

# PENNSYLVANIA BULLETIN

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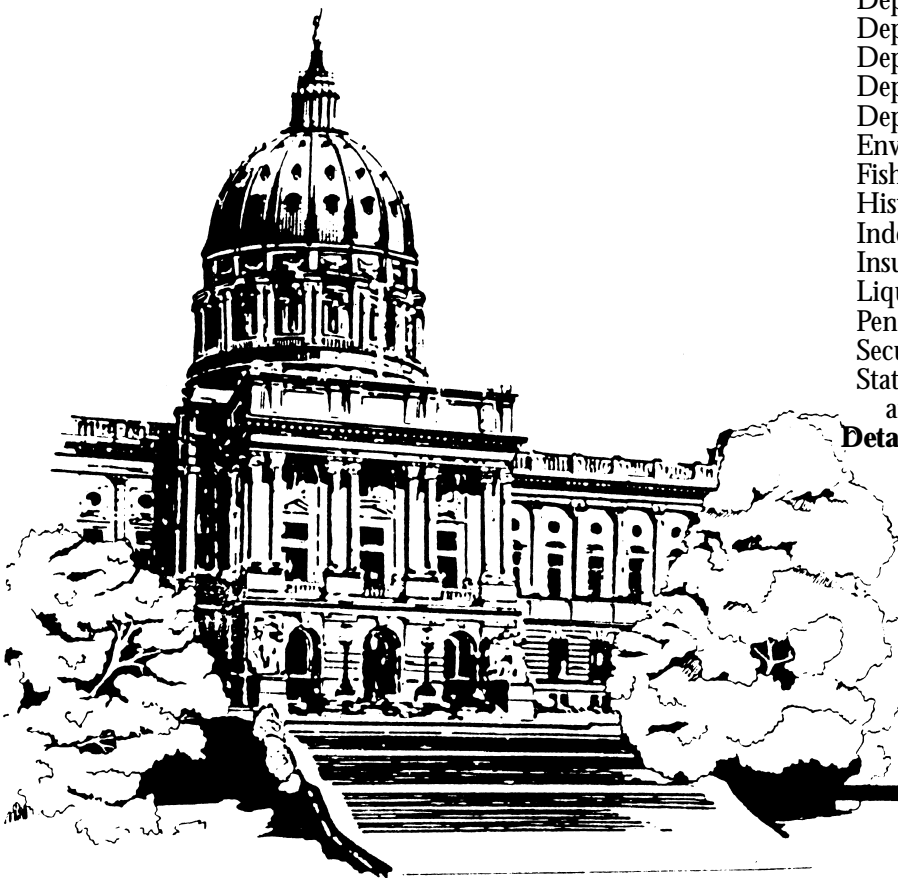
Saturday, July 12, 2003 • Harrisburg, Pa.

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State Board of Vehicle Manufacturers, Dealers  
and Salespersons

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**No. 344, July 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 JOINT RESOLUTIONS PASSED—JR 001</b>					
001	Jun 23	SB0055	PN0049		Constitution of Pennsylvania—rights of accused in criminal prosecutions and judicial administration

### 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.,  
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*Legislative Reference Bureau*

[Pa.B. Doc. No. 03-1341. Filed for public inspection July 11, 2003, 9:00 a.m.]

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<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 007 through 008</b>					
007	Jun 30	HB1406	PN2218	immediately	Medicare Hospital Service Payment Designation Act—enactment
008	Jun 30	HB1105	PN2167	immediately*	Military and Veterans Code (51 Pa.C.S.)—composition and expiration of Pennsylvania Veterans' Memorial Commission and administration of Pennsylvania Veterans' Memorial Trust Fund
<b>2003 APPROPRIATION ACTS ENACTED—ACT 002A through 007A</b>					
002A	Jun 30	SB0630	PN0668	immediately	Public School Employees' Retirement Board—Administrative expenses, etc.
003A	Jun 30	SB0631	PN0669	immediately	Bureau of Professional and Occupational Affairs—operation of professional licensure boards
004A	Jun 30	SB0632	PN0670	immediately	Department of Labor and Industry and Department of Community and Economic Development—workers' compensation, occupational diseases and Office of Small Business Advocate
005A	Jun 30	SB0633	PN0671	immediately	Pennsylvania Public Utility Commission—operation

<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>
006A	Jun 30	SB0634	PN0672	immediately	Office of Consumer Advocate—operation
007A	Jun 30	SB0635	PN0673	immediately	Office of Small Business Advocate—operation

#### Effective Dates of Statutes

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[Pa.B. Doc. No. 03-1342. Filed for public inspection July 11, 2003, 9:00 a.m.]

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 81]

#### Amendments to the Rules of Professional Conduct Relating to Ethics 2000

Notice is hereby given that The Disciplinary Board of the Supreme Court of Pennsylvania is considering recommendations made by the Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility to amend the Pennsylvania Rules of Professional Conduct as set forth in Annex A. These amendments were approved by the PBA Board of Governors and House of Delegates and were forwarded to the Disciplinary Board for consideration.

This proposal contains what would be the first comprehensive changes to the Pennsylvania Rules of Professional Conduct since their adoption in 1987. It is important to you and to our profession that you read the proposal in its entirety and, where appropriate, send us your comments. Some of your duties to clients, the Courts and third parties would be changed significantly by this proposal. Your responsibilities with regard to partners, subordinates and employees would also be changed. Note, for example, Rule 1.17 on the sale of a law practice.

While there are changes throughout the proposal, you should give particular attention to the content of RPC 1.0, 1.2, 1.4, 1.6, 1.15, 1.17, 2.1, 3.5(b), 3.6, 3.8, 3.8, 5.1, 5.3, 5.4(a)(4) and 7.1 et seq.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, First Floor, Two Lemoyne Drive, Lemoyne, PA 17043, on or before August 11, 2003.

*By the Disciplinary Board of the  
Supreme Court of Pennsylvania*

ELAINE M. BIXLER,  
*Executive Director and Secretary*

#### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart A. PROFESSIONAL RESPONSIBILITY

#### CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

##### Subchapter A. RULES OF PROFESSIONAL CONDUCT

#### § 81.1. Preamble: A Lawyer's Responsibilities.

(1) A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having a special responsibility for the quality of justice.

(2) As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal

rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. [As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. A ] As an evaluator, a lawyer acts [as evaluator ] by examining a client's legal affairs and reporting about them to the client or to others.

(3) In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

(4) In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

(5) A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

(6) As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance [ , and ]. Therefore, all lawyers should [ therefore ] devote professional time and resources and use civic influence [ in their behalf ] to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A

lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

(7) Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

(8) A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

(9) In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an **[upright]** ethical person while earning a satisfactory living. The Rules of Professional Conduct **often** prescribe terms for resolving such conflicts. Within the framework of these Rules, **however**, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. **These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.**

(10) The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

(11) To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

(12) The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

(13) Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an under-

standing by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

### § 81.2. Scope.

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may" or "should," are permissive and define areas under the Rules in which the lawyer has **[professional]** discretion **to exercise professional judgment**. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. **The Comments are sometimes used to alert lawyers to their responsibilities under such other law.** Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that **[may]** attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. **See Rule 1.18.** Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients.

[They also may have authority to represent the “public interest” in circumstances where a private lawyer would not be authorized to do so.] These Rules do not abrogate any such authority.

\* \* \* \* \*

Violation of a Rule should not **itself** give rise to a cause of action **against a lawyer** nor should it create any presumption **in such a case** that a legal duty has been breached. **In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation.** The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer’s self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.

[Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the lawyer. The fact that in exceptional situations the lawyer under the Rules has a limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.]

The lawyer’s exercise of discretion not to disclose information under Rule 1.6 should not be subject to reexamination. Permitting such reexamination would be incompatible with the general policy of promoting compliance with law through assurances that communications will be protected against disclosure.]

These Rules were **first** derived from the Model Rules of Professional Conduct adopted by the American Bar Association in 1983 as amended. **Those Rules were subject to thorough review and restatement through the work of the ABA Commission on Evaluation of the Rules of Professional Conduct (“Ethics 2000 Commission”), and have been subject to certain modifications in their adoption in Pennsylvania.** The Rules omit some provisions that appear in the ABA Model Rules of Professional Conduct. The omissions should not be interpreted as condoning behavior proscribed by the omitted provision.

The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpreta-

tion, but the text of each Rule is authoritative. [Code Comparisons were prepared to compare counterparts in the Code of Professional Responsibility. The notes have not been adopted, do not constitute part of the Rules, and are not intended to affect the application or interpretation of the Rules and Comments.]

§ 81.3. [Terminology] (Reserved).

[The following words and terms, when used in this chapter, shall have the following meanings:

**Belief or Believes**—Denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.

**Consult or Consultation**—Denotes communications of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

**Firm or Law firm**—Denotes a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization and lawyers employed in a legal services organization. See Comment, Rule 1.10.

**Fraud or Fraudulent**—Denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

**Knowingly, Known, or Knows**—Denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

**Partner**—Denotes an equity owner in a law firm, whether in the capacity of a partner in a partnership, a shareholder in a professional corporation, a member in a limited liability company, a beneficiary of a business trust, or otherwise.

**Reasonable or Reasonably**—When used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

**Reasonable belief or Reasonably believes**—When used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

**Reasonably should know**—When used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

**Substantial**—When used in reference to degree or extent denotes a material matter of clear and weighty importance.]

## § 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

### CLIENT-LAWYER RELATIONSHIP

#### Rule 1.0. Terminology.

(a) “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person’s belief may be inferred from circumstances.

(b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes an informed consent that is given in writing by the

person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the consent by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "Known," or "Knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes an equity owner in a law firm, whether in the capacity of a partner in a partnership, a shareholder in a professional corporation, a member in a limited liability company, a beneficiary of a business trust, a member of an association authorized to practice law, or otherwise.

(h) "Reasonable" or "Reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "Reasonable belief" or "Reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, Photostatting, photography, audio or video recording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

#### Comment

##### *Confirmed in Writing*

If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that agreement of consent so long as it is confirmed in writing within a reasonable time thereafter.

##### *Firm*

The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of a rule that the same lawyer should not represent opposing parties in litigation, , e.g. Rules 1.7(a), 1.10(a), while it might not be so regarded for purposes of a rule that information acquired by one lawyer is attributed to another, e.g. Rule 1.10(b).

With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

##### *Fraud*

When used in these Rules, the terms "fraud" and "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

##### *Informed Consent*

Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of

a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2(c), 1.6(a), 1.7(b), 1.8(a)(3), (b), (f) and (g), 1.9(a) and (b), 1.10 (d), 1.11(a)(2) and (d)(2)(i), 1.12(a) and 1.18(d)(1). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. Rule 1.8 (a) requires that a client's consent be obtained in a writing signed by the client. For a definition of "signed," see paragraph (n). The term informed consent in Rule 1.0 and the guidance provided in the Comment should be understood in the context of legal ethics and is not intended to incorporate jurisprudence of medical malpractice law.

**Screened**

This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10, 1.11, 1.12 or 1.18.

The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the

screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

**Rule 1.1. Competence.**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation **reasonably** necessary for the representation.

**Comment**

*Legal Knowledge and Skill*

\* \* \* \* \*

A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. [A newly admitted lawyer can be as competent as a practitioner with long experience.] Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

\* \* \* \* \*

*Thoroughness and Preparation*

Competent handling of particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more [elaborate] extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

*Maintaining Competence*

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and



comply with all continuing legal education requirements to which the lawyer is subject. [ If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances. ]

\* \* \* \* \*

**Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.**

(a) [ A ] Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation [ , subject to paragraphs (c), (d) and (e), ] and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. **A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.** A lawyer shall abide by a client's decision whether to [ accept an offer of settlement of ] settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

\* \* \* \* \*

(c) A lawyer may limit the [ objectives ] scope of the representation if the limitation is reasonable under the circumstances and the client [ consents after a full disclosure of the circumstances and consultation ] gives informed consent.

\* \* \* \* \*

[ (e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct. ]

**Comment**

**[ Scope of Representation ] Allocation of Authority between Client and Lawyer**

[ Both lawyer and client have authority and responsibility in the objectives and means of representation. The ] Paragraph (a) confers upon the client [ has ] the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. [ Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Law defining the lawyer's scope of authority in litigation varies among jurisdictions. ] The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the

means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

In a case in which the client appears to be suffering [ mental disability ] diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

\* \* \* \* \*

**[ Services Limited in Objectives or Means ] Agreements Limiting Scope of Representation**

The [ objectives or ] scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. [ For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. ] When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. [ The ] A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific [ objectives or ] means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude [ objectives or means ] actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circum-

stances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[An agreement] All agreements concerning [the scope of] a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. [Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.] See, e.g., Rules 1.1, 1.8 and 5.6.

*Criminal, Fraudulent and Prohibited Transactions*

[A] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer [is required to give] from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. [The] Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent [does not,] of itself[, ] make a lawyer a party to the course of action. [However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct.] There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. [The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 1.6. However, the] The lawyer is required to avoid [furthering the purpose] assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how [it] the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally [supposes is] supposed was legally proper but then discovers is criminal or fraudulent. [Withdrawal] The lawyer must, therefore, withdraw from the representation or rectification[, therefore, may be required] of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

\* \* \* \* \*

Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer

[should] must not participate in a [sham] transaction[; for example, a transaction] to effectuate criminal or fraudulent [escape] avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

**Rule 1.3. Diligence.**

\* \* \* \* \*

**Comment**

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and [may] take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer [should] must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. [However, a] A lawyer is not bound, however, to press for every advantage that might be realized for a client. [A] For example, a lawyer [has] may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. [A lawyer's workload should be controlled so that each matter can be handled adequately.] The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

**A lawyer's work load must be controlled so that each matter can be handled competently.**

Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the

client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client [but has not been specifically instructed concerning pursuit of an ] and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer [should advise ] must consult with the client [of ] about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).

\* \* \* \* \*

**Rule 1.4. Communication.**

(a) A lawyer shall [keep a client informed about the status of a matter and promptly comply with reasonable requests for information. ]:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

\* \* \* \* \*

**Comment**

Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

***Communicating with Client***

If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants

the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations—depending on both the importance of the action under consideration and the feasibility of consulting with the client—this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

***Explaining Matters***

The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. [For example, a lawyer negotiating on behalf of a client should provide the client with facts relevant to the matter, inform the client of communications from another party and take other reasonable steps that permit the client to make a decision regarding a serious offer from another party. A lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case should promptly inform the client of its substance unless prior discussions with the client have left it clear that the proposal will be unacceptable. See Rule 1.2(a). Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter.] Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, [in negotiations where ] when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that [might ] are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily [cannot ]

will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).

Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from [mental disability] diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client. [Practical exigency may also require a lawyer to act for a client without prior consultation.]

Withholding Information

In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interests or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client.

\* \* \* \* \*

Rule 1.5. Fees.

\* \* \* \* \*

Comment

\* \* \* \* \*

Terms of Payment

A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(j)(i). However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

\* \* \* \* \*

Rule 1.6. Confidentiality of Information.

(a) A lawyer shall not reveal information relating to representation of a client unless the client [consents after consultation] gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

\* \* \* \* \*

(c) A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a criminal act that the lawyer believes is likely to result in [death or substantial bodily harm or] substantial injury to the financial interests or property of another;

[(2)](3) to prevent, mitigate or [to] rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used; or

[(3)](4) \* \* \*

(5) to secure legal advice about the lawyer's compliance with these Rules; or

(6) to effectuate the sale of a law practice consistent with Rule 1.17.

\* \* \* \* \*

Comment

[The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

The observance of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance.

Almost without exception, clients come to lawyers in order to determine what their rights are and what is, in the maze of laws and regulations, deemed to be legal and correct. The common law recognizes that the client's confidences must be protected from disclosure. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.]

This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer [maintain confidentiality of] must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order

**to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.**

The principle of **client-lawyer confidentiality** is given effect **[in two]** by related bodies of law[,]; the attorney-client privilege, **[(which includes)]** the work product doctrine<sup>(1)</sup> **in the law of evidence** and the rule of confidentiality established in professional ethics. The attorney-client privilege **[applies]** and **work-product doctrine apply** in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, **for example**, applies not **[merely]** only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

**[The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.]**

Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

#### *Authorized Disclosure*

**[A]** Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation<sup>(2)</sup>, **except to the extent that the client's instructions or special circumstances limit that authority**. In **[litigation]** some situations, for example, a lawyer may **[disclose information by admitting]** be impliedly authorized to admit a fact that cannot properly be disputed, or **[in negotiation by making]** to make a disclosure that facilitates a satisfactory conclusion **to a matter**. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

#### *Disclosure Adverse to Client*

**[The]** Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends or learn that the client has caused

serious harm to another person. However, to the extent that a lawyer is required or permitted to disclose a client's purposes or conduct, the client may be inhibited from revealing facts that would enable the lawyer effectively to represent the client. Generally, the public interest is better served if full disclosure by clients to their lawyers is encouraged rather than inhibited. With limited exceptions, information relating to the representation must be kept confidential by a lawyer, as stated in paragraph (a).

Where **human life is threatened**, the client is or has been engaged in criminal or fraudulent conduct, or the integrity of the lawyer's own conduct is involved, the principle of confidentiality may have to yield, depending on the lawyer's knowledge about and relationship to the conduct in question.

Several situations must be distinguished:

**First, a lawyer may foresee certain death or serious bodily harm to another person. Paragraph (c)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and that the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.**

**Second, paragraph (c)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime that is reasonably certain to result in substantial injury to the financial or property interests of another. Disclosure is permitted under paragraph (c)(2) only where the lawyer reasonably believes that such threatened action is a crime; the lawyer may not substitute his or her own sense of wrongdoing for that of society at large as reflected in the applicable criminal laws. The client can, of course, prevent such disclosure by refraining from the wrongful conduct.**

**[First]** **Third**, a lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See Rule 1.2(d). To avoid assisting a client's criminal or fraudulent conduct, the lawyer may have to reveal information relating to the representation. Rule 1.6(c) **[(2)](3)** permits doing so. **[A lawyer has duties of disclosure to a tribunal under Rule 3.3(a) that may entail disclosure of information relating to the representation. Rule 1.6(b) recognizes the paramount nature of this obligation.]**

**[Second]** **Fourth**, a lawyer may have been innocently involved in past conduct by a client that was criminal or fraudulent. In such a situation, the lawyer did not violate Rule 1.2(d). However, if the lawyer's services were made an instrument of the client's crime or fraud,

the lawyer has a legitimate and overriding interest in being able to rectify the consequences of such conduct. Rule 1.6(c)(3) gives the lawyer professional discretion to reveal information relating to the representation to the extent necessary to accomplish rectification.

[ Third, a lawyer may learn that a client intends prospective conduct that is criminal and likely to result in death or bodily harm or substantial injury to the financial interest or property of another. Rule 1.6(c)(1) permits the lawyer to reveal information relating to the representation to prevent such harms when the lawyer “reasonably believes” that a client will cause a homicide or serious bodily harm. It is very difficult for a lawyer to “know” that a client will carry out such an intent, for the client may have a change of mind. The Rule must be based on the lawyer’s discretion. Exercise of that discretion requires a lawyer to consider such factors as the nature of the lawyer’s relationship to the client and with anyone who might be injured by the client and the lawyer’s prior involvement in the situation. Where possible, the lawyer should seek to persuade the client to take suitable action. A disclosure adverse to the client’s interest should be no greater than the lawyer necessary to the purpose of prevention of harm.

A lawyer’s considered decision not to make disclosures permitted by does not violate this Rule. ]

Fifth, where a legal claim or disciplinary charge alleges complicity of the lawyer in a client’s conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. If the lawyer is charged with wrongdoing in which the client’s conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. The lawyer’s right to respond arises when an assertion of such complicity has been made. Paragraph (c)(4) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

Sixth, a lawyer entitled to a fee is permitted by paragraph (c)(4) to prove the services rendered in an action to collect it. This aspect of the Rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

Seventh, a lawyer’s confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer’s personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is

not impliedly authorized, paragraph (c)(5) permits such disclosure because of the importance of a lawyer’s compliance with the Rules of Professional Conduct.

Eighth, it is recognized that the due diligence associated with the sale of a law practice authorized under Rule 1.17 may necessitate the limited disclosure of certain otherwise confidential information. Paragraph (c)(6) permits such disclosure. However, as stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having a need to know it, and to obtain appropriate arrangements minimizing the risk of disclosure.

Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4.

A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4.

Paragraph (c) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client’s interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

Paragraph (c) permits but does not require the disclosure of information relating to a client’s representation to accomplish the purposes specified in paragraphs (c)(1) through (c)(6). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer’s relationship with the client and with those who might be injured by the client, the lawyer’s own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer’s decision not to disclose as permitted by paragraph (c) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (c). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires

disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

*Withdrawal*

\* \* \* \* \*

**[ Dispute Concerning Lawyer's Conduct**

Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (c)(3) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend, of course, applies where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence, the disclosure should be made in a manner which limits access to the information to the tribunal or other persons having a need to know it, and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

If the lawyer is charged with wrongdoing in which the client's conduct is implicated, the rule of confidentiality should not prevent the lawyer from defending against the charge. Such a charge can arise in a civil, criminal or professional disciplinary proceeding, and can be based on a wrong allegedly committed by the lawyer against the client, or on a wrong alleged by a third person; for example, a person claiming to have been defrauded by the lawyer and client acting together. A lawyer entitled to a fee is permitted by paragraph (c)(3) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary. As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

***Disclosures Otherwise Required or Authorized***

The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, Rule 1.6(a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The Rules of Professional Conduct in various circumstances permit or require a lawyer to dis-

close information relating to the representation. See Rules 2.2, 2.3, 3.3 and 4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of law to give information about a client. Whether another provision of law supersedes Rule 1.6 is a matter of interpretation beyond the scope of these Rules, but a presumption should exist against such a supersession.

It is recognized that the due diligence associated with the sale of a law practice authorized under Rule 1.17 may necessitate the limited disclosure of certain otherwise confidential information. However, as stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having a need to know it, and to obtain appropriate arrangements minimizing the risk of disclosure. ]

***Acting Competently to Preserve Confidentiality***

A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

***Former Client***

The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

\* \* \* \* \*

**Rule 1.7. Conflict of Interest: [ General Rule ] Current Clients.**

[ (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially

limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after full disclosure and consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved. ]

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent.

#### Comment

##### [ *Loyalty to a Client* ]

Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See Rule 1.16. Where more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by Rule 1.9. See also Rule 2.2(c). As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's consent. Paragraph (a) expresses that general rule. Thus, a lawyer ordinarily may not act as an advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Paragraph (a) applies only when the representation of one client would be directly adverse to the other.

Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (b) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

#### *Consultation and Consent*

A client may consent to representation notwithstanding a conflict. However, as indicated in paragraph (a)(1) with respect to representation directly adverse to a client, and paragraph (b)(1) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

#### *Lawyer's Interests*

The lawyer's own interests should not be permitted to have adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and without charging an illegal or clearly excessive fee. See Rules 1.1 and 1.5. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

#### *Conflicts in Litigation*

Paragraph (a) prohibits representation of opposing parties in litigation. Simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by paragraph (b). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other



hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of paragraph (b) are met. Compare Rule 2.2 involving intermediation between clients.

Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon full disclosure and consultation. By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

#### *Interest of Person Paying for a Lawyer's Service*

A lawyer may be paid from a source other than the client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client. See Rule 1.8(f). For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement, and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients consent after full disclosure and consultation and the arrangement ensures the lawyer's professional independence.

#### *Other Conflict Situations*

Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are

generally aligned in interest even though there is some difference of interest among them.

Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may arise. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. The lawyer should make clear the relationship to the parties involved.

A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

#### *Conflict Charged by an Opposing Party*

Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is a reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment. See Scope. ]

#### *General Principles*

Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For the definition of "informed consent," see Rule 1.0(e).

Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent. The clients affected under paragraph (a) include the clients referred to in paragraph (a)(1) and the clients whose representation might be materially limited under paragraph (a)(2).

A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments (5) and (29).

Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

#### *Identifying Conflicts of Interest: Directly Adverse*

Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests

are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

Directly adverse conflicts can also arise in transactional matters. For example, if lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

#### *Lawyer's Responsibilities to Former Clients and Other Third Persons*

In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

#### *Personal Interest Conflicts*

The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may

be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

#### *Interest of Person Paying for a Lawyer's Service*

A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

#### *Prohibited Representations*

Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph 1.7(b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some

states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(m)), such representation may be precluded by paragraph (b)(1).

#### *Informed Consent*

Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comment, paragraphs (30) and (31) (effect of common representation on confidentiality).

Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

#### *Confirming Consent*

Paragraph (b) requires the lawyer to obtain the informed consent of the client to a concurrent conflict of interest. The client's consent need not be confirmed in writing to be effective. Rather, a writing tends to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing. See also Rule 1.0(b) (writing includes electronic transmission).

#### *Revoking Consent*

A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict,

whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

#### *Consent to Future Conflict*

Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

#### *Conflicts in Litigation*

Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as in civil cases. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in repre-

senting another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

#### *Nonlitigation Conflicts*

Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment (7). Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment (8).

For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

Whether a conflict is consentable depends on the circumstances. For example, lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of

an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

#### *Special Considerations in Common Representation*

In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great the multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the

lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be full explained to the clients at the outset of the representation. See Rule 1.2(c).

Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

#### *Organizational Clients*

A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

\* \* \* \* \*

Rule 1.8. Conflict of Interest: **[ Prohibited Transactions ] Current Clients: Specific Rules.**

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are **fair and reasonable to the client and are** fully disclosed and transmitted in writing **[ to the client ]** in a manner **[ which ]** that can be reasonably understood by the client;

(2) the client is advised **in writing of the desirability of seeking** and is given a reasonable opportunity to seek the advice of independent **legal counsel [ in ]** on the transaction; and

(3) the client **[ consents ] gives informed consent** in a writing **[ thereto ] signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.**

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client **[ consents after consultation ] gives informed consent, except as permitted or required by these Rules.**

(c) A lawyer shall not **solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer [ as parent, child, sibling, or spouse ] any substantial gift [ from a client, including a testamentary ] unless the lawyer or other recipient of the gift[ , except where the client ] is related to the [ donee within the third degree of relationship ] client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close familial relationship.**

\* \* \* \* \*

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client **[ consents after full disclosure of the circumstances and consultation ] gives informed consent;**

\* \* \* \* \*

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client **[ consents after consultation, including ] gives informed consent. The lawyer's disclosure [ of ] shall include** the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not

**(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless [ permitted by law and ] the client is independently represented in making the agreement[ , nor shall a lawyer ]; or**

**(2) settle a claim or potential claim for such liability with an unrepresented client or former client [ without first advising ] unless that person is advised in writing [ that ] of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent [ representation is appropriate ] legal counsel in connection therewith.**

**(i) [ A lawyer related to another lawyer as parent, child, sibling, or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.**

**(j) ] A lawyer shall not acquire a proprietary interest in a cause of action that the lawyer is conducting for a client, except that the lawyer may:**

**(1) acquire a lien [ granted ] authorized by law to secure the lawyer's fee or expenses; and**

\* \* \* \* \*

**(j) A lawyer shall not have sexual relations with a client unless a consensual relationship existed between them when the client-lawyer relationship commenced.**

**(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.**

**Comment**

*Business Transactions Between Client and Lawyer*

**[ As a general principle, all transactions between client and lawyer should be fair and reasonable to the client. In such transactions a review by independent counsel on behalf of the client is often advisable. Furthermore, a lawyer may not exploit information relating to the representation to the client's disadvantage. For example, a lawyer who has learned that the client is investing in specific real estate may not, without the client's consent, seek to acquire nearby property where doing so would adversely affect the client's plan for investment. Paragraph (a) does not, however, ] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as**

payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(e) (definition of "Informed consent").

The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

#### *Use of Information Related to Representation*

Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels

in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

#### *Gifts to Lawyers*

A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, [ **however,** ] the client should have the detached advice that another lawyer can provide. [ **Paragraph (c) recognizes an** ] The sole exception to this Rule is where the client is a relative of the donee [ **or the gift is not substantial** ].

This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

#### *Literary Rights*

An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and [ **paragraph (j)** ] paragraphs (a) and (i).

#### *Financial Assistance*

Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their cli-

ents, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

*Person Paying for a Lawyer's Services*

[ Rule 1.8(f) requires disclosure of the fact that the lawyer's services are being paid for by a third party. Such an arrangement must also conform to the requirements of Rule 1.6 concerning confidentiality and Rule 1.7 concerning conflict of interest. Where the client is a class, consent may be obtained on behalf of the class by court-supervised procedure. ]

Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph.

*[ Family Relationships Between Lawyers*

Rule 1.8(i) applies to related lawyers who are in different firms. Related lawyers in the same firm are governed by Rules 1.7, 1.9 and 1.10. The dis-

qualification stated in Rule 1.8(i) is personal and is not imputed to members of firms with whom the lawyers are associated. ]

*Aggregate Settlements*

Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0(e) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

*Limiting Liability and Settling Malpractice Claims*

Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.



**[ Acquisition of ] Acquiring Proprietary Interest in Litigation**

Paragraph **[(j) (i)]** states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. **[ This ]** Like paragraph (e), the general rule **[, which ]** has its basis in common law champerty and maintenance **[, ]** and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules **[, such as the exception for reasonable contingent fees set forth in Rule 1.5 and the exception for certain advances of the costs of litigation set forth in paragraph (e) ]**. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

**[ This Rule is not intended to apply to customary qualification and limitations in legal opinions and memoranda. ]**

**Client-Lawyer Sexual Relationships**

The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relat-

ing to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.

**Imputation of Prohibitions**

Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated lawyers.

\* \* \* \* \*

**Rule 1.9. [ Conflict of Interest: ] Duties to Former [ Client ] Clients.**

(a) A lawyer who has formerly represented a client in a matter shall not thereafter **[ :**

(a) ] represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client **[ consents after a full disclosure of the circumstances and consultation; or ]** gives informed consent.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as **[ Rule 1.6 ]** these Rules would permit or require with respect to a client, or when the information has become generally known **[ . ]**; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

### Comment

After termination of a client-lawyer relationship, a lawyer **has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. [ The principles in Rule 1.7 determine whether the interests of the present and former client are adverse. Thus ] Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment (9). Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.**

The scope of a "matter" for purposes of [ Rule 1.9(a) may depend ] **this Rule depends** on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests **in that transaction** clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a [ wholly ] **factually** distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military [jurisdiction] **jurisdictions**. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[ **Information acquired by the lawyer in the course of representing a client may not subsequently be used by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client. ]**

Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resist-

ing eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information that could be used adverse to the former client's interests in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

### *Lawyers Moving Between Firms*

When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge of information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a firm once a lawyer becomes associated with a firm, including screening provisions. See Rule 1.10(c) for the restrictions on a firm once a lawyer has terminated association with the firm.

Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files

of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[ Disqualification from subsequent representation is ] The provisions of this Rule are for the protection of former clients and can be waived [ by them ] if the client gives informed consent. See Rule 1.0(e). [ A waiver is effective only if there is a disclosure of the circumstances, including the lawyer's intended role in behalf of the new client. ] With regard to the effectiveness of an advance waiver, see Comment (22) to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

[ With regard to an opposing party's raising a question of conflict of interests, see Comment to Rule 1.7. With regard to disqualification of a firm with which a lawyer is associated, see Rule 1.10. ]

\* \* \* \* \*

Rule 1.10. [ Imputed Disqualification ] Imputation of Conflicts of Interest: General Rule.

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, [ 1.8(c), ] or 1.9 [ or 2.2 ], unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm, or unless permitted by Rules 1.10(b) or (c).

\* \* \* \* \*

(e) While lawyers are associated in a firm, a prohibition in paragraphs (a) through (i) of Rule 1.8 that applies to anyone of them shall apply to all of them.

(f) The disqualification of lawyers in a firm with former or current government lawyers is governed by Rule 1.11.

(g) The disqualification of lawyers in a firm with a former judge, arbitrator, mediator or other third-party neutral is governed by Rule 1.12.

(h) Where a lawyer in a firm is disqualified from a matter due to consultation with a prospective client pursuant to Rule 1.18(b) and (c), disqualification of other lawyers in the same firm is governed by Rule 1.18(d).

(i) The disqualification of a lawyer when another lawyer in the lawyer's firm is likely to be called as a witness is governed by Rule 3.7.

Comment

Definition of "Firm"

For the purposes of the Rules of Professional Conduct, the term "firm" [ includes ] denotes lawyers in a [ private firm, and ] law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or in the legal department of a corporation or other organization[ , or in a legal services organization ]. See Rule 1.0(c). Whether two or more lawyers constitute a firm within this definition depends on specific facts. See Rule 1.0, Comments (2)—(4). [ The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.

Where a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by Rule 1.11(c)(1). The individual lawyer involved is bound by the Rules generally, including Rules 1.6, 1.7, and 1.9.

Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to

protection of its client confidences, and therefore, to the protections provided in Rules 1.6, 1.9, and 1.11. However, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations, and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in Rule 1.11. ]

*Principles of Imputed Disqualification*

\* \* \* \* \*

The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(k) and 5.3.

Rule 1.10(c) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

Rule 1.10(d) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or

former client has given informed consent to the representation. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7, Comment (22). For a definition of informed consent, see Rule 1.0(e).

Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11 (b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

The disqualification of lawyers in a firm with a former judge, arbitrator, mediator or other third-party neutral is governed by Rule 1.12.

Where a lawyer is disqualified from a matter as a result of a consultation with a prospective client pursuant to Rule 1.18(b) and (c), disqualification of the other lawyers in the firm is governed by Rule 1.18(d).

The disqualification of a lawyer when another lawyer in the lawyer's firm is likely to be called as a witness is governed by Rule 3.7.

*[ Lawyers Moving Between Firms*

When lawyers have been associated in a firm but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

Reconciliation of these competing principles in the past has been attempted under two rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a

partner in another law firm, there is a presumption that all confidences known by a partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.

The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety proscribed in Canon 9 of the ABA Model Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of imputed disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.

A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.

**Confidentiality**

Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.

Application of paragraphs (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

Paragraphs (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(b). Thus, if a lawyer while with one firm acquired no knowledge of information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict.

Independent of the question of disqualification of a firm, a lawyer changing professional association

has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9.

**Adverse Positions**

The second aspect of loyalty to client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by Rule 1.9(a). If a lawyer left one firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interests in the same or related matters, so long as the conditions of Rule 1.10(b) and (c) have been met. ]

**Rule 1.11. [ Successive ] Special Conflicts of Interest for Former and Current Government Officers and [ Private Employment ] Employees.**

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency [ consents after consultation. No ] gives its informed consent to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

\* \* \* \* \*

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

[ (c) ](d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee [ shall not ]:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless [ under

applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or (2) ] the appropriate government agency gives its informed consent; or

(ii) negotiate for private employment with any person who is involved as a party or as [ attorney ] a lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

[ (d) ](e) As used in this Rule, the term "matter" includes:

\* \* \* \* \*

[ (e) As used in this Rule, the term "confidential government information" means information which has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public. ]

#### Comment

[ This Rule prevents a lawyer from exploiting public office for the advantage of a private client. It is a counterpart of Rule 1.10(b), which applies to lawyers moving from one firm to another.

A lawyer representing a government agency, whether employed or specially retained by the government, is ] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against [ representing adverse interests ] current conflicts of interest stated in Rule 1.7 [ and the protections afforded former clients in Rule 1.9 ]. In addition, such a lawyer [ is ] may be subject [ to Rule 1.11 and ] to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0(e) for the definition of informed consent.

Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

Paragraphs (c) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same

claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a)(2). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1), and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

[ Where ] This Rule represents a balancing of interests. On the one hand, where the successive clients are a [ public ] government agency and [ a ] another client, public or private [ client ], the risk exists that power or discretion vested in [ public authority ] that agency might be for the special benefit of [ a private ] the other client. A lawyer should not be in a position where benefit to [ a private ] the other client might affect performance of the lawyer's professional functions on behalf of [ public authority ] the government. Also, unfair advantage could accrue to the private client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. [ However ] On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus, a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening [ and waiver ] in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

When [ the client is an agency of one government, that agency should be treated as a private ] a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule [ if the lawyer thereafter represents an agency of another government ], as when a lawyer [ represents ] is employed by a city and subsequently is employed by a federal agency.

[ Paragraphs (a)(1) and (b) do not prohibit a lawyer from receiving a salary or distribution of firm profits established by prior independent agreement. They prohibit directly relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified.

Paragraph (a)(2) does not require that a lawyer give notice to the ] However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government [ agency at a time when premature disclosure would injure the client; a requirement for premature disclosure might pre-

clude engagement of the lawyer. Such notice is, however, required to ] agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 1.13 Comment (6).

Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(k) (requirements for screening procedures). These paragraphs do not prohibit a lawyer from receiving a salary or distribution of firm profits established by prior independent agreement, but that lawyer may not receive compensation directly relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified.

[ Paragraph (a)(2) does not require that a lawyer give notice to the government agency at a time when premature disclosure would injure the client; a requirement for premature disclosure might preclude engagement of the lawyer. Such notice is, however, required to ] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable [ in order that the government agency will have a reasonable opportunity to ascertain that the lawyer is complying with Rule 1.11 and to take appropriate action if it believes the lawyer is not complying. ] after the need for screening becomes apparent.

Paragraph [ (b) ](c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

Paragraphs (a) and [ (c) ](d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[ Paragraph (c) does not disqualify other lawyers in the agency with which the lawyer in question has become associated. ]

For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

Rule 1.12. Former Judge [ or ], Arbitrator [ or Law Clerk ], Mediator Or Other Third-Party Neutral.

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, [ arbitrator ] third-party neutral (including arbitrator or mediator) or law clerk to such a person, unless all parties to the proceeding give informed consent [ after disclosure ].

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as [ attorney ] lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or [ arbitrator ] third-party neutral. A lawyer serving as a law clerk to a judge, other adjudicative officer or [ arbitrator ] third-party neu-

tral may negotiate for employment with a party or [ attorney ] lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, other adjudicative officer or [ arbitrator ] third-party neutral.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which the lawyer is associated may knowingly undertake or continue representation in the matter unless:

\* \* \* \* \*

(2) written notice is promptly given to the parties and any appropriate tribunal to enable [ it ] them to ascertain compliance with the provisions of this [ rule ] Rule.

\* \* \* \* \*

Comment

This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multi-member court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other judicial officers, and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2) and C of the Model Code of Judicial Conduct provide that a part-time judge, judge pro tempore or retired judge recalled to active service, may not "act as a lawyer in any proceeding in which he served as a judge or in any other proceeding relating thereto." Although phrased differently from this Rule, those Rules correspond in meaning.

Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties give their informed consent. See Rule 1.0(e). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under the law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

Requirements for screening procedures are stated in Rule 1.0(k). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent. Notice must be given to the parties as well as to the appropriate tribunal.

\* \* \* \* \*

Rule 1.13. Organization as Client.

\* \* \* \* \*

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization [concerning such matters] and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

- (1) asking for reconsideration of the matter;

\* \* \* \* \*

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act [in] on behalf of the organization as determined by applicable law.

\* \* \* \* \*

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when [it is apparent] the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

\* \* \* \* \*

Comment

The Entity as the Client

\* \* \* \* \*

[In an extreme case, it may be reasonably necessary for the lawyer to refer the matter to the] The organization's highest authority[. Ordinarily, that is] to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere; for example, in the independent directors of a corporation.

Relation to Other Rules

The authority and responsibility provided in [paragraph (b)] this Rule are concurrent with the authority and responsibility provided in other Rules. In particular,

this Rule does not limit or expand the lawyer's responsibility under Rule 1.6, 1.8, and 1.16, 3.3 or 4.1. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rule 1.2(d) can be applicable.

Government Agency

The duty defined in this Rule applies to governmental organizations. [However, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulations. Therefore, defining] Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope (17). Although in some circumstances the client may be a specific agency, it [is generally] may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government [as a whole] may be the client for [purpose] purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See [note on] Scope.

\* \* \* \* \*

Rule 1.14. Clients [Under a Disability] with Diminished Capacity.

(a) When a client's [ability] capacity to make adequately considered decisions in connection with [the] a representation is [impaired] diminished, whether because of minority, mental [disability] impairment or for some other reason, the lawyer [should] shall, as far as reasonably possible, maintain a normal [client lawyer] client-lawyer relationship with the client.

(b) [A lawyer may seek the appointment of a guardian or take other protective action with respect to a client, only when] When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.



**(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.**

#### Comment

The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a **diminished mental [disorder or disability] capacity**, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, **[an] a severely incapacitated person** may have no power to make legally binding decisions. Nevertheless, a client **[lacking legal competence] with diminished capacity** often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. **[Furthermore, to an increasing extent the law recognizes intermediate degrees of competence.]** For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. **[If the person has no guardian or legal representative, the lawyer often must act as de facto guardian.]** Even if the person **[does have]** has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

**The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.**

If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. **[If a legal representative has not been appointed, the lawyer should see to such an appointment where it would serve the client's best interests. Thus, if a disabled client has substantial property that should be sold for the client's benefit, effective completion of the transaction ordinarily requires appointment of a legal representative. In many circumstances, however, appointment of a legal representative may be expensive or traumatic for the client. Evaluation of these considerations is a matter of professional judgment on the lawyer's part.]** In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the

guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

#### *Taking Protective Action*

**If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.**

**In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.**

**If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.**

#### *Disclosure of the Client's Condition.*

**[Rules of procedure in litigation generally provide that minors or person suffering mental disability shall be represented by a guardian or next friend if they do not have a general guardian. However, disclosure] Disclosure of the client's [dis-**

ability can ] **diminished capacity** could adversely affect the client's interests. For example, raising the question of [ **disability** ] **diminished capacity** could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one. [ **The lawyer may seek guidance from an appropriate diagnostician.** ]

**Emergency Legal Assistance**

In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

\* \* \* \* \*

**Rule 1.15. Safekeeping Property.**

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such

account funds and other property shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit a lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of such funds in a different manner.

[ (b) ](d) \* \* \*

(c) (e) When in the course of representation a lawyer is in possession of property in which [ **both the lawyer and another person** ] **two or more persons, one of whom may be the lawyer, claim [ interest ] interests**, the property shall be kept separate by the lawyer until [ **there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until** ] the dispute is resolved. **The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.**

(d) (f) Notwithstanding paragraphs (a) [ , (b) and (c) ] **through (e)**, and except as provided below in paragraph [ (e) ](g), a lawyer shall place all funds of a client or of a third person in an interest bearing account. All qualified funds received by the lawyer shall be placed in an [ **interest** ] **Interest On Lawyer Trust Account** in a depository institution approved by the Supreme Court of Pennsylvania. All other funds of a client or a third person received by the lawyer shall be placed in an interest bearing account for the benefit of the client or third person or in an other investment vehicle specifically agreed upon by the lawyer and the client or third party.

\* \* \* \* \*

(e) (g) A lawyer shall be exempt from the provisions of paragraph [ (d) ](f) only upon exemption requested and granted by the IOLTA Board. Exemptions shall be granted if: (i) the nature of the lawyer's practice does not require the routine maintenance of a trust account in Pennsylvania; (ii) compliance with paragraph [ (d) ](f) would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographical distance between the lawyer's principal office and the closest depository institution which is described in paragraph [ (d) ](f)(2), or on other compelling and necessitous factors; or (iii) the lawyer's historical annual trust account experience, based on information from the depository institution in which the lawyer deposits trust funds, demonstrates that service charges on the account would significantly and routinely exceed any interest generated.

[ (f) ](h) \* \* \*

[ (g) ](i) \* \* \*

\* \* \* \* \*

[ (h) ](j) \* \* \*

\* \* \* \* \*

**[ (i) ](k) \* \* \***

**Comment**

A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons **[ should ], including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. See, e.g., ABA Model Financial Recordkeeping Rule.**

**While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding that part of the funds which are the lawyer's.**

Lawyers often receive funds from **[ third parties from ]** which the lawyer's fee will be paid. **[ If there is a risk that the client may divert the funds without paying the fee, the ]** The lawyer is not required to remit **[ the portion from which the fee is to be paid ] to the client funds that the lawyer reasonably believes represent fees owed.** However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds **[ should ] must be kept in a trust account** and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

**[ Third ] Paragraph (e) also recognizes that third parties[ , such as a client's creditors, ] may have [ just ] lawful claims against specific funds or other property in a lawyer's custody such as a client's creditor who has a lien on funds recovered in a personal injury action.** A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client **[ , and accordingly, may ]. In such cases, when the third party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client unless the claims are resolved. [ However, a ]** A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. **When there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.**

The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves **only** as an escrow agent is governed by the applicable law relating to fiduciaries, even though the lawyer does not render legal services in the transaction, **and is not governed by this Rule.**

**[ A "client's security fund" provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as**

**a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer should participate. ]**

**A lawyer must participate in the Pennsylvania Lawyers Fund for Client Security. It is a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer.**

**Paragraphs (g) through (k) provide for the Interest on Lawyer Trust Account (IOLTA) program and distinguish two types of funds of clients and third parties held by a lawyer: qualified funds, which must be placed in an IOLTA account, and other funds, which are to be placed in an interest bearing account unless the client or third party agrees otherwise. There are further instructions in Rules 219 and 221 of the Pennsylvania Rules of Disciplinary Enforcement and in the Regulations of the Interest on Lawyers Trust Account Board, 204 Pa. Code, § 81.01 et seq., which are referred to as the IOLTA Regulations.**

\* \* \* \* \*

**Rule 1.16. Declining or Terminating Representation.**

\* \* \* \* \*

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client **[ , or if: ]**

**[ (1) ] (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;**

**[ (2) ] (3) \* \* \***

**[ (3) ] (4) the client insists upon [ pursuing an objective ] taking action that the lawyer considers repugnant or [ imprudent ] with which the lawyer has a fundamental disagreement;**

**[ (4) ] (5) \* \* \***

**[ (5) ] (6) \* \* \***

**[ (6) ] (7) \* \* \***

(c) **A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation.** When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee **or expense** that has not been earned **or incurred.** The lawyer may retain papers relating to the client to the extent permitted by other law.

**Comment**

A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. **Ordinarily, a representation in a matter is completed**

when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment (4).

*Mandatory Withdrawal*

\* \* \* \* \*

When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. **Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation.** Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may **[ wish ] request** an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. **Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.**

*Discharge*

\* \* \* \* \*

Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring **self-representation by the client [ to represent himself ]**.

If the client **[ is mentally incompetent ] has severely diminished capacity,** the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and **[ , in an extreme case, ] may [ initiate proceedings for a conservatorship or similar protection of the client. See ] take reasonably necessary protective action as provided in Rule 1.14.**

*Optional Withdrawal*

A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer **[ also ] may also withdraw where the client insists on [ a ] taking action that the lawyer considers repugnant or [ imprudent objective ] with which the lawyer has a fundamental disagreement.**

\* \* \* \* \*

*Assisting the Client Upon Withdrawal*

Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. **See Rule 1.15.**

**[ Whether or not a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these Rules. ]**

**Rule 1.17. Sale of Law Practice.**

**[ The personal representative or estate of a deceased lawyer or a lawyer disabled from the practice of law ] A lawyer or law firm may, for consideration, [ transfer the client representations of the deceased or disabled lawyer and ] sell [ the ] or purchase a law practice, including good will [ of the deceased or disabled lawyer's practice ], if the following conditions are satisfied:**

**(a) The seller ceases to engage in the private practice of law in Pennsylvania;**

**(b) The seller sells the practice as an entirety to a single lawyer. For purposes of this Rule, a practice is sold as an entirety if the purchasing lawyer assumes responsibility for all of the active files except those specified in paragraph [ (f) ] (g) of this Rule.**

**[ (b) ](c) \* \* \***

\* \* \* \* \*

**[ (c) ](d) The fees charged clients shall not be increased by reason of the sale. Existing agreements between the seller and the client concerning fees and the scope of work must be honored by the purchaser, unless the client [ consents ] gives informed consent confirmed in writing [ after consultation ].**

**[ (d) ](e) \* \* \***

**[ (e) ](f) \* \* \***

**[ (f) ](g) The sale shall not be effective as to any client for whom the proposed sale would create a conflict of interest for the purchaser or who cannot be represented by the purchaser because of other requirements of the Pennsylvania Rules of Professional Conduct or rules of the Pennsylvania Supreme Court governing the practice of law in Pennsylvania, unless such conflict, requirement or rule can be waived by the client and [ is in fact waived by the client in writing ] the client gives informed consent.**

**[ (g) ](h) \* \* \***

\* \* \* \* \*

**(2) the term "seller" means an individual lawyer or a law firm that sells a law practice and includes both the personal representative or estate of [ the ] a deceased or disabled lawyer and the deceased or disabled lawyer, as appropriate.**

**[ (h) ](i) Admission to or withdrawal from a law partnership or professional [ corporation ] association, retirement plans or similar arrangements or a sale limited to the tangible assets of a law practice is not a sale or purchase for purposes of this Rule 1.17.**

**Comment**

The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer **[ dies or is disabled ] or a law firm ceases to**

engage in the private practice of law in Pennsylvania and another lawyer or firm takes over the representation of the clients [of the deceased or disabled lawyer, the heirs] of the seller [or], the seller, including the personal representative or estate of a deceased or disabled lawyer, may obtain compensation for the reasonable value of the practice similar to withdrawing partners of law firms. See Rules 5.4 and 5.6. Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

\* \* \* \* \*

Client Confidences, Consent and Notice

\* \* \* \* \*

No single method is provided for the giving of actual written notice to the client under paragraph [(b)](c). It is up to the person undertaking to give notice to determine the most effective and efficient means for doing so. For many clients, certified mail with return receipt requested will be adequate. However, with regard to other clients, this method may not be the best method. It is up to the person responsible for giving notice to make this decision.

\* \* \* \* \*

Fee Arrangements Between Client and Purchaser

The sale may not be financed by increases in fees charged to the clients of the practice. This protection is underscored by both paragraph [(b)](c)(2) and paragraph [(c)](d). Existing agreements between the seller and the client as to the fees and the scope of the work must be honored by the purchaser, unless the client [consents after consultation] gives informed consents confirmed in writing.

Other Applicable Ethical Standards

Lawyers participating in the sale of a law practice are subject to ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure client [consultation] informed consent for those conflicts which can be waived by the client (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation. [(See Rules 1.6 and 1.9)].

If approval of the substitution of the purchasing attorney for the selling attorney is required by the Rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale. [(See Rule 1.16)].

Applicability of the Rule

[The seller may be represented by a non-lawyer representative not subject to these Rules. In such circumstances, the purchasing lawyer shall be responsible for compliance with these Rules.]

This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disap-

peared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in the sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

\* \* \* \* \*

COUNSELOR

Rule 2.1. Advisor.

In representing a client, a lawyer [should] shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Comment

Scope of Advice

\* \* \* \* \*

Advice couched in [narrowly] narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

\* \* \* \* \*

Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the [fact] face of conflicting recommendations of experts.

Offering Advice

In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer [act] offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

\* \* \* \* \*

Rule 2.2. [Intermediary] (Reserved).

[(a) A lawyer may act as intermediary between clients if:

(1) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's consent to the common representation;

(2) the lawyer reasonably believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(3) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(b) While acting as intermediary, the lawyer shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(c) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in paragraph (a) is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

#### Comment

A lawyer acts as intermediary under this Rule when the lawyer represents two or more parties with potentially conflicting interests. A key factor in defining the relationship is whether the parties share responsibility for the lawyer's fee, but the common representation may be inferred from other circumstances. Because confusion can arise as to the lawyer's role where each party is not separately represented, it is important that the lawyer make clear the relationship.

The Rule does not apply to a lawyer acting as arbitrator or mediator between or among parties who are not clients of the lawyer, even where the lawyer has been appointed with the concurrence of the parties. In performing such a role the lawyer may be subject to applicable codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint Committee of the American Bar Association and the American Arbitration Association.

A lawyer acts as intermediary in seeking to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest, arranging a property distribution in settlement of an estate or mediating a dispute between clients. The lawyer seeks to resolve potentially conflicting interests by developing the parties' mutual interests. The alternative can be that each party may have to obtain separate representation, with the possibility in some situations of incurring additional cost, complication or even litigation. Given these and other relevant factors, all the clients may prefer that the lawyer act as intermediary.

In considering whether to act as intermediary between clients, a lawyer should be mindful that if the intermediation fails the result can be additional cost, embarrassment and recrimination. In some situations the risk of failure is so great that intermediation is plainly impossible. For example, a lawyer cannot undertake common representation of clients between whom contentious litigation is imminent or who contemplate contentious negotiations. More generally, if the relationship between the parties has already assumed definite antagonism, the possibility that the clients' interests can be adjusted by intermediation ordinarily is not very good.

The appropriateness of intermediation can depend on its form. Forms of intermediation range from informal arbitration, where each client's case is presented by the respective client and the lawyer decides the outcome, to mediation, to common representation where the clients' interests are substantially though not entirely compatible. One form may be appropriate in circumstances where another would not. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating a relationship between the parties or terminating one.

#### *Confidentiality and Privilege*

A particularly important factor in determining the appropriateness of intermediation is the effect on client-lawyer confidentiality and the attorney-client privilege. In a common representation, the lawyer is still required both to keep each client adequately informed and to maintain confidentiality of information relating to the representation. See Rules 1.4 and 1.6. Complying with both requirements while acting as intermediary requires a delicate balance. If the balance cannot be maintained, the common representation is improper. With regard to the attorney-client privilege, the prevailing rule is that as between commonly represented clients the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

Since the lawyer is required to be impartial between commonly represented clients, intermediation is improper when that impartiality cannot be maintained. For example, a lawyer who has represented one of the clients for a long period and in a variety of matters might have difficulty being impartial between that client and one to whom the lawyer has only recently been introduced.

#### *Consultation*

In acting as intermediary between clients, the lawyer is required to consult with the clients on the implications of doing so, and proceed only upon consent based on such a consultation. The consultation should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances.

Paragraph (b) is an application of the principle expressed in Rule 1.4. Where the lawyer is intermediary, the clients ordinarily must assume greater responsibility for decisions than when each client is independently represented.

**Withdrawal**

**Common representation does not diminish the rights of each client in the client-lawyer relationship. Each has the right to loyal and diligent representation, the right to discharge the lawyer as stated in Rule 1.16, and the protection of Rule 1.9 concerning obligations to a former client. ]**

\* \* \* \* \*

**Rule 2.3. Evaluation for Use by [ a ] Third [ Person ] Persons.**

(a) A lawyer may [ undertake ] provide an evaluation of a matter affecting a client for the use of someone other than the client if [ :

(1) ] the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client [ ; and

(2) ] (b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client [ consents after consultation ] gives informed consent.

[ (b) ](c) Except as disclosure is [ required ] authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

**Comment**

*Definition*

An evaluation may be performed at the client's direction [ but ] or when impliedly authorized in order to carry out the representation. See Rule 1.2. Such an evaluation may be for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[ Lawyers for the government may be called upon to give a formal opinion on the legality of contemplated government agency action. In making such an evaluation, the government lawyer acts at the behest of the government as the client but for the purpose of establishing the limits of the agency's authorized activity. Such an opinion is to be distinguished from confidential legal advice given agency officials. The critical question is whether the opinion is to be made public. ]

\* \* \* \* \*

**[ Duty ] Duties Owed to Third Person and Client**

\* \* \* \* \*

**[ Access to and Disclosure of Information ] Scope of Evaluation**

The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of

investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations which are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. **In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this Rule. See Rule 4.1.**

**Confidential Information**

Information relating to an evaluation is protected by Rule 1.6. In many situations, providing an evaluation to a third party poses no significant risk to the client; thus, the lawyer may be impliedly authorized to disclose information to carry out the representation. See Rule 1.6(a). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the lawyer must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. See, Rule 1.6(a) and Rule 1.0(e) (Informed Consent).

\* \* \* \* \*

**Rule 2.4. Lawyer Serving as Third-Party Neutral.**

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

**Comment**

Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decision maker depends on the particular process that is either selected by the parties or mandated by a court.

The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role

or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0(m)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

**ADVOCATE**

**Rule 3.1. Meritorious Claims and Contentions.**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

**Comment**

\* \* \* \* \*

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts

have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. **What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions.** Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the [client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the ] lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

**The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.**

\* \* \* \* \*

**Rule 3.2. Expediting Litigation.**

\* \* \* \* \*

**Comment**

Dilatory practices bring the administration of justice into disrepute. [Delay should not be indulged merely for the convenience of the advocates, or ] **Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.**

\* \* \* \* \*

**Rule 3.3. Candor Toward the Tribunal.**

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) [ fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) ] fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

[ (4) ] (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence before a tribunal or in an ancillary proceeding conducted pursuant to a tribunal's adjudicative authority, such as a deposition, and the lawyer



comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in [ paragraph ] paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

[ (c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false. ]

\* \* \* \* \*

Comment

This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[ The advocate's task is ] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. [ However ] Consequently, [ an advocate does ] although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause [ ; ], the lawyer must not allow the tribunal [ is responsible for assessing its probative value ] to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

\* \* \* \* \*

Legal Argument

Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)[ (3) ](2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction [ which ] that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

[ False ] Offering Evidence

[ When evidence that a lawyer knows to be false is provided by a person who is not the client, the lawyer must refuse to offer it regardless of the client's wishes.

When false evidence is offered by the client, however, a conflict may arise between the lawyer's duty to keep the client's revelations confidential and the duty of candor to the court. Upon ascertaining that material evidence is false, the lawyer should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be disclosed. If the persuasion is ineffective, the lawyer must take reasonable remedial measures.

Except in the defense of a criminal accused, the rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court or to the other party. Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court. ]

Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment (9).

The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence

is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment (7).

#### [ *Perjury by a Criminal Defendant* ]

Whether an advocate for a criminally accused has the same duty of disclosure has been intensely debated. While it is agreed that the lawyer should seek to persuade the client to refrain from perjurious testimony, there has been dispute concerning the lawyer's duty when that persuasion fails. If the confrontation with the client occurs before trial, the lawyer ordinarily can withdraw. Withdrawal before trial may not be possible, however, either because trial is imminent, or because the confrontation with the client does not take place until the trial itself, or because no other counsel is available.

The most difficult situation, therefore, arises in a criminal case where the accused insists on testifying when the lawyer knows that the testimony is perjurious. The lawyer's effort to rectify the situation can increase the likelihood of the client's being convicted as well as opening the possibility of a prosecution for perjury. On the other hand, if the lawyer does not exercise control over the proof, the lawyer participates, although in a merely passive way, in deception of the court.

Three resolutions of this dilemma have been proposed. One is to permit the accused to testify by a narrative without guidance through the lawyer's questioning. This compromises both contending principles; it exempts the lawyer from the duty to disclose false evidence but subjects the client to an implicit disclosure of information imparted to counsel. Another suggested resolution, of relatively recent origin, is that the advocate be entirely excused from the duty to reveal perjury if the perjury is that of the client. This is a coherent solution but makes the advocate a knowing instrument of perjury.

The other resolution of the dilemma is that the lawyer must reveal the client's perjury if necessary to rectify the situation. A criminal accused has a right to the assistance of an advocate, a right to testify and a right of confidential communication with counsel. However, an accused should not have a right to assistance of counsel in committing perjury. Furthermore, an advocate has an obliga-

tion, not only in professional ethics but under the law as well, to avoid implication in the commission of perjury or other falsification of evidence. See Rule 1.2(d). ]

#### *Remedial Measures*

[ If perjured testimony or false ] Having offered material evidence [ has been offered ] in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course [ ordinarily ] is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate [ should seek to withdraw if that will remedy the situation ] must take further remedial action. If withdrawal from the representation is not permitted or will not [ remedy the situation or is impossible ] undo the effect of the false evidence, the advocate [ should ] must make such disclosure to the [ court ] tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the [ court ] tribunal then to determine what should be done—making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing. [ If the false testimony was that of the client, the client may controvert the lawyer's version of their communication when the lawyer discloses the situation to the court. If there is an issue whether the client has committed perjury, the lawyer cannot represent the client in resolution of the issue, and a mistrial may be unavoidable. An unscrupulous client might in this way attempt to produce a series of mistrials and thus escape prosecution. However, a second such encounter could be construed as a deliberate abuse of the right to counsel and as such a waiver of the right to further representation. ]

The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

#### [ *Constitutional Requirements* ]

The general rule—that an advocate must disclose the existence of perjury with respect to a material

fact, even that of a client—applies to defense counsel in criminal cases, as well as in other instances. However, the definition of the lawyer's ethical duty in such a situation may be qualified by constitutional provisions for due process and the right to counsel in criminal cases. In some jurisdictions these provisions have been construed to require that counsel present an accused as a witness if the accused wishes to testify, even if counsel knows the testimony will be false. The obligation of the advocate under these Rules is subordinate to such a constitutional requirement. ]

*Preserving Integrity of Adjudicative Process*

Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

*Duration of Obligation*

A practical time limit on the obligation to rectify [ the presentation of ] false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

*[ Refusing to Offer Proof Believed to be False*

Generally speaking, a lawyer has authority to offer testimony or other proof that the lawyer believes is untrustworthy. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. In criminal cases, however, a lawyer may, in some jurisdictions, be denied this authority by constitutional requirements governing the right to counsel. ]

*Ex Parte Proceedings*

Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

*Withdrawal*

Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that

the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16 to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

\* \* \* \* \*

**Rule 3.4. Fairness to Opposing Party and Counsel.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

\* \* \* \* \*

**Rule 3.5. Impartiality and Decorum of the Tribunal.**

A lawyer shall not:

\* \* \* \* \*

(b) communicate ex parte with such a person [ except as permitted ] during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress of harassment; or

(d) engage in conduct [ disruptive to ] intended to disrupt a tribunal.

**Comment**

\* \* \* \* \*

During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(m).

\* \* \* \* \*

**Rule 3.6. Trial Publicity.**

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that [ a reasonable person would expect to ] the lawyer knows or reasonably should know will be disseminated by means of public communication [ if the lawyer knows or reasonably should know that it ] and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) [ A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(c) [ Notwithstanding paragraph (a) [ and (b)(1-5) ], a lawyer [ involved in the investigation or litigation of a matter ] may state [ without elaboration ]:

(1) the [ general nature of ] claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) [ the ] information contained in a public record;

(3) that an investigation of the matter is in progress[ , including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved ];

\* \* \* \* \*

(7) in a criminal case, in addition to subparagraphs (1) through (6):

\* \* \* \* \*

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

**Comment**

\* \* \* \* \*

[ No body of rules can simultaneously satisfy all interests of fair trial and all those of free expression. The formula in this Rule is based upon the ABA Model Code of Professional Responsibility and the ABA Standards Relating to Fair Trial and Free Press, as amended in 1978. ]

Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such rules.

The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be

an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

- (1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
- (2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
- (3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
- (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
- (5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
- (6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

See Rule 3.8(e) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

\* \* \* \* \*

**Rule 3.7. Lawyer as Witness.**

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness [except where] unless:

\* \* \* \* \*

**Comment**

Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

**Advocate-Witness Rule**

The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(3). Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has first hand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The [principle of imputed disqualification] conflict of interest principles stated in [Rule] Rules 1.7, 1.9 and 1.10 [has] have no application to this aspect of the problem.

Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so except in situations involving a conflict of interest.

**Conflict of Interest**

[Whether the combination of roles involves an improper] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider

that the dual role may give rise to a conflict of interest [ with respect to the client is determined by Rule ] that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer [ or a member of the lawyer's firm ], the representation [ is improper ] involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent. In some cases, the lawyer will be precluded from seeking the client's consent. See [ Comment to ] Rule 1.7. [ If a lawyer who is a member of a firm may not act as both advocate and witness by reason of conflict of interest, Rule 1.10 disqualifies the firm also. ] See Rule 1.0(b) for the definition of "confirmed in writing" and Rule 1.0(e) for the definition of "informed consent."

Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

\* \* \* \* \*

**Rule 3.8. Special Responsibilities of a Prosecutor.**

The prosecutor in a criminal case shall:

\* \* \* \* \*

(e) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

**Comment**

A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of

Criminal Justice Relating to Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. [ See also Rule 3.3(d), governing ex parte proceedings, among which grand jury proceedings are included. ] Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of [ a ] an uncharged suspect who has knowingly waived the rights to counsel and silence.

The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

Paragraph (e) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

\* \* \* \* \*

**Rule 3.9. Advocate in Nonadjudicative Proceedings.**

A lawyer representing a client before a legislative body or administrative [ tribunal ] agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

**Comment**

In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body [ should ] must deal with [ the tribunal ] it honestly and in conformity with applicable rules of procedure. See Rules 3.3(a) through (c), 3.4 and 3.5.

\* \* \* \* \*

This Rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative

body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency [ ; representation ] or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such [ a transaction ] matters is governed by Rules 4.1 [ thru ] through 4.4.

\* \* \* \* \*

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in Statements to Others.

\* \* \* \* \*

Comment

Misrepresentation

A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by [ failure to act ] partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact

This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

Crime or Fraud by Client

Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) [ recognizes that ] states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose [ certain ] information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. [ The requirement of ] If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under

paragraph (b) the lawyer is required to do so, unless the disclosure [ created by this paragraph is, however, subject to the obligations created ] is prohibited by Rule 1.6. Rule 1.6 permits a lawyer to disclose information when necessary to prevent or rectify certain crimes or frauds. See Rule 1.6(c). If disclosure is permitted by Rule 1.6, then such disclosure is required under this Rule, but only to the extent necessary to avoid assisting a client crime or fraud.

\* \* \* \* \*

Rule 4.2. Communication with Person Represented by Counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a [ party ] person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law [ to do so ] or a court order.

Comment

This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

This Rule does not prohibit communication with a [ party ] represented person, or an employee or agent of such a [ party ] person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer from communicating with nonlawyer representatives of the other regarding a separate matter. [ Also, parties ] Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with [ the other party ] a represented person is permitted to do so. [ Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

In the case of an organization, this Rule prohibits communications by a lawyer for one party concern-

ing the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(d).

This Rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question. ]

Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include constitutionally permissible investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(f).

Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

\* \* \* \* \*

Rule 4.3. Dealing with Unrepresented Person [and Communicating with One of Adverse Interest ].

\* \* \* \* \*

(b) During the course of a lawyer's representation of a client, a lawyer shall not give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the lawyer knows or reasonably should know the interests of such person are or have a reasonable possibility of being in conflict with the interests of the lawyer's client.

\* \* \* \* \*

Comment

An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. [During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel.] In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(d).

The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

\* \* \* \* \*

Rule 4.4 Respect for Rights of Third Persons.

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or



use methods of obtaining evidence that violate the legal rights of **such a [ third ]** person.

**(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.**

**Comment**

Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalog all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and **unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.**

Paragraph (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that a document was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this Rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

Some lawyers may choose to return a document unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent to the wrong address. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

\* \* \* \* \*

**LAW FIRMS AND ASSOCIATIONS**

Rule 5.1. Responsibilities of **[ a Partner or ] Partners, Managers and Supervisory [ Lawyer ] Lawyers.**

(a) A partner in a law firm **[ should ], and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall** make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer **[ should ] shall** make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

\* \* \* \* \*

(2) the lawyer is a partner **or has comparable managerial authority** in the law firm in which the other lawyer practices, or has direct supervisory authority over

the other lawyer, and knows **[ in either case ]** of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**Comment**

Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

Paragraph (c)(1) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

Paragraph (c)(2) defines the duty of a **partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer [ having ] who has** direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has **[ such ]** supervisory authority in particular circumstances is a question of fact. Partners **[ of a private firm ] and lawyers with comparable authority** have at least indirect responsibility for all work being done by the firm, while a partner **or manager** in charge of a particular matter ordinarily **also has [ direct authority over ] supervisory responsibility for the work of** other firm lawyers engaged in the matter. Appropriate remedial action by a partner **or managing lawyer** would depend on the immediacy of **[ the partner's ] that lawyer's** involvement and the seriousness of the miscon-

duct. [The ] A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

**Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.**

Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

**The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).**

\* \* \* \* \*

**Rule 5.2. Responsibilities of a Subordinate Lawyer.**

(a) A lawyer is bound by the Rules of Professional Conduct [ even when ] notwithstanding that the lawyer acts at the direction of another person.

\* \* \* \* \*

**Rule 5.3. Responsibilities Regarding Nonlawyer Assistants.**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner **and a lawyer who individually or together with other lawyers possesses comparable managerial authority** in a law firm [ should ] shall make reasonable efforts to ensure that the firm has in effect measures [ in effect ] giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer [ should ] shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

\* \* \* \* \*

(2) the lawyer is a partner **or has comparable managerial authority** in the law firm in which the person is employed, or has direct supervisory authority over the person, and in either case knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**Comment**

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer [ should ] must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation

not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

**[ A partner in a law firm should make reasonable efforts to ensure that the firm has measures in effect giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.**

**A lawyer having direct supervisory authority over the nonlawyer should make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer. ]**

Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See Comment (1) to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

\* \* \* \* \*

**Rule 5.4. Professional Independence of a Lawyer.**

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

\* \* \* \* \*

**(5) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.**

\* \* \* \* \*

(d) A lawyer shall not practice with or in the form of a professional corporation or [ other form of ] association [ organized ] authorized to practice law for profit, if:

(1) a nonlawyer [ is the beneficial owner of ] owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

**Paragraph (a)(4) incorporates the authorization for the sale of a law practice pursuant to Rule 1.17. Fees may be shared between a lawyer purchasing a law practice and the estate or representative of the lawyer when a law practice is sold.**

**Paragraph (a)(5) adds a new dimension to the current Rule by specifically permitting sharing of**

fees with a nonprofit organization. It is a practice approved in ABA Formal Opinion 93-374.

\* \* \* \* \*

**Rule 5.6. Restrictions on Right to Practice.**

A lawyer shall not participate in offering or making:

\* \* \* \* \*

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy [ **between private parties** ].

**Comment**

An agreement restricting the right of [ **partners or associates** ] lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such [ **agreement** ] agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

**This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.**

\* \* \* \* \*

**Rule 5.7. Responsibilities Regarding Nonlegal Services.**

\* \* \* \* \*

(e) The term "nonlegal services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

**Comment**

For many years, lawyers have provided to their clients nonlegal services that are ancillary to the practice of law. [ **Nonlegal services are those that are not prohibited as unauthorized practice of law when provided by a nonlawyer.** ] Examples of nonlegal services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax return preparation, and patent, medical or environmental consulting. A broad range of economic and other interests of clients may be served by lawyers participating in the delivery of these services. In recent years, however, there has been significant debate about the role the Rules of Professional Conduct should play in regulating the degree and manner in which a lawyer participates in the delivery of nonlegal services. [ **The ABA, for example, adopted, repealed and then adopted a different version of Rule 5.7. In the course of this debate, several ABA sections offered competing versions of Rule 5.7.**

**One approach to the issue of nonlegal services is to try to substantively limit the type of nonlegal services a lawyer may provide to a recipient or the manner in which the services are provided. A competing approach does not try to substantively limit the lawyer's provision of nonlegal services, but instead attempts to clarify the conduct to which the rules of Professional Conduct apply and to avoid**

**misunderstanding on the part of the recipient of the nonlegal services. This Rule adopts the latter approach. ]**

\* \* \* \* \*

**PUBLIC SERVICE**

**Rule 6.1. Voluntary Pro Bono Publico Service.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problem of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer as well as the profession generally, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession and government to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services and other related programs have been developed, and others will be developed by the profession and government. Every lawyer should support all proper efforts to meet this need for legal services.

**Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.**

\* \* \* \* \*

**Rule 6.2. Accepting Appointments.**

\* \* \* \* \*

**Comment**

A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. **See Rule 6.1.** An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

\* \* \* \* \*

**Rule 6.3. Membership in Legal Services Organization.**

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision **or action** would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

\* \* \* \* \*

**Rule 6.5. Nonprofit and Court Appointed Limited Legal Services Programs.**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or

court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

#### Comment

Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services—such as advice or the completion of legal forms—that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rule 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being repre-

sented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

#### INFORMATION ABOUT LEGAL SERVICES

##### Rule 7.1. Communications Concerning a Lawyer's Service.

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it [ : ] contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

[ (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, such as the amount of previous damage awards, the lawyer's record in obtaining favorable verdicts, or client endorsements, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law;

(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

(d) contains subjective claims as to the quality of legal services or a lawyer's credentials that are not capable of measurement or of verification. ]

#### Comment

This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them [ should ] must be truthful. [ The prohibition in paragraph (b) of statements that may create "unjustified expectations" has been expanded to incorporate the substance of the previous Comment, and to make clear that results obtained on behalf of one client may be misleading as indicators of the result another client might expect. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances. Paragraph (d) expresses the qualification found in existing law condemning claims that are subjective, and not capable of objective verification, concerning the quality of a lawyer's services or of his credentials. ]

Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

\* \* \* \* \*

**Rule 7.2. Advertising.**

(a) Subject to the requirements of Rule 7.1, a lawyer may advertise services [through public media, such as telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television, or ] through written, recorded or electronic communications, including public media, not within the purview of Rule 7.3.

\* \* \* \* \*

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay:

(1) the reasonable cost of [advertising] advertisements or written [communication] communications permitted by this [rule] Rule;

(2) the usual charges of a [not-for-profit] lawyer referral service or other legal service organization; and

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through

\* \* \* \* \*

*Paying Others to Recommend a Lawyer*

Subject to the limitations set forth under paragraph (j), a lawyer is allowed to pay for advertising permitted by this Rule and for the purchase of a law practice in accordance with the provisions of Rule 1.17, but otherwise is not permitted to pay another person for channeling professional work. Paragraph (c)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the cost of print, directory listings, on-line directory listings, newspaper ads, television and radio air time, domain-name registrations, sponsorship fees, banner ads, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of non-lawyers who prepare marketing materials for them. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in [not-for-profit] lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule.

\* \* \* \* \*

**Rule 7.3. Direct Contact with Prospective Clients.**

(a) A lawyer shall not solicit in-person or by intermediary professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted is a lawyer or has a family, close personal, or prior professional relationship with the lawyer. The term "solicit" includes contact [in person or] in-person, by telephone or by real-time electronic communication, but, subject to the requirements of Rule 7.1 and Rule 7.3(b), does not include written communications, which may include targeted, direct mail advertisements.

(b) A lawyer [shall not] may contact, or send a written communication to, a prospective client for the purpose of obtaining professional employment [if] unless:

\* \* \* \* \*

**Comment**

There is a potential for abuse inherent in direct solicitation, including in-person, telephone or real-time electronic communication, by a lawyer of prospective clients known to need legal services. [It subjects] These forms of contact subject the lay person to the private importuning of a trained advocate, in a direct interpersonal encounter. [A] The prospective client [often feels], who may already feel overwhelmed by the [situation] circumstances giving rise to the need for legal services, [and may have an impaired capacity for reason, judgment and protective self-interest] may find it difficult fully to evaluate all available alternatives with reasoned

judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching. [ Furthermore, the lawyer seeking the retainer is faced with a conflict stemming from the lawyer's own interest, which may color the advice and representation offered the vulnerable prospect.

The situation is therefore fraught with the possibility of undue influence, intimidation, and over-reaching. This potential for abuse inherent in direct solicitation of prospective clients justifies its limitation, particularly since lawyer advertising permitted under Rule 7.2 offers an alternative means of communicating necessary information to those who may be in need of legal services.

Advertising makes it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct personal persuasion that may overwhelm the client's judgment.

The use of general advertising to transmit information from lawyer to prospective client, rather than direct private contact, will help to assure that the information flows cleanly as well as freely. Advertising is out in public view, thus subject to scrutiny by those who know the lawyer. This informal review is itself likely to help guard against statements and claims that might constitute false or misleading communications, in violation of Rule 7.1. Direct, private communications from a lawyer to a prospective client are not subject to such third-person scrutiny and consequently are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading. ]

This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written communications, which may be mailed, or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.

The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1 The contents of direct in-

person, live telephone or real-time electronic conversations between a lawyer and prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations from those that are false and misleading.

There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) is not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(3), or which involves contact with a prospective client who has made known to the lawyer desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(2) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third-parties for the purposes informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

\* \* \* \* \*

Rule 7.4. Communication of Fields of Practice and Specialization.

\* \* \* \* \*

Rule 7.5. Firm Names and Letterheads.

\* \* \* \* \*

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the

lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

\* \* \* \* \*

**Comment**

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." **A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation.** Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, **or the name of a nonlawyer.**

With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact **[ partners ] associated with each other in a law firm**, may not denominate themselves as, for example, "Smith and Jones," for that title suggests **[ partnership in the practice of ] that they are practicing law together in a firm.**

\* \* \* \* \*

**Rule 7.6. [ Advertising a Certification ] (Reserved).**

**[ (a) A lawyer shall not advertise that the lawyer has been certified by a certifying organization, unless the certifying organization has been approved for advertising of certification by the procedure set forth in this Rule 7.6.**

**(b) Approval of certifying organizations shall be obtained in accordance with Rule 7.4(b) and in accordance with the procedures and rules adopted by the Supreme Court of Pennsylvania.**

**Comment**

**This Rule will prevent lawyers from using certifications obtained from non-approved organizations. With the adoption of the Supreme Court of Pennsylvania Rules approving certifying organizations, the public will be provided with meaningful and relevant information in selecting or choosing a lawyer. Additionally, unauthorized and meaningless certifications will be effectively terminated.]**

\* \* \* \* \*

**Rule 7.7. Lawyer Referral Service.**

\* \* \* \* \*

**Comment**

This Rule prevents a lawyer from circumventing the Rules of Professional Conduct by using a lawyer referral service or similar organization which would not be subject to the Rules of Professional Conduct. **A lawyer may pay the usual charges of a lawyer referral service. A lawyer may not, however, share legal fees with a non-lawyer. See Rule 5.4(a).**

\* \* \* \* \*  
**MAINTAINING THE INTEGRITY OF THE PROFESSION**

**Rule 8.1. Bar Admission and Disciplinary Matters.**

**An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:**

**(a) [ A lawyer is subject to discipline if the lawyer has made a materially false statement in, or if the lawyer has deliberately failed to disclose a material fact requested in connection with, the lawyer's application for admission to the bar or any disciplinary matter. ] knowingly make a false statement of material fact; or**

**(b) [ A lawyer shall not further the application for admission to the bar of another person known by the lawyer to be unqualified in respect to character, education, or other relevant attribute. ] fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.**

**Comment**

The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. **[ This ] Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.**

\* \* \* \* \*

A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, **including Rule 1.6 and, in some cases, Rule 3.3.**

\* \* \* \* \*

**Rule 8.2. Statements Concerning Judges and Other Adjudicatory Officers.**

**(a) A lawyer shall not [ knowingly ] make [ false statements of fact ] a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to [ a ] judicial or legal office.**

**(b) [ A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officers.**

(c) ] A lawyer who is a candidate for judicial office shall comply with the applicable provisions of [ Canon 7 of ] the Code of Judicial Conduct

\* \* \* \* \*

**Rule 8.3. Reporting Professional Misconduct.**

(a) A lawyer [ **having knowledge** ] who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer [ **having knowledge** ] who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This [ **rule** ] Rule does not require disclosure of information otherwise protected by Rule 1.6; or of information [ **learned** ] gained by a lawyer or judge while [ **serving as a sobriety, financial or practice monitor for another lawyer (except for information required to be reported by the order appointing the monitor) or while participating in an alcohol or substance abuse rehabilitation program, to the extent that the information would be protected by Rule 1.6 if it had been communicated in the context of an attorney-client relationship** ] participating in an approved lawyers assistance program.

**Comment**

\* \* \* \* \*

If a lawyer were obligated to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions, but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provision of this Rule. **The duty to report involves only misconduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.** The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial conduct.

**While a lawyer may report professional misconduct at any time, the lawyer must report misconduct upon acquiring actual knowledge of misconduct. The discretionary reporting of misconduct should not be undertaken for purposes of tactical advantage over another lawyer, to punish or inconvenience another for a personal or professional slight, or to harass another lawyer.**

\* \* \* \* \*

Information about [ **the fitness or misconduct of a lawyer or judge** ] lawyer's or judge's misconduct or fitness may be received by [ **another lawyer in the course of the receiving lawyer's participation in an alcohol or substance abuse rehabilitation program or while the receiving lawyer is serving as a sobri-**

**ety, financial or practice monitor** ] a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In [ **those circumstances** ] that circumstance, providing for [ **the confidentiality of information** ] an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without [ **confidentiality** ] such an exception, lawyers and judges may hesitate to seek assistance [ **, which may then result in** ] from these programs, in additional harm to their professional careers and additional injury to the welfare of clients and to the public. [ **Paragraph (c) therefore provides an exemption from the reporting requirements of paragraphs (a) and (b) with respect to information that would be privileged if the relationship between the impaired lawyer or judge and the recipient of the information were that of a client and a lawyer. The one exception is where the order appointing a sobriety, financial or practice monitor requires disclosure of certain information (for example, where the monitor is ordered to report violations by the impaired lawyer of the terms of his or her probation); but even in that case, information beyond that specifically required to be disclosed is to be kept confidential.** ] The Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

\* \* \* \* \*

**Rule 8.4. Misconduct.**

It is professional misconduct for a lawyer to:

\* \* \* \* \*

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

\* \* \* \* \*

**Comment**

\* \* \* \* \*

**Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client of action the client is lawfully entitled to take.**

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of [ **offense** ] offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics rel-



evant to law practice. Offenses involving violence, dishonesty [or], breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

**[As an officer of the court, a lawyer should be particularly sensitive to conduct that is prejudicial to the administration of justice. An example of a type of conduct that may prejudice the administration of justice is violation of an applicable order of court.]**

\* \* \* \* \*

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of [attorney] lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

\* \* \* \* \*

[Pa.B. Doc. No. 03-1343. Filed for public inspection July 11, 2003, 9:00 a.m.]

## Title 207—JUDICIAL CONDUCT

### PART IV. COURT OF JUDICIAL DISCIPLINE [207 PA. CODE CH. 4]

**Amendment to the Rules of Procedure of the Court of Judicial Discipline; Doc. No. 1 JD 94**

#### Order

*Per Curiam:*

*And Now*, this 25th day of June, 2003, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted amendments to Rule of Procedure No. 421, as more specifically hereinafter set forth, *It Is Hereby Ordered:*

That Rule of Procedure No. 421 shall become effective immediately.

#### Annex A

### TITLE 207. JUDICIAL CONDUCT

#### PART IV. COURT OF JUDICIAL DISCIPLINE ARTICLE II. PROCEEDINGS BASED ON THE FILING OF FORMAL CHARGES

#### CHAPTER 4. PRE-TRIAL PROCEEDINGS

#### PRE-TRIAL CONFERENCE

**Rule 421. Pre-Trial Conference.**

\* \* \* \* \*

(D) At the conclusion of the Pre-Trial Conference, the Conference Judge shall on the record enter an order stating the agreements and objections made by the parties, and rulings made by the Conference Judge on any matter considered during the Pre-Trial Conference. The order shall control subsequent proceedings before the Court on the record, unless modified by the Court or a

panel of the Court on the record. The parties shall have the right to file objections to any part of the Order within 15 days of its entry.

[Pa.B. Doc. No. 03-1344. Filed for public inspection July 11, 2003, 9:00 a.m.]

### PART II. CONDUCT STANDARDS [207 PA. CODE CH. 51]

**Amendment of Rule 17 of the Rules Governing Standards of Conduct of District Justices; No. 195 Magisterial Doc. No. 1, Book No. 2**

#### Order

*Per Curiam:*

*And Now*, this 25th day of June, 2003, Rule 17 of the Rules Governing Standards of Conduct of District Justices is amended to read as follows.

To the extent that notice of the proposed rulemaking would be required by Rule 103 of the Pennsylvania Rules of Judicial Administration or otherwise, the immediate amendment of Rule 17 is hereby found to be required in the interests of justice and efficient administration.

This Order shall be effective immediately and shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration.

#### Annex A

### TITLE 207. JUDICIAL CONDUCT PART II. CONDUCT STANDARDS

#### CHAPTER 51. STANDARDS OF CONDUCT OF DISTRICT JUSTICES

#### PENNSYLVANIA RULES FOR DISTRICT JUSTICES

Rule 17. Supervision of District [Justices] Justice Courts by President Judges.

(A) The president judge of the court of common pleas of a judicial district shall exercise general supervision and administrative [control] authority over district [justices] justice courts within [his] the judicial district.

(B) The president judge's administrative authority over district justice courts within the judicial district includes but is not limited to, and shall be governed by, the following:

(1) *Records*—The president judge may designate a person to maintain personnel and other records in such form as directed by the president judge or required by general or local rule.

(2) *Meetings with District Justices*—The president judge may require the attendance of district justices in the judicial district, individually or collectively, at meetings with the president judge or his or her representative.

(3) *Staff in the District Justice Courts*—

(a) Except where minimum job qualifications for staff in the district justice courts are prescribed by the Supreme Court of Pennsylvania, the president judge may prescribe minimum job qualifications for staff in the district justice courts in the judicial district.

(b) The president judge may establish a classification system and job descriptions for all authorized staff in the district justice courts in the judicial district. The president judge may establish general procedures regarding the hiring, firing, supervision, and discipline of all authorized staff in the district justice courts in the judicial district.

(c) Subject to subparagraphs (a) and (b) above, a district justice

(i) shall be responsible for the management of authorized staff in his or her court;

(ii) shall assign work among authorized staff in his or her court, and;

(iii) may select one authorized staff member as personal staff.

(d) In the interest of efficient administration of the judicial district, the president judge may

(i) transfer or reassign a staff member, other than personal staff who may be transferred or reassigned only with the consent of the district justice, from one district justice court in the judicial district to another, and;

(ii) hire and assign, as appropriate, temporary or floater staff.

(e) The president judge may establish a system of performance evaluation for staff in the district justice courts in the judicial district.

(f) The president judge may prescribe initial and ongoing training for staff in the district justice courts in the judicial district.

(4) *District Justice Leave; Coverage During Leave*—

(a) The president judge may coordinate leave for district justices in the judicial district to assure access to judicial resources.

(b) Subject to the provisions of subparagraph (a) above, a district justice shall enjoy autonomy with respect to choosing when to take leave, subject to reasonable coordination by the president judge with the schedules of the other district justices in the judicial district.

(5) *Office Hours*—In consultation with the district justices, the president judge may designate the ordinary hours of district justice courts in the judicial district in accordance with Rule 103 of the Rules and Standards with Respect to Offices of District Justices and the efficient administration of justice.

(6) *Temporary Assignments; Transfer of Cases*—In consultation with the affected district justice(s), the president judge may order temporary assignments of district justices or reassignment of cases or certain classes of cases to other magisterial districts within the judicial district or to central courts within the judicial district.

(7) *Conduct of District Justices*—When a complaint is received with respect to the conduct of a district justice, the president judge may in his or her discretion, review the matter with the affected district justice and may take any action that the president judge deems appropriate to assure the efficient administration of justice. Contemporaneous notice of any such action taken by the president judge resulting in reassignment of cases or

otherwise affecting the duties of the district justice shall be given to the Supreme Court of Pennsylvania and the Court Administrator of Pennsylvania.

(8) *Procedural Audits*—The president judge may direct that procedural audits of a district justice court be conducted to assure compliance with general and local rules, administrative policies and procedures, and the *District Justice Automated Office Clerical Procedures Manual*. Such procedural audits shall be separate from the fiscal audits conducted by the county controller or state Auditor General, which shall be limited in scope to the accounts of the district justice. Such procedural audits may be conducted by the district court administrator, an outside independent auditor, or such other person as the president judge may designate.

*Official Note:* [The striking of constables from the heading and body of Rule 17 is pursuant to the Pennsylvania Supreme Court holding in *Rosenwald v. Barbieri*, 501 Pa. 563, 462 A.2d 644, 1983.]

This Rule is promulgated in order to secure the efficient and effective administration of the district justice courts. It recognizes that district justices are the judicial officials charged with the legal and administrative responsibilities within their respective magisterial districts. Designed to further the unified judicial system in each of the judicial districts, this Rule contemplates a cooperative approach to the administration of the district justice courts, acknowledging the independence of the judicial officers and the supervisory role of the president judges.

This Rule was amended in 2003 to more specifically outline the authority, powers, and responsibilities of the president judges with regard to management of the district justice system. In so doing, however, it was not intended that this be an exclusive list of powers and responsibilities, nor was it intended to limit the president judges' authority to the areas listed. Given the diverse needs of judicial districts throughout Pennsylvania, how president judges exercise this authority will recognizably be varied. In general, president judges have broad authority with regard to management of the district justice courts, but it seemed advisable that certain areas of authority and responsibility be specifically defined.

With regard to paragraph (B)(2), president judges or their representatives are encouraged to meet regularly with the district justices in the judicial district to foster and maintain open lines of communication regarding the management of the district justice system.

The term "authorized staff" as used in this Rule means staff positions that have been approved, funded, and hired in accordance with all applicable personnel policies and procedures.

Subparagraphs (B)(3)(c) and (B)(4)(b) limit the president judges' authority in certain areas that are within the district justices' discretion. With regard to subparagraph (B)(3)(c), see 42 Pa.C.S. §§ 102 and 2301(a)(1), and Rule 5C. With regard to subparagraph (B)(4)(b), see Rule 3A.

Subparagraph (B)(3)(d)(i) gives president judges authority to transfer or reassign district justice court staff as needed, except for personal staff as provided in subparagraph (B)(3)(c), who may be transferred or reassigned only with the consent of the affected district justice. It is contemplated that president judges would consult with and give sufficient notice to the affected district justices before making transfers.

Nothing in subparagraph (B)(3)(f) is intended to circumvent any training program established or required by the Supreme Court of Pennsylvania or the Court Administrator of Pennsylvania.

As to paragraph (B)(6), compare Pa.R.Crim.P. 131(B) relating to central locations for preliminary hearings and summary trials. In addition, if the judicial district is part of a regional administrative unit, district justices may be assigned to any other judicial district in the unit. See Pa.R.J.A. No. 701(E).

Nothing in paragraph (B)(7) is intended to contradict or circumvent the constitutionally established process for the suspension, removal, and discipline of district justices. See Pa. Const. art. V, § 18; see also 207 Pa. Code Chs. 101–119 (Judicial Conduct Board rules of procedure). President judges do not have authority to suspend or discipline district justices.

All references to constables were stricken from this Rule pursuant to the Pennsylvania Supreme Court's holding in *Rosenwald v. Barbieri*, 501 Pa. 563, 462 A.2d 644 (1983).

Adopted, effective Feb. 1, 1973. Amended and effective April 3, 1973; amended April 25, 1979, effective in 30 days; June 30, 1982, effective 30 days after July 17, 1982; amended and effective June 20, 1985; amended June 25, 2003, effective immediately.

[Pa.B. Doc. No. 03-1345. Filed for public inspection July 11, 2003, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [231 PA. CODE CH. 200]

#### Addition of Rule 229.1 Governing Sanctions for Failure to Deliver Settlement Funds; Proposed Recommendation No. 186

The Civil Procedural Rules Committee proposes that new Rule of Civil Procedure 229.1 be promulgated to govern sanctions for failure to deliver settlement funds. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent not later than September 12, 2003 to:

Harold K. Don, Jr.,  
Counsel  
Civil Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, Pennsylvania 17055  
or E-Mail to  
civil.rules@supreme.court.state.pa.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

### Annex A

## TITLE 231. RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### CHAPTER 200. BUSINESS OF COURTS

#### Rule 229.1. Settlement Funds. Failure to Deliver. Sanctions.

(a) As used in this rule,

“defendant” means a party released from a claim of liability pursuant to an agreement of settlement;

“plaintiff” means a party who, by execution of a release pursuant to an agreement of settlement, has agreed to forego a claim of liability against a defendant. The term includes a defendant who asserts a counterclaim;

“settlement funds” means any form of monetary exchange to a plaintiff pursuant to an agreement of settlement, but not including the annuity or future installment portion of a structured settlement.

(b) The parties may agree in writing to modify or waive any of the provisions of this rule.

(c) If a plaintiff and a defendant have entered into an agreement of settlement, the defendant shall deliver the settlement funds to the plaintiff or the attorney for the plaintiff within twenty calendar days from receipt of an executed release.

**Official Note:** If court approval of the settlement is required, Rule 229.1 is not operative until the settlement is so approved.

(d) If settlement funds are not delivered to the plaintiff within the time required by subdivision (c), the plaintiff may seek to

(1) invalidate the agreement of settlement as permitted by law, or

(2) impose sanctions on the defendant as provided in subdivision of this rule.

(e) A plaintiff seeking to impose sanctions on the defendant shall file an affidavit with the court attesting to non-payment. The affidavit shall be executed by the plaintiff's attorney and be accompanied by

(1) a copy of any document evidencing the terms of the settlement agreement,

(2) a copy of the executed release,

(3) a copy of a receipt reflecting delivery of the executed release more than twenty days prior to the date of filing of the affidavit

(4) a certification by the attorney of the applicable interest rate,

(5) the form of order prescribed by subdivision (h), and

(6) a certification by the attorney that the affidavit and accompanying documents have been served on the attorneys for all interested parties.

(f) Upon receipt of the affidavit and supporting documentation required by subdivision (e), the defendant shall have twenty days to file a response.

(g) If the court finds that the defendant violated subdivision (c) of this rule and that there is no material dispute as to the terms of the settlement or the terms of the release, the court shall impose sanctions in the form of interest calculated at the rate equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the interest is awarded, plus one percent, not compounded, running from the twenty-first day to the date of delivery of the settlement funds, together with reasonable attorneys' fees incurred in the preparation of the affidavit.

(h) The affidavit shall be accompanied by an order in substantially the following form:

(Caption)

ORDER

AND NOW, \_\_\_\_\_, upon consideration of the affidavit of \_\_\_\_\_, attorney for \_\_\_\_\_,

(Plaintiff)

and the exhibits thereto, and upon a finding that payment was not made within twenty days of receipt of the executed release in the above captioned action, it is ORDERED that, in addition to the settlement funds of \$ \_\_\_\_\_, \_\_\_\_\_ pay forthwith interest at

(Defendant)

the rate of \_\_\_\_ % on the aforementioned settlement funds from the twenty-first day to the date of delivery of the settlement funds, together with \$ \_\_\_\_\_ in attorneys' fees.

\_\_\_\_\_  
Judge

**Official Note:** The interest rate is determined in accordance with subdivision (g) of this rule.

The defendant is the party who has failed to deliver settlement funds as required by this rule. The plaintiff is the party who is seeking to impose sanctions on the defendant for that failure.

#### Explanatory Comment

The Civil Procedural Rules Committee is proposing the adoption of new Rule 229.1 governing sanctions for failure to deliver settlement funds. The proposed rule expands statewide a practice which is currently limited to Philadelphia County.<sup>1</sup> The new rule provides a straightforward procedure of an affidavit filed by the plaintiff, a response filed by the defendant and a decision entered by the court.

Three points should be noted. First, subdivision (a) defines the terms "defendant," "plaintiff" and "settlement funds." The plaintiff is the party seeking the imposition of sanctions, whether that party is plaintiff or defendant in the action. Similarly, the defendant is the party against whom sanctions are sought, whether that party is plaintiff or defendant in the action.

Second, the sanction to be imposed includes an award of interest on the settlement funds for the period during which the defendant has failed to deliver the funds to the plaintiff as required by the rule. The calculation of the

<sup>1</sup> See Philadelphia Local Rule 229.1. Sanctions for Failure to Deliver Settlement funds.

rate of interest is identical to the manner of calculating damages for delay pursuant to Rule 238.

Third, while the rule sets forth the obligations of the parties with respect to the delivery of settlement funds, the "parties may agree in writing to modify or waive any of the provisions of this rule."

*By the Civil Procedural Rules Committee*

R. STANTON WETTICK, Jr.,  
Chair

[Pa.B. Doc. No. 03-1346. Filed for public inspection July 11, 2003, 9:00 a.m.]

## PART I. GENERAL

### [231 PA. CODE CH. 4000]

#### Amendment of Rules of Civil Procedure Governing Depositions by Oral Examination; Proposed Recommendation No. 185

The Civil Procedural Rules Committee proposes that the Rules of Civil Procedure be amended by adding new Rules 4007.5 and 4019(a)(1)(viii) to govern conduct in depositions by oral examination. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania.

All communications in reference to the proposed recommendation should be sent not later than September 12, 2003 to:

Harold K. Don, Jr.,  
Counsel

Civil Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, Pennsylvania 17055  
or E-Mail to  
civil.rules@supreme.court.state.pa.us

The Explanatory Comment which appears in connection with the proposed recommendation has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules of civil procedure or be officially adopted or promulgated by the Court.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 4000. DEPOSITIONS AND DISCOVERY

#### Rule 4007.5. Conduct in Deposition by Oral Examination.

(a) At a deposition upon oral examination, deponents, parties and attorneys shall conduct themselves in a civil manner.

**Official Note:** For remedies and sanctions for violation of this rule, see Rule 4019(a)(1)(viii).

(b) An attorney or party conducting the examination shall not engage in questioning that violates the limitations in Rule 4011.

(c) The attorney for the deponent shall not

(1) make objections or statements which coach the deponent on how to answer a question, instruct the deponent concerning the way in which he or she should frame an answer, or suggest an answer to the deponent, and

**Official Note:** While the rule does not permit an attorney to coach the deponent or to suggest an answer, it does not prohibit an attorney from seeking a good faith clarification of a question or an answer.

(2) instruct a deponent to refuse to answer a question without reasonable basis.

(d) When making an objection, the attorney for the deponent shall state the objection concisely but, if requested by the attorney or party conducting the examination, shall give a detailed explanation of the basis for the objection.

**Official Note:** In most cases, a short-form objection such as "leading," "argumentative," or "asked and answered" should constitute a sufficient objection for the record.

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

**Rule 4019. Sanctions.**

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

\* \* \* \* \*

(viii) a deponent, party or attorney violates Rule 4007.5;

(ix) a party or person otherwise fails to make discovery or to obey an order of court respecting discovery.

\* \* \* \* \*

**Explanatory Comment**

The preamble to the Rules of Professional conduct defines a lawyer as "a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." Proposed Rule 4007.5 is designed to assist the lawyer in these responsibilities by setting guidelines and boundaries for depositions.

Proposed Rule 4007.5 consists of four subdivisions. Subdivision (a) is a general provision requiring all participants at a deposition to "conduct themselves in a civil manner." Subdivision (b) incorporates the limitations of Rule 4011 and specifically applies them to attorneys and parties conducting a deposition. Subdivisions (c) and (d) set forth guidelines with respect to the manner of objecting to questions at a deposition.

The amendment to Rule 4019(a)(1) provides the enforceability of the new rule. New subparagraph (viii) authorizes the court, on motion, to make an appropriate order if "a deponent, party or attorney violates Rule 4007.5." The enforcement provisions of Rule 4019 then become applicable to remedy a violation of the rule. The catchall provision of Rule 4019(a)(1), formerly subparagraph (viii), is designated as new subparagraph (ix).

*By the Civil Procedural Rules Committee*

R. STANTON WETTICK, Jr.,  
*Chair*

[Pa.B. Doc. No. 03-1347. Filed for public inspection July 11, 2003, 9:00 a.m.]

**Title 234—RULES OF CRIMINAL PROCEDURE**

[234 PA. CODE CH. 10]

**Order Amending Rule 1013; No. 294 Criminal Procedural Rules; Doc. No. 2**

The Criminal Procedural Rules Committee has prepared a Final Report explaining the amendments to Rule of Criminal Procedure 1013 (Prompt Trial—Municipal Court). The amendments expand the time for the trial de novo in Common Pleas Court in Philadelphia Municipal Court case appeals from within 90 days to 120 days, and the time for trial from 120 days to 180 days in cases (1) that are commenced as Common Pleas Court cases but are ordered to be tried in Municipal Court, and (2) that are transferred from Juvenile Court to Municipal Court. The Final Report follows the Court's Order.

**Order**

*Per Curiam:*

Now, this 26th day of June, 2003, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication in the interests of justice pursuant to Pa.R.J.A. 103(a)(3), and a Final Report to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 1013 is amended in the following form.

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

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE  
CHAPTER 10. RULES OF CRIMINAL PROCEDURE  
FOR THE PHILADELPHIA MUNICIPAL COURT**

**Rule 1013. Prompt Trial—Municipal Court.**

(A)(1) Trial in a Municipal Court case in which a preliminary arraignment is held after June 30, 1974, but before July 1, 1975, shall commence no later than 210 days from the date on which the preliminary arraignment is held.

\* \* \* \* \*

(4) Trial in a case that commenced as a Common Pleas Court case but was later ordered to be tried in Municipal Court shall commence no later than [ 120 ] 180 days from the date on which the preliminary arraignment is held or 60 days from the date on which the order is made, whichever is greater.

(5) Trial in a case which is transferred from the juvenile court to the Municipal Court shall commence no later than [ 120 ] 180 days from the date of filing the transfer order.

\* \* \* \* \*

(G) A trial de novo in the Court of Common Pleas shall commence within a period of [ 90 ] 120 days after the notice of appeal from the Municipal Court is filed. In all other respects the provisions of Rule 600 shall apply to such trials in the Court of Common Pleas.

\* \* \* \* \*

**Official Note:** Rule 6013 adopted June 28, 1974, effective prospectively as set forth in paragraphs (A)(1)

and (A)(2) of this rule; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; the amendment to paragraph (D) as it regards exclusion of defense-requested continuances was specifically made effective as to continuances requested on or after January 1, 1982, and paragraph (H), which provides the time for retrials, was specifically made effective as to retrials required by orders entered on or after January 1, 1982; amended September 3, 1993, effective January 1, 1994; renumbered Rule 1013 and amended March 1, 2000, effective April 1, 2001; amended August 8, 2002, effective January 1, 2003; **amended June 26, 2003, effective July 1, 2003.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the June 26, 2003 amendments to paragraphs (A)(4) and (A)(5) expanding the time for trial from 120 to 180 days, and to paragraph (G) expanding the time for trial from 90 days to 120 days published with the Court's Order at 33 Pa.B. 3364 (July 12, 2003).**

#### FINAL REPORT<sup>1</sup>

*Amendments to Pa.R.Crim.P. 1013*

#### **Time For Trial In Municipal Court Cases; Time For The Trial De Novo In The Court Of Common Pleas In Municipal Court Appeals**

#### INTRODUCTION

On June 26, 2003, effective July 1, 2003, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 1013 (Prompt Trial—Municipal Court). The amendments expand the time for the trial de novo in the Common Pleas Court in an appeal from a Municipal Court decision from 90 days to 120 days, and the time for trial in Philadelphia Municipal Court from 120 days to 180 days in cases (1) that are commenced as Common Pleas Court cases but are ordered to be tried in Municipal Court, and (2) that are transferred from Juvenile Court to Municipal Court.

#### DISCUSSION

At the request of the Supreme Court, the Committee considered whether the time for the trial de novo in a Municipal Court appeal in Rule 1013(G) should be expanded from the current 90 days. Before proceeding, the Committee reviewed the matter with representatives from the Philadelphia Municipal and Common Pleas Courts.<sup>2</sup> The consensus was that some expansion of time would be helpful in the timely disposition of these cases. In addition, the Deputy Court Administrator for the Common Pleas Court reviewed the issue with the Common Pleas Court Administrative Judge and Supervising Judge, and they agreed an increase to 120 days would be reasonable for the Common Pleas Court to dispose of the Municipal Court case trials de novo.

The Committee also reviewed the Committee history for Rules 600 (Prompt Trial) and 1013 (Prompt Trial—Municipal Court) to see if there was any information that would be helpful concerning how, when developing Rules

600 and 1013, the Committee had arrived at the times used in the rules. We did not find anything explaining the Committee's reasoning.<sup>3</sup>

In view of the input we received from the Philadelphia courts, the Committee agreed to an expansion of the Rule 1013(G) time for the trial de novo from 90 days to 120 days.

During the course of the Committee's discussion, several members suggested that the times in Rule 1013(A)(4), concerning cases that are commenced as Common Pleas Court cases but are ordered to be tried in Municipal Court, and in paragraph (A)(5), concerning cases that are transferred from Juvenile Court to Municipal Court for trial, should be expanded to 180 days to be consistent with the August 8, 2002 changes to Rule 1013(A)(1), (2), and (3). The Committee examined these paragraphs and agreed that, for all the same reasons supporting the changes to paragraphs (A)(1), (2), and (3),<sup>4</sup> paragraphs (A)(4) and (A)(5) should be amended to expand the time from 120 days to 180 days.<sup>5</sup>

[Pa.B. Doc. No. 03-1348. Filed for public inspection July 11, 2003, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Disbarment

Notice is hereby given that Alfred A. Porro, Jr., having been disbarred from the practice of law in the State of New Jersey, the Supreme Court of Pennsylvania issued an Order on June 26, 2003, disbaring Alfred A. Porro, Jr., from the Bar of this Commonwealth, retroactive to March 3, 2000. 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. 03-1349. Filed for public inspection July 11, 2003, 9:00 a.m.]

<sup>3</sup>The early work on then-Rule 1100 was done by Subcommittee, and there are limited Committee records of Subcommittee work in the 1970s.

<sup>4</sup>See Committee's Final Report at 32 Pa.B. 4123 (August 24, 2002).

<sup>5</sup>In all other respects, Rule 1013 remains the same.

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

<sup>2</sup>Because of the unique nature and limited jurisdiction of the Philadelphia Municipal Court, and the need to have input from individuals who are daily involved with Municipal Court, the Committee deviated from our normal review of this issue, and consulted the Philadelphia Deputy Court Administrators for municipal and Common Pleas Court and the Chiefs of the Municipal Court units of The Philadelphia Public Defender's office and the Philadelphia District Attorney's office.

# RULES AND REGULATIONS

## Title 64—SECURITIES

### SECURITIES COMMISSION

[64 PA. CODE CH. 102, 202—204,  
207, 305 AND 606]

#### Banking and Savings and Loan Institutions

The Securities Commission (Commission), under the authority contained in sections 102(d), (k) and (t), 202(a), (c), (e) and (i), 203(d), (i.1), (p) and (r), 204(a), 207(l), 305(a)(ix), 606(a) and (d) and 609(a) of the Pennsylvania Securities Act of 1972 (act) (70 P. S. §§ 1-102(d), (k) and (t), 1-202(a), (c), (e) and (i), 1-203(d), (i.1), (p) and (r), 1-204(a), 1-207(l), 305(a)(ix), 1-606(a) and (d) and 1-609(a)), has adopted amendments to regulations concerning the subject matter of the act to read as set forth in Annex A.

#### *Publication of Notice of Proposed Rulemaking*

Publication of proposed rulemaking was published at 33 Pa.B. 884 (February 15, 2003).

#### *Public Comments*

No written comments were received during the public comment period. After the public comment period closed, the Commission received a telephone inquiry from Thomas Harding, Esq., Pugh, Jones & Johnson, P.C., 180 N. LaSalle St., Chicago, IL who asked for additional background information concerning § 202.010 (relating to securities issued by a governmental unit). After receiving the information and discussing it with staff, Thomas Harding indicated that he had no comment on the proposed rulemaking.

#### *Comments of the Independent Regulatory Review Commission (IRRC)*

By letter dated April 17, 2003, IRRC provided the Commission with comments on §§ 102.041, 102.112, 202.030, 203.161 and 305.011. No comments, suggestions or objections were provided by IRRC with respect to the remainder of the proposed rulemaking set forth at 33 Pa.B. 884.

With regard to § 102.041 (relating to bank holding companies; banks in organization), IRRC suggested that subsection (b)(2) be revised to use the declarative rather than subjective mood. The Commission made this change. With respect to § 102.112 (relating to SEPs, IRAs and KEOGHs as institutional investors), IRRC requested clarification of "a person knowledgeable and experienced in financial and business matters." The Commission has revised this section to require that the person be registered with the Commission as an investment adviser or be a Federally-covered adviser.

With respect to § 202.030, IRRC requested that the Commission clarify, if possible, the use of the term "Nationally recognized statistical rating organization" (NRSRO). The Commission has no legal authority to do so. First, this section is being amended to conform to Federal law as dictated by the National Securities Markets Improvement Act of 1996 (NSMIA). Second, the use of the term "NRSRO" and the determination of those firms which are to be so designated is within the exclusive jurisdiction of the United States Securities and Exchange Commission (SEC).

Since 1975, the SEC has required credit ratings by NRSROs in its net capital rule for broker-dealers which the Commission, under NSMIA, is required to follow. Initially, Standard & Poor's, Moody's Investor Services and Fitch's (the same firms that existed in 1975) were the only NRSROs. NRSRO is not defined in SEC regulations and the process for obtaining NRSRO designation from the SEC is not specified. Generally, designation of NRSROs has been done through an informal process by way of a no-action letter from the staff of the SEC Division of Market Regulation. The number of firms designated as NRSROs was expanded to four upon issuance of an SEC staff no-action on February 24, 2003, in which Dominion Bond Rating Service, Ltd. was designated as the newest NRSRO.

With regard to § 203.161 (relating to debt securities of nonprofit organizations), IRRC suggested that the reference to, and role of, the North American Securities Administrators Association (NASAA) Statement of Policy on Church Bonds be clarified. The Commission amended this section to indicate that an offering document would meet the requirements of this regulation if it includes the information elicited by the sections of that statement of policy enumerated in the regulation.

IRRC requested that the Commission clarify § 305.011 (relating to supervision of agents, investment adviser representatives and employees) by giving examples when more frequent inspections would be required. The Commission revised this section to be compliant with NSMIA. The internal inspection requirement for broker-dealers is dictated by the Conduct Rules of the National Association of Securities Dealers, Inc. (NASD). Under NSMIA, the Commission cannot adopt a rule for broker-dealers that is inconsistent with NASD conduct rules. Therefore, the Commission has incorporated examples provided in NASD Notice to Members 98-38 (May 1998) regarding frequency of internal inspections.

#### *Changes Made by the Commission on Adoption*

In response to IRRC comments, the Commission modified language in §§ 102.041, 102.112, 203.161 and 305.011 as indicated in the previous section.

The Commission also revised Item 7 to Commission Form E in § 203.041 (relating to limited offerings) to elicit information of the amount of securities to be offered in this Commonwealth. This is required so that Commission staff can accurately calculate the statutorily required filing fee in section 602(b.1)(viii) of the act (70 P. S. § 1-602(b.1)(viii)). The Commission also delegated authority in § 606.041(a) (relating to delegation and substitution) to the Director of the Division of Enforcement, Litigation and Compliance to institute a proceeding under sections 512, 513 and 514 of the act (70 P. S. §§ 1-512—1-514).

#### *Summary and Purpose of the Final-Form Rulemaking*

*Section 102.041.* This section states that a "bank," as defined in the act, does not include a person organized as a holding company and codifies the Commission's interpretation of when a "bank-in-organization" becomes a "bank" for purposes of the act.

*Section 102.112.* The Commission's published position on when this definition would include IRAs, SEPs and KEOGHs has been codified into a separate regulation.

*Section 102.202.* This section includes a statement of when the offer and sale of real property would be a

“security” under the act, deletes references to the Unit Property Act (68 P. S. §§ 700.101—700.805) and follows SEC staff no-action letters which base the existence of a security on participation in a mandatory rental pool arrangement.

*Section 102.241.* This section has been conformed to make the definition similar to the Federal securities laws.

*Section 202.010.* The section makes it clear that all securities that are exempt securities under section 3(a)(2) of the Securities Act of 1933 (1933 Act) (15 U.S.C.A. § 77c(a)(2)) are exempt under section 202(a) of the act except where a separate security exists by application of SEC Rule 131.

*Section 202.030.* The section states that all section 3(a)(3) exempt securities under the 1933 Act, as interpreted by SEC Release 33-4412, are eligible for the section 202(c) exemption; defines “prime quality” as being in one of the three highest ratings of a NRSRO; prohibits use of public media advertising and mass mailings; and requires that commercial paper issued by bank holding companies contain disclosures that the paper is not issued by a “bank” and, therefore, is not covered by FDIC insurance.

*Section 202.051.* This section was amended to correct a citation.

*Section 202.092.* This section defines the term “guaranty” and includes only issuers located in this Commonwealth or any issuer where the guaranty would be deemed a separate security under SEC Rule 131.

*Section 203.041.* The Commission has adopted a minor revision to Form E to distinguish the amount of securities to be offered in this Commonwealth to assess the correct filing fee established in section 602(b.1)(viii) of the act.

*Section 203.091.* As required by Act 108 of 2002, the section deletes the filing requirement and Form 203-I.

*Section 203.161.* This section permits issuers relying on this section to comply with the trust indenture and offering circular requirements of section 203(p) of the act by satisfying Parts V-VII of the NASAA Statement of Policy on Church Bonds.

*Section 203.189.* The definition of “accredited investor” in § 204.010 (relating to Increasing number of purchasers and offerees) has been added to this section and is the same definition as set forth in SEC Rule 501(a).

*Section 204.010.* Since Act 109 of 1998 enacted an accredited investor exemption in section 203(t) of the act, the definition of “accredited investor” in § 204.010 has been repealed.

*Section 207.120.* NSMIA prohibits states from registering securities issued by registered investment companies. This sections relates to registration of investment company securities and, under NSMIA, is no longer applicable. Therefore, the section has been reserved.

*Section 305.011.* NSMIA prohibits states from maintaining rules governing recordkeeping or financial or operational reporting requirements for broker-dealers that are inconsistent with rules established by the SEC under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk). These generally are NASD conduct rules which are subject to SEC approval. This section has been revised to mirror inspection requirements for broker-dealers of their offices of supervisory jurisdiction, branch offices and nonbranch locations in accordance with criteria in NASD Rule 3010(g) and NASD Notice to Members 98-38.

*Section 606.011.* Act 108 of 2002 gave the Commission authority to require, by rule, that persons purchasing securities from a nonprofit issuer under section 203(p) of the act receive annual financial information from the issuer. The section was amended to include securities sold under section 203(p) of the act.

*Section 606.041.* The section has been amended to permit the Assistant Director of the Division of Corporation Finance to exercise authority delegated to the Director in his absence and also to delegate to the Director of the Division of Enforcement, Litigation and Compliance the authority to institute a proceeding under sections 512—514 of the act.

#### *Persons Affected by the Final-Form Rulemaking*

Issuers of municipal securities in this Commonwealth and issuers of commercial paper will be affected by the final-form rulemaking. Registered broker-dealers will be affected by the changes to inspection requirements for various offices maintained by the broker-dealer. Nonprofit organizations issuing debt securities secured by a first lien mortgage shall comply with certain disclosure requirements in the use of an offering circular and in annual financial information to be given to security holders in this Commonwealth.

#### *Fiscal Impact*

The final-form rulemaking reduces compliance costs by eliminating the filing of Form 203-I. The only new compliance cost is that nonprofit organizations which sell debt securities to Commonwealth residents that are secured by a first lien mortgage on property owned by the issuer must provide annual financial information to those purchasers. The Commission does not believe the compliance cost to be unreasonable when balanced against an investor’s need to know the financial health of the issuer and the security of bonds the investor purchased. No additional compliance cost is envisioned for broker-dealer inspection of their offices as the regulatory requirement mirrors that which already exists in NASD conduct rules.

#### *Paperwork*

The Commission has eliminated Form 203-I. The only new paperwork requirement is the provision of annual financial information to Commonwealth residents who have purchased debt securities from a nonprofit organization which are secured by a first lien mortgage on property owned by the organization.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 3, 2003, the Commission submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 884, to IRRC and to the Chairpersons of the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance for review and comment.

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

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on June 11, 2003, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regula-



tory Review Act, IRRC met on June 12, 2003, and approved the final-form rulemaking.

*Availability in Alternative Formats*

The final-form rulemaking may be made available in alternative formats upon request. TDD users should use the AT&T Relay Center (800) 854-5984. To make arrangements for alternative formats, contact George Spiess, ADA Coordinator, (717) 787-6828.

*Contact Person*

The contact person for an explanation of the final-form rulemaking is G. Philip Rutledge, Chief Counsel, Securities Commission, Eastgate Building, 1010 N. Seventh Street, 2nd Floor, Harrisburg, PA 17102-1410, (717) 783-5130.

*Findings*

The Commission finds that:

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

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

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

*Order*

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

(a) The regulations of the Commission, 64 Pa. Code, Chapters 102, 202—204, 207, 305 and 606, are amended by amending §§ 102.202, 102.241, 202.010, 202.030, 202.051, 202.092, 203.189, 204.010, and 606.011 and deleting §§ 202.032 and 207.120 to read as set forth at 33 Pa.B. 884; and by amending §§ 102.041, 203.041, 203.161, 305.011 and 606.041 and adding § 102.112 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary of the Commission shall submit this order, 33 Pa.B. 884 and Annex A to the Office of Attorney General for approval as to form and legality.

(c) The Secretary of the Commission shall certify this order, 33 Pa.B. 884 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

M. JOANNA CUMMINGS,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 3092 (June 28, 2003).)*

**Fiscal Note:** Fiscal Note 50-118 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 64. SECURITIES**

**PART I. SECURITIES COMMISSION**

**Subpart A. DEFINITIONS**

**CHAPTER 102. DEFINITIONS**

**§ 102.041. Bank holding companies; banks in organization.**

(a) The definition of "bank" in section 102(d) of the act (70 P. S. § 1-102(d)) does not include a holding company for a bank.

(b) The definition of "bank" in section 102(d) of the act (70 P. S. § 1-102(d)) does not include a bank-in-organization. Whether an entity is a "bank" or a "bank-in-organization" shall be determined in accordance with the interpretation of the primary regulatory authority responsible for administration of the banking laws under which the entity is being formed or with which it shall otherwise comply.

**§ 102.112. SEPs, IRAs and KEOGHs as institutional investors.**

Institutional investor, as defined in section 102(k) of the act (70 P. S. § 1-102(k)), includes a Qualified Pension and Profit Sharing and Stock Bonus Plan under section 401 of the Internal Revenue Code of 1986 (KEOGH), an Individual Retirement Account under section 408 of the Internal Revenue Code of 1986 (IRA) and a Simplified Employee Pension under section 408(k) of the Internal Revenue Code of 1986 (SEP) if the KEOGH, IRA or SEP has one of the following:

- (1) Plan assets of \$5 million or more.
- (2) Retained, on an ongoing basis, the services of an investment adviser registered under section 301 of the act (70 P. S. § 1-301) or a Federally-covered adviser to render professional investment management advice and has investments of \$500,000 or more in securities.

**Subpart B. REGISTRATION OF SECURITIES**

**CHAPTER 203. EXEMPT TRANSACTIONS**

**§ 203.041. Limited offerings.**

(a) The notice required by section 203(d) of the act (70 P. S. § 1-203(d)) shall be filed with the Commission within the time period specified by that section on the following form, designated by the Commission as Form E.

\* \* \* \* \*  
COMMISSION FORM E  
\* \* \* \* \*

7. Description of securities to be sold  
Describe type of securities proposed to be sold, price per unit and expected net proceeds to the issuer. Indicate the aggregate offering amount and the amount to be offered in Pennsylvania. \_\_\_ Check here if responding to this item by incorporating items C.1-4 of SEC Form D attached hereto (the amount to be offered in Pennsylvania either must be shown here or on SEC Form D).

\* \* \* \* \*

**§ 203.161. Debt securities of nonprofit organizations.**

(a) A person proposing to offer debt securities under section 203(p) of the act (70 P. S. § 1-203(p)) shall complete and file with the Commission two copies of the following notice, designated by the Commission as Form

203-P not later than 5 business days before the issuer receives from any person an executed subscription agreement or other contract to purchase the securities being offered or the issuer receives consideration from any person therefor, whichever is earlier.

(b) Except in cases when the delivery of an offering document is not required by order of the Commission, every offering of debt securities pursuant to section 203(p) shall be made by an offering document containing all material information about the securities being offered and the issuer. An offering document will be deemed to meet the requirements of this section if it includes the information that is elicited by Part VII of the Statement of Policy Regarding Church Bonds adopted April 14, 2002, by the North American Securities Administrators Association, Inc. and any successor policy thereto (NASAA Guidelines) and is in the format set forth therein. A copy of the offering document and any offering literature to be used in connection with the offer or sale of securities under section 203(p) shall be filed with the Commission at the same time the notice required by subsection (a) must be filed.

(c) The offering document required by subsection (b) shall meet the following conditions:

(1) Contain a notice of a right to withdraw that complies with § 207.130 (relating to notice to purchasers under section 207(m) of the act (70 P. S. § 1-207(m))).

(2) Contain financial statements of the issuer that comply with § 609.034(b) (relating to financial statements).

(3) Demonstrate compliance with the trust indenture standards and trustee qualification standards and associated disclosure requirements as set forth in Parts V and VI of the NASAA Guidelines if the total amount of securities to be offered exceeds \$250,000.

(4) Include whatever data may be necessary to establish that investors will receive a first lien on real estate of the issuer, that the issuer has not defaulted on prior obligations and that the total amount of securities offered does not exceed 75% of the current fair market value of the real property covered by the securities.

**Subpart C. REGISTRATION OF  
BROKER-DEALERS, AGENTS, INVESTMENT  
ADVISERS AND INVESTMENT ADVISER  
REPRESENTATIVES AND NOTICE FILINGS BY  
FEDERALLY-COVERED ADVISERS**

**CHAPTER 305. DENIAL, SUSPENSION,  
REVOCAION AND CONDITIONING OF  
REGISTRATION**

**§ 305.011. Supervision of agents, investment adviser representatives and employees.**

\* \* \* \* \*

(c) As evidence of compliance with the supervisory obligations imposed by this section, every broker-dealer and investment adviser shall implement written procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business, and shall establish, maintain and enforce those written procedures designed to achieve compliance with the act and this title and to detect and prevent violations described in subsection (a). These written procedures, at a minimum, shall address:

\* \* \* \* \*

(10) The periodic inspection of each location in this Commonwealth from which business is conducted to

ensure that the written procedures and systems are enforced. In establishing an inspection cycle, the broker-dealer and investment adviser shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done and the number of agents or investment adviser representatives assigned to the location. The obligation of diligent supervision required by this section may require that one or more locations of a broker-dealer or investment adviser in this Commonwealth receive more inspections or be on a periodic inspection cycle different than other locations of the broker-dealer or investment adviser in this Commonwealth and that inspections be unannounced. In acquitting their obligations under this section, registrants are to consult NASD Notice to Members 98-38 (May 1998) and SEC Release No. 34-38174 (January 15, 1997). In accordance with NASD Notice to Members 98-38, unannounced visits may be appropriate when there are indicators of misconduct such as receipt of significant customer complaints; personnel with disciplinary records; or excessive trade corrections, extensions, liquidations, or variable contract replacements.

(i) An office of supervisory jurisdiction of a broker-dealer shall be inspected at least annually. Branch offices and nonbranch locations of a broker-dealer shall be inspected in accordance with an inspection cycle established in the broker-dealer's written supervisory procedures.

(ii) It is the responsibility of the broker-dealer or investment adviser to ensure through inspections of each location in this Commonwealth that the written procedures and systems are enforced and the supervisory obligations imposed by this section are being honored.

(iii) Written records shall be maintained reflecting each inspection conducted.

(iv) For purposes of this section, the terms "office of supervisory jurisdiction" and "branch office" shall have the same meaning as those terms are defined in NASD Conduct Rule 3010(g) or any successor thereto. The term "nonbranch location" means any location at which a broker-dealer is conducting a securities business that does not come within the definition of "office of supervisory jurisdiction" or "branch office."

**Subpart F. ADMINISTRATION**

**CHAPTER 606. MISCELLANEOUS POWERS OF  
COMMISSION**

**§ 606.041. Delegation and substitution.**

(a) The Commission delegates to the Director and Assistant Director of the Division of Enforcement, Litigation and Compliance:

\* \* \* \* \*

(5) The power to institute a proceeding under sections 512—514 of the act (70 P. S. §§ 1-512—1-514) to do one of the following:

(i) Impose a statutory bar under section 512 of the act (70 P. S. § 1-514).

(ii) Mandate a rescission offer under section 513 of the act (70 P. S. § 1-513).

(iii) Compel the return of sales commissions under section 514 of the act (70 P. S. § 1-514).

\* \* \* \* \*

(e) The Commission authorizes the following:

(1) The Chief Counsel, Deputy Chief Counsel or the Assistant Director of the Division of Corporation Finance may exercise the delegations given in this section in the absence of the Director of the Division of Corporation Finance.

(2) The Chief Counsel and Deputy Chief Counsel may exercise the delegations given in this section in the absence of the Director of the Division of Licensing.

[Pa.B. Doc. No. 03-1350. Filed for public inspection July 11, 2003, 9:00 a.m.]

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# NOTICES

## DEPARTMENT OF BANKING

### Action on Applications

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending July 1, 2003.

#### BANKING INSTITUTIONS

##### New Charter Applications

<i>Date</i>	<i>Name of Institution</i>	<i>Location</i>	<i>Action</i>
6-24-03	Highview Trust Company Greensburg Westmoreland County  <i>Correspondent:</i> Louis T. Steiner 900 Ligonier Street Latrobe, PA 15658	Greensburg	Filed

##### Mutual Holding Company Reorganization

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
6-30-03	First Savings Bank of Perkasio Perkasie Bucks County  Application represents reorganization into a mutual holding company structure to be known as "FSB Mutual Holdings, Inc."	Perkasie	Filed

##### Conversions

<i>Date</i>	<i>Name of Institution</i>	<i>Location</i>	<i>Action</i>
7-1-03	Huntingdon Valley Bank Huntingdon Valley Montgomery County <i>To:</i> Huntingdon Valley Bank Huntingdon Valley Montgomery County  Represents conversion of a Federally-chartered mutual savings association to a State-chartered mutual savings bank.	2617 Huntingdon Pk. Huntingdon Valley Montgomery County	Effective

##### Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
7-1-03	East Penn Bank, Emmaus, and East Penn Interim Bank, Emmaus Surviving Institution— East Penn Bank, Emmaus  Merger being effected solely to effect the acquisition of East Penn Bank by East Penn Financial Corporation, Emmaus, a newly-formed bank holding company.	Emmaus	Effective

##### Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
6-27-03	Citizens & Northern Bank Wellsboro Tioga County	130 Court Street Williamsport Lycoming County	Filed

**Branch Discontinuances**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
12-13-02	Pittsburgh Savings Bank Pittsburgh Allegheny County	125 Brownsville Road Pittsburgh Allegheny County	Effective

**SAVINGS INSTITUTIONS****Conversions**

<i>Date</i>	<i>Name of Association</i>	<i>Location</i>	<i>Action</i>
7-1-03	Savings and Loan Association of Milton, PA Milton Northumberland County <i>To:</i> Milton Savings Bank Milton Northumberland County	80 Broadway Milton Northumberland County	Effective

Represents conversion from a State-chartered savings and loan association to a Federally-chartered mutual savings bank.

**CREDIT UNIONS****Consolidations, Mergers and Absorptions**

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
6-23-03	Belco Community Credit Union, Harrisburg, and CP Lutheran Credit Union, Mechanicsburg Surviving Institution— Belco Community Credit Union, Harrisburg	Harrisburg	Approved Effective 6-30-03

**Branch Relocation**

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
6-16-03	Superior Credit Union Collegeville Montgomery County	<i>To:</i> 308 Main Street Royersford Montgomery County  <i>From:</i> 402 First Avenue Royersford Montgomery County	Effective

*Note:* Relocation is subsequent to the merger of ARE Federal Credit Union with and into Superior Credit Union. The 402 First Avenue address is the former main office of ARE Federal Credit Union.

A. WILLIAM SCHENCK, III,  
*Secretary*

[Pa.B. Doc. No. 03-1351. Filed for public inspection July 11, 2003, 9:00 a.m.]

## DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

### Consolidated Plan Public Meeting and Regional Housing Advisory Committee Meetings

The Department of Community and Economic Development (DCED) is preparing its Consolidated Plan (plan) for Federal Fiscal Years (FFY) 2004-2008, including the annual Action Plan for FFY 2004. This document must be submitted to, and approved by, the United States Department of Housing and Urban Development (HUD) for the Commonwealth and organizations within this Commonwealth to receive funding under most HUD housing and community development programs. The plan creates a unified strategy for housing and community development

programs, as well as the necessary linkages for building successful neighborhoods and communities.

The Commonwealth's 2004-2008 plan will address how the Commonwealth intends to allocate funds under the following programs: Community Development Block Grant, HOME Investment Partnerships, Emergency Shelter Grant and Housing Opportunities for Persons with AIDS. The Commonwealth anticipates incorporating new outcome measures as a pilot participant in HUD's Consolidated Plan Improvement Initiative. Outcome measures will be a major item of discussion at the public meeting and committee meetings.

#### *Public Meeting*

The public meeting will be conducted electronically by means of the Internet. The format will be more accessible in that persons who wish to make a comment or discuss policy may participate directly from their personal computer or from a computer location at their public library on Tuesday, August 19, 2003. Access to the discussion by

means of the Internet will occur between 10 a.m. and 1 p.m. This more widely available personal computer access will replace the usual public meeting.

Individuals or organizations may give testimony or comments by means of the Internet. Comments will be accepted about topics related to community development, housing, the content of the Commonwealth's Action Plan and the process by which the public input is gathered. The Commonwealth encourages public participation in this process.

Individuals who want to participate must register in advance online by means of the Internet at the following website: [www.state.pa.us/chat/](http://www.state.pa.us/chat/). If additional assistance is needed, individuals should call Karen Overly Smith at (717) 214-5340 to receive registration instructions for the Internet meeting at least 24 hours prior to the meeting date. Internet public meeting access will be open from 10 a.m. to 1 p.m. on August 19, 2003. During the meeting, if support is required, call (866) 224-4890 and enter "pin number" 6455 and then press the pound (#) sign.

#### *Written Comments*

Written testimony, instead of Internet testimony, may be submitted by 5 p.m. on August 22, 2003. Submit comments to Karen Overly Smith, Department of Community and Economic Development, Center for Community Building, Office of Community Development, 400 North Street, 4th Floor, Harrisburg, PA 17120-0225.

#### *Regional Housing Advisory Committee Meetings*

The Commonwealth has six Regional Housing Advisory Committees (Committees) across this Commonwealth comprised of appointed members. Meetings of these committees are open to the public under 65 Pa.C.S. §§ 701—716 (relating to Sunshine Act). These committees advise the DCED regarding housing and community development needs, as well as assist in fair housing planning. These meetings will be held as follows:

*July 22, 2003*

Chamber/CAN DO  
Renaissance Center  
One South Church Street, Suite 200  
Hazelton, PA 18201  
8:30 a.m. to 11:30 a.m.

*July 24, 2004*

Norristown State Hospital  
Building #33  
1001 Sterigere Street  
Norristown, PA 19401  
1 p.m. to 4 p.m.

*July 25, 2003*

Harrisburg Regional Chamber of Commerce  
3211 North Front Street  
Harrisburg, PA 17110  
1:30 p.m. to 4:30 p.m.

*July 29, 2003*

Cranberry Municipal Building  
2525 Rochester Road, Suite 400  
Cranberry Township, PA 16066  
1 p.m. to 4 p.m.

*July 30, 2003*

Radisson Hotel Sharon  
3377 Newcastle Road  
West Middlesex, PA 16159  
9 a.m. to 12 p.m.

*July 31, 2003*

Juniata Valley Chamber of Comm.  
152 Market Street, Suite 103  
Lewistown, PA 17044  
9 a.m. to 12 p.m.

Persons with a disability who wish to attend any of the Committee meetings and require an auxiliary aid, service or other accommodation to participate in the proceeding should contact Karen Overly Smith, Department of Community and Economic Development, Center for Community Building, Office of Community Development, 4th Floor, 400 North Street, Harrisburg, PA 17120-0225, (717) 214-5340, to discuss how the DCED may best accommodate their needs. Text telephone calls can be placed through the Pennsylvania Relay System at (800) 654-5984. Calls will be relayed to the DCED's number listed in this notice.

MICHAEL P. DIBERARDINIS,  
*Secretary*

[Pa.B. Doc. No. 03-1352. Filed for public inspection July 11, 2003, 9:00 a.m.]

## DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

### Community Conservation Partnerships Program Grants; Preapplication Workshops

The Department of Conservation and Natural Resources (Department) announces an open application period for the Community Conservation Partnerships Program grants administered by the Bureau of Recreation and Conservation (Bureau). The open application period will officially begin July 12, 2003, and end at 5 p.m. on October 15, 2003. Funding for recreation and conservation programs, including community recreation, land trusts, rails-to-trails, rivers conservation, Pennsylvania recreational trails, snowmobile/ATV and Land and Water Conservation Fund, will be the focus of 11 workshops and break-out sessions scheduled at the following 9 locations throughout this Commonwealth during July and August, 2003:

July 15, 2003	Days Inn Conference Center, Meadville	8:30 a.m.—12 p.m.
July 16, 2003	Ramada Inn Conference Center, Monroeville	8:30 a.m.—12 p.m. 1 p.m.—4:30 p.m.
July 22, 2003	The Inn at Nichols Village, Clarks Summit	8:30 a.m.—12 p.m.
July 23, 2003	Montgomery County Community College Pottstown	8:30 a.m.—12 p.m.
July 24, 2003	Montgomery County Fire Academy, Conshohocken	1 p.m.—4:30 p.m.
July 29, 2003	Radisson Hotel Williamsport	8:30 a.m.—12 p.m.

July 31, 2003	Clarion Hotel and Convention Center Carlisle	8:30 a.m.—12 p.m. 1 p.m.—4:30 p.m.
August 5, 2003	Holiday Inn, Clarion	8:30 a.m.—12 p.m.
August 6, 2003	Ramada Inn, Altoona	8:30 a.m.—12 p.m.

The Grant Application Manual for fiscal year 2003-2004 as well as additional information regarding associated grant materials and directions to the workshops may be obtained by contacting the Department of Conservation and Natural Resources, Bureau of Recreation and Conservation, 6th Floor, Rachel Carson State Office Building, P. O. Box 8475, Harrisburg, PA 17105-8475, (717) 783-4734, e-mail rec&con@state.pa.us or through the Department's website at www.dcnr.state.pa.us. The Bureau will conduct the workshops in cooperation with the Pennsylvania Recreation and Park Society.

MICHAEL F. DIBERARDINIS,  
*Secretary*

[Pa.B. Doc. No. 03-1353. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Conservation and Natural Resources Advisory Council Meeting

The Conservation and Natural Resources Advisory Council to the Department of Conservation and Natural Resources (Department) will hold a meeting at 10 a.m. on Wednesday, July 23, 2003, in Room 105, Lobby Level, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning this meeting or agenda items should be directed to Kurt Leitholf at (717) 705-0031.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Claire Guisewite at (717) 705-0031 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. 03-1354. Filed for public inspection July 11, 2003, 9:00 a.m.]

## DEPARTMENT OF EDUCATION

### Application of Carnegie Mellon University for Approval of Amendment of Its Articles of Incorporation

#### Opportunity for Hearing and Invitation to Protest

Under 24 Pa.C.S. § 6504(a) (relating to fundamental changes), the Department of Education (Department) will consider the application of Carnegie Mellon University for

a Certificate of Authority approving the amendment to and the restating of its Articles of Incorporation in their entirety.

In accordance with 24 Pa.C.S. § 6503(e) (relating to certification of institutions), the Department will act upon the application without hearing, unless within 30 days after the publication of this notice in the *Pennsylvania Bulletin* a written request for public hearing is filed with the Department, along with a notice of intervention, a petition to intervene or protest in accordance with 1 Pa. Code §§ 35.23 and 35.24 (relating to protest) or 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

Petitions to intervene, protests and requests for hearing shall be filed with Paula Fleck, Chief, Division of Program Services, (717) 772-3623 or Carol Gisselquist, Higher Education Specialist, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-4448 by 4 p.m. on the due date prescribed by this notice. Persons wishing to review the application should phone or write to the aforementioned office to schedule a time for an in-office review. Duplicate copies are not available.

Persons with a disability who wish to attend the hearing, if held, and require an auxiliary aid, service or other accommodation to participate should contact Paula Fleck, (717) 772-3623 or Carol Gisselquist, (717) 787-4448 to discuss how the Department may best accommodate their needs.

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

[Pa.B. Doc. No. 03-1355. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Application of Pittsburgh Technical Institute for Approval of Revised Articles of Incorporation

#### Opportunity for Hearing and Invitation to Protest

Under 24 Pa.C.S. § 6503(e) (relating to certification of institutions), the Department of Education (Department) will consider the application of Pittsburgh Technical Institute for a Certificate of Authority approving the institution's amendments to their Articles of Incorporation and Canons.

In accordance with 24 Pa.C.S. § 6503(e), the Department will act upon the application without hearing, unless within 30 days after the publication of the notice in the *Pennsylvania Bulletin* a written request for public hearing is filed with the Department, along with a notice of intervention, a petition to intervene or protest in accordance with 1 Pa. Code §§ 35.23 and 35.25 (relating to protest) or 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

Petitions to intervene, protests and requests for hearing should be filed with Paula Fleck, Chief, Division of Program Services, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 772-3623 by 4 p.m. on the due date prescribed by this notice. Persons wishing to review the application should phone or write to the aforementioned office to schedule a time for an in-office review. Copies of the application are not available.

Persons with a disability who wish to attend the hearing, if held, and require an auxiliary aid, service or other accommodation to participate should contact Paula

Fleck at (717) 772-3623 to discuss how the Department may best accommodate their needs.

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

[Pa.B. Doc. No. 03-1356. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Application of Westminster College for Approval of Revised Articles of Incorporation

#### Opportunity for Hearing and Invitation to Protest

Under 24 Pa.C.S. § 6503(e) (relating to certification of institutions), the Department of Education (Department) will consider the application of Westminster College for a revision and restatement of its Articles of Incorporation.

In accordance with 24 Pa.C.S. § 6503(e), the Department will act upon the application without hearing, unless within 30 days after the publication of the notice in the *Pennsylvania Bulletin* a written request for public hearing is filed with the Department, along with a notice

of intervention, a petition to intervene or protest in accordance with 1 Pa. Code §§ 35.23 and 35.25 (relating to protest) or 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

Petitions to intervene, protests and requests for hearing should be filed with Paula Fleck, Chief, Division of Program Services, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 772-3623 by 4 p.m. on the due date prescribed by this notice. Persons wishing to review the application should phone or write to the aforementioned office to schedule a time for an in-office review. Copies of the application are not available.

Persons with a disability who wish to attend the hearing, if held, and require an auxiliary aid, service or other accommodation to participate should contact Paula Fleck at (717) 772-3623 to discuss how the Department may best accommodate their needs.

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

[Pa.B. Doc. No. 03-1357. Filed for public inspection July 11, 2003, 9:00 a.m.]

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Applications, Actions and Special Notices

#### APPLICATIONS

### 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 Permit 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>
PA0052566	Owen J. Mooney 2015 Valley Road Newtown Square, PA 19073	Delaware County Edgemont Township	Unnamed Steam to Ridley Creek	Y
PA0057223	William and Donna Dodson 999 Long Mill Road Telford, PA 18969-2315	Montgomery County Franconia Township	East Branch of the Perkiomen Creek	Y

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

<i>NPDES Permit 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>
PA0033049	Department of Transportation Rest Area No. 25 Bureau of Design P. O. Box 3060 Harrisburg, PA 17105-3060	Pine Creek Township Jefferson County	Fivemile Run Watershed 17-C	Y

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

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

**PAS212211**, Industrial Waste, **Glenwood Stone Co., Inc.**, R. R. 1, Box 1130, Nicholson, PA 18846. This proposed facility is in Lenox Township, **Susquehanna County**.

Description of Proposed Activity: Issuance of new NPDES stormwater permit.

The receiving stream, unnamed tributary to East Branch Tunkhannock Creek, is in the State Water Plan watershed no. 4F and is classified for CWF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for the Danville Water Supply is on the Susquehanna River, approximately 90 miles below the point of discharge.

One stormwater Outfall 001 subject to stormwater Appendix J optional monitoring requirements.

**Appendix J—Monitoring for Additional Facilities\*\***

<i>Discharge Parameter</i>	<i>Units</i>	<i>Sample Type</i>	<i>Measurement Frequency</i>
CBOD <sub>5</sub>	(mg/l)	1 Grab	1 Year
Chemical Oxygen Demand	(mg/l)	1 Grab	1 Year
Oil and Grease	(mg/l)	1 Grab	1 Year
pH	(S.U.)	1 Grab	1 Year
Total Suspended Solids	(mg/l)	1 Grab	1 Year
Total Kjeldahl Nitrogen	(mg/l)	1 Grab	1 Year
Total Phosphorous	(mg/l)	1 Grab	1 Year
Effluent Guideline Pollutants*	(mg/l)	1 Grab	1 Year
Iron (Dissolved)	(mg/l)	1 Grab	1 Year

\*Any pollutant limited in an effluent guideline to which the facility is subject.

\*\*Facilities subject to Appendix J are not required to monitor and may perform an annual inspection of the facility instead of monitoring.

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

**PA0028720**, Sewage, **Reading Regional Airport Authority**, 2501 Bernville Road, Reading, PA 19605-9611. This facility is in Bern Township, **Berks County**.

Description of activity: Issuance of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Schuylkill River, is in Watershed 3-C and classified for WWF, water supply recreation and fish consumption. The nearest downstream public water supply intake for Pottstown Borough is on the Schuylkill River, approximately 24 miles downstream. The discharge is not expected to affect the water supply.

The proposed Interim effluent limits for Outfall 001 for a design flow of 0.175 MGD are:

Parameter	Average		Instantaneous Maximum (mg/l)
	Monthly (mg/l)	Weekly (mg/l)	
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N	20		40
Total Dissolved Solids	1,000		2,000
Total Residual Chlorine	1.0		1.5
Oil and Grease	15		30
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)			

The proposed final effluent limits for Outfall 001 for a design flow of 0.42 MGD are:

Parameter	Average		Instantaneous Maximum (mg/l)
	Monthly (mg/l)	Weekly (mg/l)	
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N	20		40
Total Dissolved Solids	1,000		2,000
Total Residual Chlorine	0.5		1.6
Oil and Grease	15		30
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 in effect.

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

**PA0217468**, Industrial Waste, SIC 4941, **Beaver Falls Municipal Authority**, 1425 8th Avenue, P. O. Box 400, Beaver Falls, PA 15010. This application is for renewal of an NPDES permit to discharge treated process water from a water plant in Eastvale Borough, **Beaver County**.

The following effluent limitations are proposed for discharge to the receiving waters, the Beaver River, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Beaver Falls Municipal Authority, at New Brighton, 3 miles below the discharge point.

*Outfall 001: existing discharge, design flow of 0.853 mgd.*

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow	Monitor and Report				
TSS			30		60
Aluminum			4		8

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Iron			2		4
Manganese			1		2
TRC			0.5		1.0
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

**PA0023892**, Sewage, **Masontown Municipal Authority**, 2 Court Street, Masontown, PA 15461-1841. This application is for renewal of an NPDES permit to discharge treated sewage from Bessemer Sewage Treatment Plant (aka Cats Run Sewage Treatment Plant) in Masontown Borough, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Cats 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 Masontown Borough WW on the Monongahela River.

*Outfall 001*: existing discharge, design flow of 0.2 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>	25	37.5		50
Suspended Solids	30	45		60
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	1.0			3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0023906**, Sewage, **Masontown Municipal Authority**, 2 Court Street, Masontown, PA 15461-1841. This application is for renewal of an NPDES permit to discharge treated sewage from Big Run Sewage Treatment Plant in Masontown Borough, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary of the Monongahela River, 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 Masontown Borough WW on the Monongahela River.

*Outfall 001*: existing discharge, design flow of 0.4 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD <sub>5</sub>	25	37.5		50
Suspended Solids	30	45		60
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	60,000/100 ml as a geometric mean			
Total Residual Chlorine	1.0			3.3
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

**PA0028011**, Sewage, **Sunoco, Inc.—East Quaker Park Building**, 1001 Hector Street, 4th Floor, Conshohocken, PA 19428. This application is for renewal of an NPDES permit to discharge treated sewage from Zelenople Station Service Plaza Sewage Treatment Plant in New Sewickley Township, **Beaver County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Brush Creek, which are classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Beaver Falls Municipal Authority on the Beaver River.

*Outfall 001*: existing discharge, design flow of 0.05 mgd.

Parameter	Concentration (mg/l)			Instantaneous Maximum
	Average Monthly	Average Weekly	Maximum Daily	
CBOD <sub>5</sub>	10			20
Suspended Solids	25			50
Ammonia Nitrogen (5-1 to 10-31)	2.0			4.0
(11-1 to 4-30)	6.0			12.0
Phosphorus	0.5			1
Fecal Coliform (5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 ml as a geometric mean			
Total Residual Chlorine	1.4			3.3
Dissolved Oxygen	not less than 5.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

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

**PA0239151**, Sewage, **David F. Buchanan**, 706 Perkinswood Boulevard S. E., Warren, OH 44483. This proposed facility is in West Shenango Township, **Crawford County**.

Description of Proposed Activity: New 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 Reynold's Water Company Intake on the Shenango River in Pymatuning Township, Mercer County, approximately 17 miles below point of discharge.

The receiving stream, unnamed tributary to Shenango River, is in watershed 20-A and classified for WWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0004 MGD.

Parameter	Concentrations		
	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
CBOD <sub>5</sub>	10		20
Total Suspended Solids	20		40
Fecal Coliform	200/100ml as a geometric average		
Total Residual Chlorine	Monitor and Report		
pH	6.0 to 9.0 standard units at all times		

The EPA waiver is in effect.

**PA0239259**, Sewage, **David E. Davis, SFTF**, 17 S. Water Street, Albion, PA 16401. This proposed facility is in Spring Township, **Crawford County**.

Description of Proposed Activity: New 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 Lake Erie, approximately 50 miles below point of discharge.

The receiving stream, an unnamed tributary of Conneaut Creek, is in watershed 15A and classified for CWF, MF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0008 MGD.

Parameter	Concentrations		
	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Flow	Monitoring Only		
CBOD <sub>5</sub>	10		20
Total Suspended Solids	20		40
Fecal Coliform	200/100ml as a geometric average		
Total Residual Chlorine	XX		
pH	6.0 to 9.0 standard units at all times		

XX—Monitor and Report on AMR.

The EPA waiver is in effect.

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**III. WQM Industrial Waste and Sewerage Applications 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. 1501426 Amendment**, Sewerage, **West Vincent Township**, P. O. Box 163, 2200 Flowing Springs Road, Birchrunville, PA 19421. This proposed facility is in West Vincent Township, **Chester County**.

Description of Proposed Action/Activity: Construction and operation of wastewater collection, treatment and disposal facilities.

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

**WQM Permit No. 6703406**, Sewerage, **Jacobus Borough Sewer Authority**, 126 North Cherry Lane, Jacobus, PA 17407. This proposed facility is in Jacobus Borough, **York County**.

Description of Proposed Action/Activity: Construction/operation of the Creekwood Drive sewer extension and pumping station at The Woods of Lake Redman.

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

**WQM Permit No. 2003201**, Industrial Waste, **Oil Creek Plastics**, 45619 State Highway 27, P. O. Box 385, Titusville, PA 16354-0385. This proposed facility is in City of Titusville, **Crawford County**.

Description of Proposed Action/Activity: This project is for the installation and operation of a cooling tower and chilled water system.

**WQM Permit No. 2503418**, Sewerage, **Waterford Municipal Authority**, 30 South Park Row, Waterford, PA 16441. This proposed facility is in Borough of Waterford, **Erie County**.

Description of Proposed Action/Activity: This project is for the replacement of chlorine disinfection with UV disinfection equipment as well as a conversion from anaerobic digestion to an aerobic process.

**WQM Permit No. 3703405**, Sewerage, **Neshannock Township Sewer Department**, 3131 Mercer Road, New Castle, PA 16105. This proposed facility is in Union Township and City of New Castle, **Lawrence County**.

Description of Proposed Action/Activity: This project is for the construction of the Shenango Interceptor and sewer extension for the West Bank Sewer Project.

**WQM Permit No. 2003418**, Sewerage, **Vernon Township Sanitary Authority**, 16678 McMath Avenue, Meadville, PA 16335. This proposed facility is in Vernon Township, **Crawford County**.

Description of Proposed Action/Activity: This project is for the construction of the Harmonsburg Road Sewer Extension to include sewers, manholes, grinder pumps, pump station and electrical equipment.

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


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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>
PAI130515	Buckingham Township P. O. Box 413 Buckingham, PA	Bucks	Buckingham	Y
PAI130507	Charlestown Township P. O. Box 507 Devault, PA	Chester	Charlestown	Y
PAI130523	East Bradford Township 666 Copeland School Rd. West Chester, PA	Chester	East Bradford	Y
PAI130524	East Brandywine Township 1214 Horseshoe Pike Downingtown, PA	Chester	East Brandywine	Y
PAI130536	East Caln Township P. O. Box 232 110 Bell Tavern Rd. Downingtown, PA	Chester	East Caln	Y
PAI130501	East Coventry Township 855 Ellis Woods Rd. Pottstown, PA	Chester	East Coventry	Y
PAI130512	East Fallowfield Township 2264 Strasburg Rd. Coatesville, PA	Chester	East Fallowfield	Y

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI130520	East Goshen Township 1580 Paoli Pike West Chester, PA	Chester	East Goshen	Y
PAI130514	East Pikeland Township Rapps Dam Rd. P. O. Box 58 Kimbertown, PA	Chester	East Pikeland	Y
PAI130518	East Vincent Township 262 Ridge Rd. Spring City, PA	Chester	East Vincent	Y
PAI130508	East Whiteland Township 209 Conestoga Rd. Frazer, PA	Chester	East Whiteland	Y
PAI130509	Easttown Township 566 Beaumont Rd. P. O. Box 79 Devon, PA	Chester	Easttown	Y
PAI130522	Edgmont Township P. O. Box 267 1000 Gradyville Rd. Gradyville, PA	Delaware	Edgmont	Y
PAI130535	Honey Brook Township P. O. Box 1281 Honey Brook, PA	Chester	Honey Brook	Y
PAI130503	London Grove Township 372 Rosehill Road, Suite 100 West Grove, PA	Chester	London Grove	Y
PAI130525	Malvern Borough P. O. Box 437 Malvern, PA	Chester	Malvern	Y
PAI130513	Marlborough Township 6040 Upper Ridge Road Green Lane, PA	Montgomery	Marlborough	Y
PAI130510	Middletown Township 27 N. Pennell Rd. P. O. Box 157 Lima, PA	Delaware	Middletown	Y
PAI130519	Montgomery County P. O. Box 311 Montgomery County Courthouse Norristown, PA	Montgomery	Norristown	N
PAI130516	New Garden Township 8934 Gap Newport Pike Landenberg, PA	Chester	New Garden	Y
PAI130526	New London Township 902 West State Road P. O. Box 1002 New London, PA	Chester	New London	Y
PAI130502	Newtown Township 209 Bishop Hollow Rd. Newtown Square, PA	Delaware	Newtown	Y
PAI130537	North Coventry Township 845 S. Hanover St. Pottstown, PA	Chester	North Coventry	Y
PAI130538	Pennsylvania State University 201 Old Main Physical Plant Building University Park, PA	Delaware	Middletown	N

## 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>
PAI130539	Penn Township 260 Lewis Rd. P. O. Box 39 West Grove, PA	Chester	Penn	Y
PAI130533	Schuylkill Township 101 Valley Park Rd. Phoenixville, PA	Chester	Schuylkill	Y
PAI130541	South Coventry Township 1002 Ridge Rd. Pottstown, PA	Chester	South Coventry	Y
PAI130517	Thornbury Township 6 Township Dr. Cheyney, PA	Delaware	Thornbury	Y
PAI130504	Tredyffrin Township 1100 DuPortail Rd. Berwyn, PA	Chester	Tredyffrin	Y
PAI130540	Trumbauersville Borough 1 Evergreen Dr. Trumbauersville, PA	Bucks	Trumbauersville	Y
PAI130534	Upper Salford Township P. O. Box 100 Salfordville, PA	Montgomery	Upper Salford	Y
PAI130527	Upper Uwchlan Township 140 Pottstown Pike Chester Springs, PA	Chester	Upper Uwchlan	Y
PAI130505	Uwchlan Township 715 N. Ship Rd. Exton, PA	Chester	Uwchlan	Y
PAI130529	Wallace Township P. O. Box 96 Glenmoore, PA	Chester	Wallace	Y
PAI130511	West Bradford Township 1385 Campus Dr. Downingtown, PA	Chester	West Bradford	Y
PAI130532	West Goshen Township 1025 Paoli Pk. West Chester, PA	Chester	West Goshen	Y
PAI130531	West Pikeland Township P. O. Box 6 1208 and Route 113 Chester Springs, PA	Chester	West Pikeland	Y
PAI130530	West Whiteland Township P. O. Box 210 222 N. Pottstown Pk. Exton, PA	Chester	West Whiteland	Y
PAI130528	Westtown Township P. O. Box 79 Westtown, PA	Chester	Westtown	Y
PAI130521	Willistown Township 688 Sugartown Rd. Malvern, PA	Chester	Willistown	Y
PAI130506	Solebury Township P. O. Box 139 Solebury, PA	Bucks	Solebury	Y

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


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


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

*Wayne County Conservation District: Ag Service Center, 470 Sunrise Ave., Honesdale, PA 18431, (570) 253-0930.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI026403003	Mark Froland R. R. 5, Box 5346D Moscow, PA 18444	Wayne	Salem Township	Moss Hollow Creek HQ-CWF

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

<i>NPDES No.</i>	<i>Applicant Name and Address</i>	<i>County and Municipality</i>	<i>Receiving Water/Use</i>
PAI041203001	Department of Transportation District 2-0 1924-30 Daisy St. Clearfield, PA 16830	Shippen Township Cameron County	Fourmile Hollow HQ-CWF

*Centre Conservation District: 414 Holmes Ave., Bellefonte, PA 16823 814-355-6817.*

<i>NPDES No.</i>	<i>Applicant Name &amp; Address</i>	<i>County and Municipality</i>	<i>Receiving Water/Use</i>
PAS10F070R	Department of Transportation Engineering District 2-0 1924-30 Daisy St. Clearfield, PA 16830 (814) 765-0450	Centre County College, Spring and Benner Townships	Spring 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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**MS4 Notices of Intent Received**


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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>Department Protocol (Y/N)</i>
PAG130007	Doylestown Township 425 Wells Rd. Doylestown, PA	Bucks	Doylestown	Y
PAG130012	Abington Township 1176 Old York Rd. Abington, PA	Montgomery	Abington	Y
PAG130009	Aldan Borough One W. Providence Rd. Aldan, PA	Delaware	Aldan	Y
PAG130036	Ambler Borough 122 E. Butler Ave. Ambler, PA	Montgomery	Ambler	Y
PAG130122	Aston Township 233 Pennell Rd. Aston, PA	Delaware	Aston	Y
PAG130079	Avondale Borough P. O. Box 247 110 Pomeroy Ave. Avondale, PA	Chester	Avondale	Y
PAG130045	Bensalem Township 2400 Byberry Rd. Bensalem, PA	Bucks	Bensalem	Y



## NOTICES

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<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG130076	Bethel Township 1082 Bethel Rd. Boothwyn, PA	Delaware	Bethel	Y
PAG130047	Birmingham Township 1040 W. Street Rd. West Chester, PA	Chester	Birmingham	Y
PAG130117	Bridgeport Borough Fourth and Mill St. Bridgeport, PA	Montgomery	Bridgeport	Y
PAG130105	Bristol Borough 250 Pond St. Bristol, PA	Bucks	Bristol	Y
PAG130151	Bristol Township 2501 Bath Rd. Bristol, PA	Bucks	Bristol	Y
PAG130125	Brookhaven Borough 2 Cambridge Rd., Suite 100 Brookhaven, PA	Delaware	Brookhaven	Y
PAG130111	Bucks County Rt. 611 and Almshouse Rd. Neshaminy Manor Ctr. Doylestown, PA	Bucks	Doylestown	N
PAG130053	Caln Township 253 Municipal Dr. P. O. Box 149 Thorndale, PA	Chester	Caln	Y
PAG130142	Chadds Ford Township P. O. Box 181 Chadds Ford, PA	Delaware	Chadds Ford	Y
PAG130068	Chalfont Borough 40 N. Main St. P. O. Box 80 Chalfont, PA	Bucks	Chalfont	Y
PAG130054	Cheltenham Township 8230 Old York Rd. Elkins Park, PA	Montgomery	Cheltenham	Y
PAG130090	Chester City 36 E. 5th St. Chester City Hall Chester, PA	Delaware	Chester	Y
PAG130119	Chester Heights Borough P. O. Box 658 Chester Heights, PA	Delaware	Chester Heights	Y
PAG130089	Chester Township 1150 Engle St. Chester, PA	Delaware	Chester	Y
PAG130025	Cheyney University P. O. Box 200 Cheyney, PA	Delaware	Thornbury	Y
PAG130143	Clifton Heights Borough 30 S. Springfield Rd. Clifton Heights, PA	Delaware	Clifton Heights	Y
PAG130138	Collegeville Borough 491 East Main St. Collegeville, PA	Montgomery	Collegeville	Y
PAG130120	Collingdale Borough 800 McDade Blvd. Collingdale, PA	Delaware	Collingdale	Y

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG130093	Colwyn Borough 221 Spruce St. Colwyn, PA	Delaware	Colwyn	Y
PAG130158	Concord Township P. O. Box 171 Concordville, PA	Delaware	Concord	Y
PAG130013	Conshohocken Borough 720 Fayette St. Conshohocken, PA	Montgomery	Conshohocken	Y
PAG130127	Darby Borough 821 Summit St. Darby, PA	Delaware	Darby	Y
PAG130088	Darby Township 21 Bartram Ave. Glenolden, PA	Delaware	Darby	Y
PAG130095	Douglass Township 1320 E. Philadelphia Ave. Gilbertsville, PA	Montgomery	Douglass	Y
PAG130140	Downingtown Borough Municipal Government Center 4-10 Lancaster Ave. Downingtown, PA	Chester	Downingtown	Y
PAG130035	Doylestown Borough 57 W. Court St. Doylestown, PA	Bucks	Doylestown	Y
PAG130156	East Greenville Borough 206 Main St. P. O. Box 128 East Greenville, PA	Montgomery	East Greenville	N
PAG130124	East Lansdowne Borough 155 Lexington Ave. East Lansdowne, PA	Delaware	East Lansdowne	Y
PAG130123	East Marlborough Township 721 Unionville Rd. Kennett Square, PA	Chester	East Marlborough	Y
PAG130032	East Norriton Township 2501 Stanbridge St. East Norriton, PA	Montgomery	East Norriton	Y
PAG130162	East Rockhill Township 1622 Ridge Rd. Perkasie, PA	Bucks	East Rockhill	Y
PAG130087	Eddystone Borough 1300 E. 12th St. Eddystone, PA	Delaware	Eddystone	Y
PAG130050	Falls Township 188 Lincoln Hwy., Suite 100 Fairless Hills, PA	Bucks	Falls	N
PAG130015	Folcroft Borough 1555 Elmwood Ave. Folcroft, PA	Delaware	Folcroft	Y
PAG130147	Franconia Township 671 Allentown Rd. P. O. Box 128 Franconia, PA	Montgomery	Franconia	Y
PAG130058	Franklin Township P. O. Box 118 Kemblesville, PA	Chester	Franklin	Y

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<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG130092	Glenolden Borough 36 E. Boon Ave. Glenolden, PA	Delaware	Glenolden	Y
PAG130034	Hatboro Borough 414 S. York Road Hatboro, PA	Montgomery	Hatboro	Y
PAG130052	Hatfield Borough P. O. Box 190 Main and Chestnut Sts. Hatfield, PA	Montgomery	Hatfield	Y
PAG130114	Hatfield Township 1950 School Rd. Hatfield, PA	Montgomery	Hatfield	Y
PAG130077	Haverford Township 2325 Darby Rd. Havertown, PA	Delaware	Haverford	Y
PAG130040	Hilltown Township P. O. Box 260 13 W. Creamery Rd. Hilltown, PA	Bucks	Hilltown	Y
PAG130157	Horsham Township 1025 Horsham Rd. Horsham, PA	Montgomery	Horsham	N
PAG130153	Ivyland Borough 710 Ivyglenn Circle Ivyland, PA	Bucks	Ivyland	Y
PAG130149	Jenkintown Borough P. O. Box 2176 Jenkintown, PA	Montgomery	Jenkintown	Y
PAG130037	Kennett Square Borough 120 N. Broad St. P. O. Box 5 Kennett Square, PA	Chester	Kennett Square	Y
PAG130146	Kennett Township P. O. Box H 1001 E. Baltimore Pike Longwood Fire Co. Bldg. Kennett Square, PA	Chester	Kennett	Y
PAG130039	Langhorne Borough 114 E. Maple Ave. Langhorne, PA	Bucks	Langhorne	Y
PAG130044	Langhorne Manor Borough 618 Hulmeville Ave. Langhorne, PA	Bucks	Langhorne Manor	Y
PAG130038	Lansdale Borough 1 Vine St. Lansdale, PA	Montgomery	Lansdale	Y
PAG130126	Lansdowne Borough 12 E. Baltimore Ave. Lansdowne, PA	Delaware	Lansdowne	Y
PAG130148	Limerick Township 646 West Ridge Pike Limerick, PA	Montgomery	Limerick	Y
PAG130062	London Britain Township P. O. Box 215 Kemblesville, PA	Chester	London Britain	Y
PAG130091	Lower Chichester Township 1410 Market St. Linwood, PA	Delaware	Lower Chichester	Y

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG130116	Lower Frederick Township P. O. Box 253 53 Spring Mount Rd. Zieglerville, PA	Montgomery	Lower Frederick	Y
PAG130072	Lower Gwynedd Township 1130 N. Bethlehem Pk. P. O. Box 635 Spring House, PA	Montgomery	Lower Gwynedd	Y
PAG130011	Lower Makefield Township 1100 Edgewood Rd. Yardley, PA	Bucks	Lower Makefield	N
PAG130064	Lower Merion Township 75 E. Lancaster Ave. Ardmore, PA	Montgomery	Upper Merion	N
PAG130027	Lower Moreland Township 640 Red Lion Rd. Huntingdon Valley, PA	Montgomery	Lower Moreland	Y
PAG130073	Lower Pottsgrove Township 2199 Buchert Rd. P. O. Box 11 Pottstown, PA	Montgomery	Lower Pottsgrove	Y
PAG130018	Lower Providence Township 100 Parklane Dr. Eagleville, PA	Montgomery	Lower Providence	Y
PAG130131	Lower Salford Township P. O. Box 243 Mainland, PA	Montgomery	Lower Salford	Y
PAG130030	Lower Southampton Township 1500 Desire Ave. Feasterville, PA	Bucks	Lower Southampton	Y
PAG130071	Marcus Hook Borough 1015 Green St., Suite A Marcus Hook Borough Hall Marcus Hook, PA	Delaware	Marcus Hook	Y
PAG130021	Marple Township Springfield and Sproul Rd. 227 South Sproul Road Broomall, PA	Delaware	Marple	Y
PAG130115	Media Borough 301 N. Jackson St., Fl. 2 Media, PA	Delaware	Media	Y
PAG130028	Middletown Township 3 Municipal Way Langhorne, PA	Bucks	Middletown	Y
PAG130136	Milford Township P. O. Box 86 2100 Krames Rd. Spinnerstown, PA	Bucks	Milford	Y
PAG130016	Montgomery Township 1001 Stump Road Montgomeryville, PA	Montgomery	Montgomery	Y
PAG130104	Morrisville Borough 35 Union St. Morrisville, PA	Bucks	Morrisville	Y
PAG130094	Morton Borough 500 Highland Ave. Morton, PA	Delaware	Morton	Y
PAG130080	Narberth Borough 100 Conway Ave. Narberth, PA	Montgomery	Narberth	Y

## NOTICES

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<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG130099	Nether Providence Township 214 Sykes Ln. Wallingford, PA	Delaware	Nether Providence	Y
PAG130154	New Britain Borough 45 Keeler Ave. New Britain, PA	Bucks	New Britain	Y
PAG130060	New Britain Township 207 Park Ave. Chalfont, PA	Bucks	New Britain	Y
PAG130020	New Hanover Township 2943 Charlotte St. Gilbertsville, PA	Montgomery	New Hanover	Y
PAG130065	Newlin Township 929 Springwood Dr. West Chester, PA	Chester	Newlin	Y
PAG130057	Newtown Borough 23 N. State St. Newtown, PA	Bucks	Newtown	Y
PAG130048	Newtown Township 100 Municipal Dr. Newtown, PA	Bucks	Newtown	Y
PAG130159	Norristown Borough 235 E. Airy St. Norristown Borough Hall Norristown, PA	Montgomery	Norristown	Y
PAG130005	North Wales Borough 300 School St. North Wales, PA	Montgomery	North Wales	Y
PAG130098	Northampton Township 55 Township Road Richboro, PA	Bucks	Northampton	Y
PAG130135	Norwood Borough 10 W. Cleveland Ave. P. O. Box 65 Norwood, PA	Delaware	Norwood	Y
PAG130081	Parkesburg Borough 329 W. First Ave. Parkesburg, PA	Chester	Parkesburg	Y
PAG130083	Parkside Borough 22 E. Elbon Rd. Parkside, PA	Delaware	Parkside	Y
PAG130112	Pennsylvania State University 201 Old Main Physical Plant Building University Park, PA	Montgomery	Abington	N
PAG130051	Penndel Borough 300 Bellevue Ave. Penndel, PA	Bucks	Penndel	Y
PAG130063	Pennsburg Borough 76 W. Sixth St. Pennsburg, PA	Montgomery	Pennsburg	Y
PAG130134	Pennsbury Township 702 Baltimore Pike Chadds Ford, PA	Chester	Pennsbury	Y
PAG130139	Perkasie Borough 620 W. Chestnut St. Perkasie, PA	Bucks	Perkasie	Y

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG130069	Perkiomen Township 1 Trappe Rd. Collegeville, PA	Montgomery	Perkiomen	Y
PAG130106	Plumstead Township P. O. Box 387 5186 Stump Rd. Plumsteadville, PA	Bucks	Plumstead	Y
PAG130008	Plymouth Township 700 Belvoir Rd. Norristown, PA	Montgomery	Plymouth	Y
PAG130113	Pocopson Township P. O. Box 1 Pocopson, PA	Chester	Pocopson	Y
PAG130033	Pottstown Borough Authority 241 King St. Pottstown, PA	Montgomery	Pottstown	Y
PAG130121	Prospect Park Borough 720 Maryland Ave. P. O. Box 301 Prospect Park, PA	Delaware	Prospect Park	Y
PAG130096	Quakertown Borough P. O. Box 727 15-35 N. Second St. Quakertown, PA	Bucks	Quakertown	Y
PAG130102	Radnor Township 301 Iven Ave. Wayne, PA	Delaware	Radnor	Y
PAG130059	Richland Township P. O. Box 249 1328 California Rd. Richlandtown, PA	Bucks	Richland	Y
PAG130086	Ridley Park Borough 105 E. Ward St. Ridley Park, PA	Delaware	Ridley Park	Y
PAG130084	Ridley Township 100 E. MacDade Blvd. Ridley Township Municipal Building Folsom, PA	Delaware	Ridley	Y
PAG130152	Rockledge Borough 1 Park Ave. Rockledge, PA	Montgomery	Rockledge	Y
PAG130023	Royersford Borough 300 Main St. P. O. Box 188 Royersford, PA	Montgomery	Royersford	Y
PAG130101	Sadsbury Township P. O. Box 261 Sadsburyville, PA	Chester	Sadsbury	Y
PAG130004	Salford Township P. O. Box 54 Tylersport, PA	Montgomery	Salford	Y
PAG130155	Sellersville Borough 140 E. Church St. Sellersville, PA	Bucks	Sellersville	Y
PAG130014	Sharon Hill Borough 250 Sharon Ave. Sharon Hill, PA	Delaware	Sharon Hill	Y

## NOTICES

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<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG130160	Silverdale Borough P. O. Box 74 Silverdale, PA	Bucks	Silverdale	Y
PAG130022	Skippack Township P. O. Box 164 1455 Sumneytown Pike Skippack, PA	Montgomery	Skippack	Y
PAG130070	Spring City Borough 6 S. Church St. Spring City, PA	Chester	Spring City	Y
PAG130130	Springfield Township 50 Powell Rd. Springfield, PA	Delaware	Springfield	Y
PAG130078	Springfield Township 1510 Paper Mill Rd. Wyndmoor, PA	Montgomery	Montgomery	Y
PAG130001	Swarthmore Borough 121 Park Ave. Swarthmore, PA	Delaware	Swarthmore	Y
PAG130133	Telford Borough P. O. Box 209 Telford, PA	Montgomery	Telford	Y
PAG130067	Thornbury Township 8 Township Dr. Cheyney, PA	Chester	Thornbury	Y
PAG130097	Tinicum Township 629 N. Governor Printz Blvd. Essington, PA	Delaware	Tinicum	Y
PAG130024	Towamencin Township 1675 Sumneytown Pike P. O. Box 303 Kulpsville, PA	Montgomery	Towamencin	Y
PAG130118	Trainer Borough 824 Main St. Trainer Municipal Building Trainer, PA	Delaware	Trainer	Y
PAG130110	Trappe Borough 525 Main St. Trappe, PA	Montgomery	Trappe	Y
PAG130161	Tullytown Borough 500 Main St. Tullytown, PA	Bucks	Tullytown	Y
PAG130085	Upland Borough 224 Castle Ave. Upland, PA	Delaware	Upland	Y
PAG130082	Upper Chichester Township P. O. Box 2187 Furey Rd. Boothwyn, PA	Delaware	Upper Chichester	Y
PAG130003	Upper Darby Township 100 Garrett Rd. Municipal Building Upper Darby, PA	Delaware	Upper Darby	Y
PAG130075	Upper Dublin Township 801 Loch Alsh Ave. Fort Washington, PA	Montgomery	Upper Dublin	Y
PAG130129	Upper Frederick Township P. O. Box 597 Frederick, PA	Montgomery	Upper Frederick	Y

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG130031	Upper Gwynedd Township Parkside Place P. O. Box 1 West Point, PA	Montgomery	Upper Gwynedd	Y
PAG130109	Upper Hanover Township P. O. Box 27 1704 Pillsbury Rd. East Greenville, PA	Montgomery	Upper Hanover	Y
PAG130010	Upper Makefield Township 1076 Eagle Rd. Newtown, PA	Bucks	Upper Makefield	Y
PAG130042	Upper Merion Township 175 W. Valley Forge Rd. King of Prussia, PA	Montgomery	Upper Merion	Y
PAG130019	Upper Moreland Township 117 Park Ave. Willow Grove, PA	Montgomery	Upper Moreland	Y
PAG130107	Upper Pottsgrove Township 1409 Farmington Ave. Pottstown, PA	Montgomery	Upper Pottsgrove	Y
PAG130141	Upper Providence Township 935 N. Providence Rd. Media, PA	Delaware	Upper Providence	Y
PAG130108	Upper Providence Township 1286 Black Rock Rd. P. O. Box 406 Oaks, PA	Montgomery	Upper Providence	Y
PAG130029	Upper Southampton Township 939 Street Rd. Southampton, PA	Bucks	Upper Southampton	Y
PAG130150	Valley Township P. O. Box 467 890 W. Lincoln Hwy. Coatesville, PA	Chester	Valley	Y
PAG130049	Warminster Township Henry and Gibson Ave. Warminster, PA	Bucks	Warminster	Y
PAG130055	Warrington Township 852 Easton Rd. Warrington, PA	Bucks	Warrington	Y
PAG130074	Warwick Township 1733 Township Greene Jamison, PA	Bucks	Warwick	Y
PAG130100	West Brandywine Township 199 Lafayette Rd. Coatesville, PA	Chester	West Brandywine	Y
PAG130145	West Caln Township P. O. Box 175 Wagontown, PA	Chester	West Caln	N
PAG130002	West Chester Borough 401 E. Gay St. West Chester, PA	Chester	West Chester	Y
PAG130056	West Conshohocken Borough 112 Ford St. West Conshohocken, PA	Montgomery	West Conshohocken	Y
PAG130144	West Grove Borough 117 Rosehill Ave. West Grove, PA	Chester	West Grove	Y



<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Department Protocol (Y/N)</i>
PAG130006	West Norriton Township 1630 W. Marshall St. Jeffersonville, PA	Montgomery	West Norriton	Y
PAG130061	West Pottsgrove Township 980 Grosstown Rd. Stowe, PA	Montgomery	West Pottsgrove	Y
PAG130046	West Rockhill Township 1028 Ridge Rd. Sellersville, PA	Bucks	West Rockhill	Y
PAG130103	Whitemarsh Township 616 Germantown Pike Lafayette Hill, PA	Montgomery	Whitemarsh	Y
PAG130137	Whitpain Township 960 Wentz Rd. P. O. Box 800 Blue Bell, PA	Montgomery	Whitpain	Y
PAG130026	Worcester Township 1721 Valley Forge Road P. O. Box 767 Worcester, PA	Montgomery	Worcester	Y
PAG130043	Wrightstown Township 738 Penns Park Rd. Wrightstown, PA	Bucks	Wrightstown	Y
PAG130041	Yardley Borough 56 South Main St. Yardley, PA	Bucks	Yardley	Y
PAG130128	Yeadon Borough P. O. Box 5187 Yeadon, PA	Delaware	Yeadon	Y
PAG130017	Phoenixville Borough 140 Church St. Phoenixville, PA	Chester	Phoenixville	Y
PAG130066	Coatesville City One City Hall Place Coatesville, PA	Chester	Coatesville	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>Receiving Water/Use</i>	<i>Department Protocol (Y/N)</i>
PAG138328	Middlesex Township 133 Browns Hill Road Valencia, PA 16059	Butler	Middlesex Township	Glade Run	Y

## 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 remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period, the municipality may request that the person identified, as the remediator of the site, develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the Environmental Cleanup Program Manager in the Department Regional Office 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:

*Northeast Regional Field Office: Joseph A. Brogna, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**Former Durkee Foods Property**, City of Bethlehem, **Lehigh County**. Peter Berkout, Senior Environmental Engineer, Environmental Waste Management Associates, LLC, 100 Misty Lane, P. O. Box 5430, Parsippany, NJ 07054 has submitted a Notice of Intent to Remediate (on behalf of Tiger Den Partners, LLC, 171 Route 173, Suite 201, Asbury, NJ 08802) concerning the remediation of soils and groundwater found or suspected of being contaminated with various petroleum products, chlorinated solvents, polycyclic aromatic hydrocarbons, lead and/or other inorganics. The applicant proposes to meet a combination of the residential and nonresidential Statewide Health and Site-Specific Standards. A summary of the Notice of Intent to Remediate was reportedly published in *The Morning Call* on June 20, 2003.

**The Preserve at College Hill Tract**, Forks Township, **Northampton County**. David B. Farrington, P. G., President, Walter B. Satterthwaite Associates, Inc. has submitted a Notice of Intent to Remediate (on behalf of the property owners, John and Constance Panovec, Mitman Road, Easton, PA 18040 and the remediator, Jack Calahan, Jack Calahan, Inc., P. O. Box 1511, Bethlehem, PA 18016) concerning the remediation of soils found or suspected of being contaminated with lead and/or other inorganics. The applicant proposes to meet a combination of the Statewide Health and Site-Specific Standards. A summary of the Notice of Intent to Remediate was reportedly published in the *Express-Times* on June 6, 2003.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Former Chesebrough-Ponds USA Co.**, Reading City, **Berks County**. TRC Raviv Associates, Inc., 57 East

Willow Street, Milburn NJ 07041, on behalf of Unilever Home and Personal Care—USA, 75 Merritt Boulevard, Trumbull, CT 06611, submitted a Notice of Intent to Remediate site groundwater contaminated with Chlorinated Solvents. The applicant proposes to remediate the site to meet the Site-Specific Standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Reading Eagle* on July 2, 2003.

**Defense Distribution Depot Susquehanna PA SWMU 27 Tank 950**, Fairview Township, **York County**. Defense Logistics Agency, Defense Distribution Depot Susquehanna, PA, 2001 Mission Drive, Suite 1, New Cumberland, PA 17070-5002, submitted a Notice of Intent to Remediate site groundwater contaminated with chlorinated solvents. 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 *Harrisburg Patriot News* and the *York Daily Record/York News Dispatch* 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.**

*Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Permit Application No. 101620. Waste Mgmt. of PA Inc.**, 4300 Industrial Park Road, Camp Hill, PA 17011, **Hampden Township, Cumberland County**. The application is for the permit renewal for the Waste Management of Central PA Transfer Station. The application was determined to be administratively complete by the Southcentral Regional Office on June 24, 2003.

Comments concerning the application should be directed to John Krueger, Program Manager, Waste Management, 909 Elmerton Avenue, Harrisburg, PA 17110. Persons interested in obtaining more information about the general permit application may contact the Waste Management, (717) 705-4704. TDD users may contact the Department through the Pennsylvania Relay Service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to and approval or denial of the application.

### AIR QUALITY

#### PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

##### NEW SOURCES AND MODIFICATIONS

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State Operating Permit and Title V Operating Permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of these applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office identified in this notice. Persons interested in reviewing the application files should contact the appropriate Regional Office to schedule an appointment.

Persons wishing to receive a copy of the proposed Plan Approval or Operating Permit must indicate their interest to the Department Regional Office within 30 days of the date of this notice and must file protests or comments on a Proposed Plan Approval or Operating Permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Any 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 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.*

**54-399-034: WMPI, PTY, LLC** (P. O. Box R, Frackville, PA 17931) for the construction of a coal gasification/liquification plant at their facility to be in Mahanoy and West Mahanoy Townships, **Schuylkill County**.

**66-315-043: The Procter and Gamble Paper Products Co.** (P. O. Box 32, Route 87, Mehoopany, PA 18629) for the construction of a raw material feed system and associated air cleaning device at their facility in Washington Township, **Wyoming County**.

**66-315-012B: The Procter and Gamble Paper Products Co.** (P. O. Box 32, Route 87, Mehoopany, PA 18629) for the modification of an air cleaning device to improve dust collection in the 4M paper machine room at their facility in Washington Township, **Wyoming County**.

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

**22-03056A: Susquehanna Valley Organics Corp.** (3705 Trindle Road, Camp Hill, PA 17011) for the construction of a sludge pelletization plant controlled by two cyclones and two wet scrubbers in the City of Harrisburg,

**Dauphin County.** The sludge dryer is subject to 40 CFR Part 61, Subpart E—National Emission Standard for Mercury.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.*

**49-00005B: Hoeganaes Corp.** (1001 Taylors Lane, Cinnaminson, NJ 08077) to modify a metal powder coating process (insulated particles process) by increasing the allowable emission rate of an HAP, methylene chloride, to a level of 43 tons in any 12 consecutive month period in Delaware Township, **Northumberland County**.

**41-00010D: Andritz, Inc.** (35 Sherman Street, Muncy, PA 17756) to modify a thermal foundry sand reclamation system by increasing the allowable rate of NOx emissions from 2.07 pounds per hour to 3.1 pounds per hour in Muncy Borough and Muncy Creek Township, **Lycoming 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.*

**46-0062A: Jefferson Smurfit Corp.** (500 Church Road, North Wales, PA 19454) for the installation of an eight-color, 32-inch wide flexographic printing press at their Jefferson Smurfit North Wales plant. The press will be equipped with eight natural gas fired dryers. The North Wales plant is a Title V facility in Upper Gwynedd Township, **Montgomery County**. This installation will result in a VOC net emission increase of 12.5 tons per year. 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.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: Mark Wayner, Facilities Permitting Chief, (412) 442-4174.*

**65-00693A: USA Valley Facility, Inc.** (Pleasant Valley Road, R. R. 2, Box 282A, Irwin, PA 15642) Penn Township, **Westmoreland County**. Under 25 Pa. Code §§ 127.44—127.48, the Department intends to issue a Plan Approval to allow the installation of a new enclosed flare at the Valley landfill. Emissions from the proposed flare have been calculated at 36 tons of NOx per year, 65 tons of CO per year and 2 tons of VOCs per year. The proposed flare is subject to the operational, monitoring, recordkeeping, testing and reporting requirements required by 40 CFR 60, Subpart CC and 25 Pa. Code Chapter 127 and the Plan Approval has been conditioned accordingly. Copies of the Plan Approval application, the Department's analysis and the proposed Plan Approval are available for public inspection during normal business hours at the following address.

Persons wishing to oppose the plan approval may file a written protest. A 30-day comment period, from the date of this publication, will exist for the submission of protests. Written protests must contain the name, address and telephone number of the person filing the protest,

identification of proposed Plan Approval PA-65-00693A and concise statement of the objections to the Plan Approval issuance and relevant facts upon which the objections are based.

A public hearing may be held, if the Department, in its discretion, decides that a hearing is warranted based on the information received. Persons submitting written protests or requesting a hearing will be notified of the decision to hold a hearing by publication in the *Pennsylvania Bulletin* or by telephone, where the Department determines notification by telephone is sufficient. Written comments or request for a public hearing should be directed to Barbara Hatch, Air Pollution Control Engineer, Department of Environmental Protection, Southwest Regional Office, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

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

**43-011A: Greenville Metals, Inc.** (99 Crestview Drive Extension, Transfer, PA 16154) for the post construction of a manganese sulfide exothermic reaction process in **Mercer County**. The facility currently has a Title V Operating Permit No. 43-00011. 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.

#### 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.*

**09-00030: MSC Engineered Materials and Solutions Group** (120 Enterprise Ave., Morrisville, PA 19067) in Falls Township, **Bucks County**. The facility's major emission points include metal coil prime and finishing coating ovens. The amended 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 permit is being amended to incorporate following changes: owner and responsible official; and listing of sources, include the VOC content limit of the coatings in pound VOC per gallon coating solids for source CO1.

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

**06-05024: Reliant Energy Mid Atlantic Holdings, LLC** (P. O. Box 1050, Johnstown, PA 15907-1050) for operation of an electric generating station at their Titus Station controlled by electrostatic precipitators, low NOx burners and SOFA in Cumru Township, **Berks County**. The facility is subject to Title IV (Acid Rain) Phase II. This permit limits the emissions of nitrogen oxides and the annual emissions of sulfur dioxide. Each of the main units is limited to the sulfur dioxide allowances owned by the applicant for each calendar year under the Phase II Acid Rain regulations and 25 Pa. Code § 127.531.

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

**55-00010: National Limestone Quarry, Inc.** (P. O. Box 937, Middleburg, PA 17842) for their Paxtonville Quarry in Franklin Township, **Snyder County**. The facility's main sources include stone crushing process equipment, 1 cold cleaning degreaser, 1 cement facility, 1 water pump and 13 storage tanks. The facility has the potential to emit SOx, NOx, CO, PM10, VOCs and HAPs below the major emission thresholds. The proposed Operating Permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**55-00011: National Limestone Quarry, Inc.** (P. O. Box 937, Middleburg, PA 17842) for their Fremont Quarry in Perry Township, **Snyder County**. The facility's main sources include stone crushing process equipment, one cold cleaning degreaser and five storage tanks. The facility has the potential to emit SOx, NOx, CO, PM10, VOCs and HAPs below the major emission thresholds. The proposed operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**SMOP 17-00040: Moshannon Valley School District** (R. R. 1, Box 314, Houtzdale, PA 16651) for their elementary school and the junior/senior high school in Bigler Township, **Clearfield County**. The facility's main sources include: two bituminous/no. 2 fuel oil-fired boilers, two bituminous coal-fired boilers, two propane-fired emergency generators, no. 2 fuel oil-fired domestic water boiler, storage tanks and a wastewater treatment operation. These sources have the potential to emit major quantities of SOx. The facility has taken restrictions to limit SOx emissions below the major emission thresholds for SOx. The facility has the potential to emit CO, NOx, PM, VOCs and HAPs below the major emission thresholds. The proposed operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**59-00007: Reliant Energy Mid-Atlantic Power Holdings LLC** (1001 Broad Street, P. O. Box 1050, Johnstown, PA 15907-1050), for their Blossburg combustion turbine facility in Covington Township, **Tioga County**. The facility's main sources include one natural gas fired combustion turbine and one diesel fired starting engine. The facility has the potential to emit CO and NOx above major emission thresholds but has taken elective restrictions to emit less than major emission thresholds for NOx and CO. This facility also has the potential to emit SOx, PM10, VOCs and HAPs below the major emission thresholds. The proposed operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**49-00028: Wildwood Cemetery Co.** (1511 Cemetery Street, Williamsport, PA 17701), for their Pomfret Manor Cemetery in Sunbury, **Northumberland County**. The facility's main sources include two crematory incinerators. The facility has the potential to emit SOx, NOx, CO, PM10, VOCs and HAPs below the major emission thresholds. The proposed operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**59-00014: Wellsboro Small Animal Hospital** (23 Tioga Street, Wellsboro, PA 16901), for their Veterinary Medical Center in Richmond Township, **Tioga County**. The facility's main source is one small animal incinerator. The facility has the potential to emit SOx, NOx, CO, PM10, VOCs and HAPs below the major emission thresholds. The proposed Operating Permit contains all appli-

cable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**53-00015: SMC Powder Metallurgy** (Route 6, West Galeton, PA 16922) for their powdered metal parts manufacturing facility in Pike Township, **Potter County**. The facility's main sources include ten sintering furnaces. The facility has the potential to emit SO<sub>x</sub>, NO<sub>x</sub>, CO, PM<sub>10</sub>, VOCs and HAPs below the major emission thresholds. The proposed operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**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.*

**15-00088: National Foam, Inc.** (350 East Union Street, West Chester, PA 19382) for operation of their chemical preparation facility in West Chester Borough, **Chester County**. The Permit is for a non-Title V (State-only) facility. Major sources of air emissions include a protein-based fire-fighting chemical manufacturing facility and associated control devices. The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

**46-00116: PECORA Corporation** (165 Wambold Road, Harleysville, PA 19438) in Lower Salford Township, **Montgomery County**. The Permit is for a non-Title V (State-only) facility. The facility's sources include mixers and machines. The Permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

**46-00158: Colorcon** (415 Moyer Boulevard, West Point, PA 19486-2605), for a non-Title V, State-only, Natural Minor Operating Permit in Upper Gwynedd Township, **Montgomery County** and an administrative amendment for Plan Approval 46-317-006A. Colorcon manufactures color additives and specialty coatings for food, drugs and nontoxic printing inks. Operations at the facility include grinding, blending, mixing and packaging of coating materials. Dust collectors and scrubbers are in each section of the plant and are used to control particulate emissions. PM and VOC limits have been reviewed and changes have been made. Colorcon has facility emissions limits of 7.55 tons of PM per year and 22.49 tons of VOCs per year. Monitoring, recordkeeping and reporting requirements have been added to the permit to address applicable limitations.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Mark J. Wejkszner, New Source Review Chief, (570) 826-2531.*

**39-309-056: Lafarge North America** (5160 Main Street, Whitehall, PA 18052) for the operation of a replacement air cleaning device (fabric collector) for the B5 bulk storage group at their Whitehall Plant in Whitehall Township, **Lehigh County**. The particulate emissions from the fabric collector will not exceed the best available technology (BAT) standard of 0.015 grain/DSCFT (2.67 tons per year). The Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements. The facility currently

has a Title V Operating Permit No. 39-00011. This Operating Permit will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V Operating Permit through an administrative amendment.

**39-309-057: Lafarge North America** (5160 Main Street, Whitehall, PA 18052) for the operation of a replacement air cleaning device (fabric collector) for the A-frame clinker storage building at their Whitehall Plant in Whitehall Township, **Lehigh County**. The particulate emissions from the new fabric collector will not exceed the BAT standard of 0.02 grain/DSCFT (10.16 tons per year). However, the replacement of the existing 11,500 ACFM fabric collector with the new 15,000 ACFM fabric collector will result in an overall particulate emission increase of 2.32 tons per year. The Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements. The facility currently has a Title V Operating Permit No. 39-00011. This operating permit will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V Operating Permit through an administrative amendment.

**39-309-058: Lafarge North America** (5160 Main Street, Whitehall, PA 18052) for the operation of an air cleaning device (fabric collector) for the load-out spouts of the Nos. 2 and 6 clinker storage silos at their Whitehall Plant in Whitehall Township, **Lehigh County**. Only one load-out spout can be in operation at any given time. The particulate emissions from the fabric collector will not exceed the BAT standard of 0.015 grain/DSCFT (0.65 tons per year). The Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements. The facility currently has a Title V Operating Permit No. 39-00011. This operating permit will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V Operating Permit through an administrative amendment.

**54-00037: Copperhead Chemical Company, Inc.** (2 river Road, Tamaqua, PA 18252) for operation of two boilers and an acetone recovery system at their facility in Walker Township, **Schuylkill County**.

**52-00003: G. F. Edwards Inc.** (Box 174, Elmhurst, PA 18416) for operation of a crushing plant and its accessories at their facility in Greene Township, **Pikes County**.

**52-00004: Dingmans Ferry Stone Inc.** (P. O. Box 686, Dingmans Ferry, PA 18328) for operation of a crushing plant and its accessories at their facility in Delaware Township, **Pikes County**.

**39-00060: Day-Timers Inc.** (1 Willow Lane, East Texas, PA 18046) for the operation of lithographic printing operation at their facility in Lower Macungie Township, **Lehigh County**.

**48-00067: Eastern Industries Inc.** (4401 Camp Meeting Road, Center Valley, PA 18034) for operation of a crushing plant and its accessories at their facility in Lower Nazareth Township, **Northampton County**.

**48-00058: Efforts Foundry, Inc.** (P. O. Box 158, Bath, PA 18014) for operation of a foundry plant and its accessories at their facility in Lower Bath Township, **Northampton County**.

**13-00016: Haulmark Industries Inc. (Pennsylvania Division)** (P. O. Box 8, McAddod, PA 18237) for operation of a spray booth and its accessories at their facility in Bank Township, **Carbon County**.

**54-00051: Department of Corrections (SCI Mahanoy)** (301 Morea Road Frackville, PA 17932) for operation of a boiler and generators at their facility in West Mahanoy Township, **Schuylkill County**.

**54-00056: Pine Grove Area School District (High School)** (103 School Street, Pine-Grove, PA 17963) for operation of a coal fired boiler at their facility in Pine Grove Borough, **Schuylkill County**.

**35-00051: Scranton Material Inc.** (P. O. Box 196, 2502 Lucon Road, Skippack, PA 19474) for operation of a crushing plant and its accessories at their facility in Ransom Township, **Lackawanna County**.

**39-00038: Sure Fit (A Division of Fieldcrest-Cannon Inc.)** (939 Marcon Boulevard, Allentown, PA 18103) for the operation of two boilers at their facility in Hanover Township, **Lehigh County**.

**39-00053: The Pillsbury Company (A Division of General Mills Inc.)** (2132 Downyflake Lane, Allentown, PA 18103) for the operation of nine baking ovens, one boiler and other accessories related to baking operation at their facility in City of Allentown, **Lehigh County**.

**54-00015: Sunoco Partners Marketing & Terminals L. P.** (1801 Market Street, 19/10 PC, Philadelphia, PA 19103) for the operation of a bulk petroleum products handling with the vapor recovery system at their facility in Rush Township, **Schuylkill County**. This action is the issuance of a State-only Operating Permit as the renewal in place of the Title V Operating Permit, which was issued in 1997, since the emission level of VOCs has been reduced to below the threshold limit.

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

**01-05004: Reliant Energy Mid Atlantic Power Holdings LLC** (1001 Broad Street, Johnstown, PA 15907) for operation of a natural gas or oil fired gas turbine at their electric generating station at the Hamilton Station in Hamilton Township, **Adams County**. The emissions of NO<sub>x</sub> will remain below the major source threshold of 100 tons per year. This will be accomplished by limiting the amount of heat input to each unit. The State-only operating permit shall include appropriate conditions designed to keep the facility operating within all other applicable air quality requirements.

**28-03043: CAM Superline, Inc.** (4763 Zane A. Miller Drive, Waynesboro, PA 17268) for operation of their construction trailer and dump trailer manufacturing facility in Washington Township, **Franklin County**. The facility has the following annual potential emissions: 30 tons of VOC and 1 ton of xylene. The State-only Operating Permit will include emission restrictions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: Mark Wayner, Facilities Permitting Chief, (412) 442-4174.*

**63-00624: Golden Eagle Construction Co.** (P. O. Box 945, Uniontown, PA 15401) for their hot mix asphalt plant at their Eighty Four facility in North Strabane Township, **Washington County**. This is a Synthetic Minor.

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

**42-00198: Elkhorn Field Services—Kane Plant** (6307 Route 6 East, Kane, PA 16735) for operation of a Natural Minor Operating Permit for a natural gas processing plant in Wetmore Township, **McKean County**. This facility is subject to Subpart KKK, the Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.

**27-00019: Department of Corrections—SCI at Forest** (HC 2, Box 18, Marienville, PA 16239) for a Natural Minor Operating Permit. The facility's primary emissions are from the four boilers used to provide comfort heat and hot water to the facility in Jenks Township, **Forest County**.

**24-00132: Elk County Heat Treaters, Inc.** (316 Battery Street, PA 15857-1439) for the issuance of a Natural Minor Operating Permit. The facility's primary emissions are from the 12 small boilers used to provide process steam and from the 12 heat treater furnaces in the Borough of St. Marys, **Elk County**

## 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 previ-

ously 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 sum-

mary 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.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**56980101 and NPDES Permit No. PA0234664. Heritage Mining Company**, P. O. Box 126, Cresson, PA 16630, permit revision to add surface mine augering within the permit boundary in Shade and Paint Townships, **Somerset County**, affecting 62.3 acres. Receiving streams: unnamed tributary to/and Shade Creek (CWF). The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Stonycreek Surface Water Withdrawal. Application received June 18, 2003.

**56980101 and NPDES Permit No. PA0234664. Heritage Mining Company**, P. O. Box 126, Cresson, PA 16630, permit renewal for continued restoration of a

bituminous surface mine in Shade and Paint Townships, **Somerset County**, affecting 62.3 acres. Receiving streams: unnamed tributary to/and Shade Creek (CWF). The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Stonycreek Surface Water Withdrawal. Application received June 20, 2003.

**11823003 and NPDES Permit No. PA0608211. Cooney Bros. Coal Company**, P. O. Box 246, Cresson, PA 16630, permit renewal for reclamation only and for continued restoration of a bituminous surface mine in Summerhill Township, **Cambria County**, affecting 125.6 acres. Receiving streams: Beaverdam Run (HQ-CWF). The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Little Conemaugh Surface Withdrawal. Application received June 23, 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:

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
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.*

**7675SM1 and NPDES Permit PA0124028. Pennsy Supply, Inc.** (P. O. Box 3331, Harrisburg, PA 17105), renewal of an NPDES Permit for discharge of treated mine drainage in West Cornwall and South Annville Townships, **Lebanon County**, receiving Bachman Run (WWF). Application received June 23, 2003.

**22880301 and NPDES Permit PA0023948. Rocky Licensing Corp.** (P. O. Box 3331, Harrisburg, PA 17105), renewal of an NPDES Permit for discharge of treated

mine drainage in Lower Swatara Township, **Dauphin County**, receiving stream: Swatara Creek (CWF). Application received June 23, 2003.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**56030801. Durst Stone**, 323 Broadway Street, Meyersdale, PA 15552, commencement, operation and restoration of a small noncoal flagstone/fieldstone mine in Greenville Township, **Somerset County**, affecting 2.5 acres. Receiving streams: unnamed tributary to Miller Run (CWF). There are no potable water supply intakes within 10 miles downstream. Application received June 17, 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 any comments, suggestions or objections within 30 days of the date of this notice as well as any questions to the office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Each individual will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 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.*

**E52-185. Tom J. Russo**, 103 Park Drive, Milford, PA 18337 in Milford Township, **Pike County**, U. S. Army Corps of Engineers, Philadelphia District.

To modify and maintain an existing house along the right bank within the floodway of Vandermark Creek (HQ-CWF) with work consisting of a 4-foot by 14-foot addition to an existing 8-foot by 14-foot porch and enclosure of the porch. The project is at the southeast corner of the intersection of Moon Valley Road and Park Drive, approximately 300 feet downstream of the confluence of Vandermark Creek and Deep Brook (Milford, PA-NJ Quadrangle N: 15.3 inches; W: 6.7 inches).

**E35-366. Karf, LLC**, 1000 Greenbriar Drive, Clarks Summit, PA 18411 in Clarks Summit Borough, **Lackawanna County**, U. S. Army Corps of Engineers, Baltimore District.

To construct and maintain a commercial building in the floodway of a tributary to Leggetts Creek (CWF). The project is on the northeast side of, and adjacent to, Routes 6 and 11, approximately 0.4 mile southeast of its intersection with SR 0407 (Grove Street) (Scranton, PA Quadrangle N: 20.4 inches; W: 9.7 inches).

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

**E31-191: James M. and Heather A. Little**, 1516-26 Avenue, Altoona, PA 16601 in Henderson Township, **Huntingdon County**, ACOE Baltimore District.

To construct and maintain a 16-foot by 32-foot prefabricated storage shed elevated on piers next to the Juniata River (WWF) along Jacob's Crossing Road in Henderson Township, Huntingdon County (Mount Union, PA Quadrangle N: 14.5 inches; W: 13.9 inches).

**E38-140: Nel-Ray Farms**, 699 East Lincoln Avenue, Myerstown, PA 17067 in Jackson Township, **Lebanon County**, ACOE Baltimore District.

To relocate and maintain approximately 330 linear feet of an unnamed tributary to Tulpehocken Creek (TSF), also to install and maintain fencing along a 600-foot section of the stream to mitigate losses and restore a riparian buffer. Located at 141 Flanagan Road (Richland, PA Quadrangle N: 21.0 inches; W: 3.9 inches) in Jackson Township, Lebanon County.

**E06-504-R: Maiden creek Township**, 1 Quarry Road, Blandon, PA 19510 in Maiden creek Township, **Berks County**, ACOE Philadelphia District.

To construct and maintain a pedestrian footbridge having a clear span of 25 feet and an instream length of approximately 6 feet across an unnamed tributary to Willow Creek (CWF) at a point within the Maiden creek Township Community Park, 450 feet northwest of the intersection of Park Road and East Wessner Road (Fleetwood, PA Quadrangle N: 12.7 inches; W: 15.1 inches) in Maiden creek Township, Berks County.

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

**E14-448. Stearns Boal LLP**, 100 North Patterson Street, State College, PA 16803. Small Projects Joint Permit Application in College Township, **Centre County**, ACOE Susquehanna River Basin District (State College, PA Quadrangle N: 14.0 inches; W: 9.7 inches).

To construct and maintain two stormwater outfalls into Spring Creek (HQ-CWF). The project is 0.5 mile north along Houserville Road from the intersection of SR 0026 and Houserville Road. This project does not propose to impact any jurisdictional wetlands.

**E14-449. Department of Transportation, Engineering District 2-0**, 1924-30 Daisy Street, Clearfield, PA



16830. SR 4002 Section A01 Bridge Replacement in Snow Shoe Township, **Centre County**, ACOE Susquehanna River Basin District (Snow Shoe, PA Quadrangle N: 9.9 inches; W: 11.1 inches).

The applicant proposes to remove the existing bridge and appurtenant substructures and: (1) to construct and maintain a precast reinforced concrete box culvert with a single clear span of 16.0 feet (16.0 feet normal), 4.25-foot rise (1 foot depressed invert) and 32.0 feet long with precast reinforced concrete inlet and outlet end section; (2) realign existing drainage ditches along the downstream roadway embankments due to the increased roadway width and proposed approach roadway guide rail; (3) construct a drainage system consisting of a Type D Endwall, inlets, 24-inch thermoplastic pipe, 30-inch thermoplastic pipe and 30-inch reinforced concrete pipe with R-5 rock aprons at the inlet and outlet of the drainage system; (4) permanently fill 0.044 acre of wetland as a result of roadway embankment placement, culvert construction, proposed rock protection, new utility poles and the proposed drainage system; and (5) place R-6 riprap for scour protection at the inlet and outlet of the proposed culvert. The proposed project will directly affect approximately 160 linear feet of Cherry Run (CWF), 0.044 acre of permanent wetland impacts and 0.23 acre of temporary impacts.

**E18-365. Lamar Township Supervisors**, 148 Beagle Road, Mill Hall, PA 17751. Water Obstruction and Encroachment Permit in Lamar Township, **Clinton County**, ACOE Susquehanna River Basin District (Mill Hall, PA Quadrangle N: 11.98 inches; W: 3.05 inches).

To construct and maintain a 72-foot long dry hydrant in Long Run (HQ-CWF). The project is along SR 0477 approximately 1.5 miles north of Rote in Lamar Township, Clinton County.

**E60-160. Department of Transportation, Engineering District 3-0**, P. O. Box 218, Montoursville, PA 17754-0218. SR 3002 Section 003 tributary to Penns Creek, bridge replacement in Hartley Township, **Union County**, ACOE Susquehanna River Basin District (Harleton, PA Quadrangle N: 1.05 inches; W: 13.08 inches).

To remove an existing concrete slab bridge and construct and maintain a 16-foot wide by 5-foot high concrete box culvert in a tributary to Penns Creek (CWF). The project is along SR 3002 Segment 0170, Offset 0161 in Hartley Township, Union County. The project proposes to permanently impact 0.014 acre.

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

**E02-1429. Michael and Elizabeth Borza**, 228 Elmore Road, Pittsburgh, PA 15221-3741. Borza Residence Bridge in West Deer Township, **Allegheny County**, Pittsburgh ACOE District (Valencia, PA Quadrangle N: 5.9 inches; W: 4.0 inches). The applicant proposes to finish the construction of and to maintain an arch bridge having a span of 14.25 feet and an underclearance of 6.8 feet across Deer Creek (CWF). The bridge will be used to provide access to a proposed residence. The bridge is on the west side of Glasgow Road approximately 1,200 feet north of its intersection with Culmerville Road. The total stream impact is approximately 12 feet.

**E02-1430. Maronda Homes, Inc.**, 202 Park West Drive, Pittsburgh, PA 15275. Canterbury Woods PDR Subdivision in North Fayette Township, **Allegheny County**, Pittsburgh ACOE District (Clinton, PA Quadrangle N: 10.9 inches; W: 1.6 inches). The applicant proposes to place and maintain fill in two wetlands. The

wetlands are within the Montour Run Watershed (TSF). Wetland no. 1 is .004 acre and wetland no. 2 is .016 acre. The wetland encroachments are part of a proposed 138 townhouse unit development. The project is on the east side of Santiago Road approximately 0.5 mile north of its intersection with Old Steubenville Pike Road. The applicant has already received a General Permit No. 7 to impact .006 acre of wetlands. This project will also impact 635 feet of a tributary to Montour Run that meets waiver 105.12(a)(2). The total wetland impacted by the proposed development is 0.026 acre.

**E11-300. West Carroll Township Supervisors**, P. O. Box 374, Elmora, PA 15737-0374. Sportsman Road Bridge Replacement in West Carroll Township, **Cambria County**, Pittsburgh ACOE District (Latitude: 40°, 37', 59.9999"; Longitude: 78°, 44', 48"). The applicant proposes to remove the existing structure and to construct and maintain a con span bridge with natural streambed having a single opening of 20 feet wide and 8 feet high in Fox Run (CWF). The project is on Sportsman Road (T-626) approximately 0.1 mile south of SR 219.

**E56-299-A1. Somerset County Conservation District**, 1590 North Center Avenue, Suite 103, Somerset, PA 15501. Quemahoning Creek AMD Abatement Project in the Borough of Jennerstown, **Somerset County**, Pittsburgh ACOE District (Latitude: 40°, 9', 28"; Longitude: 79°, 2', 36"). The applicant proposed to construct and maintain a passive mine drainage treatment system that will impact approximately 4.67 acres of wetlands, which are currently impacted by the mine drainage. The area will be regraded to construct berms to increase detention time within this area for improved passive treatment of the mine discharge. When the area is regarded, approximately 5.46 acres of wetland will be reconstructed including the creation of 0.65 acre of wetland to compensate for wetland impacts that resulted from a previous phase of construction for this project. The project site is adjacent to Beaver Dam Creek (HQ-CWF), between its confluence with the Quemahoning Creek and SR 4023.

**E56-323. Cambria Somerset Authority**, 244 Walnut Street, Johnstown, PA 15901. Border Dam System Rehabilitation in Richland Township, Paint Township, Ferndale Borough, Stonycreek Township, City of Johnstown in **Cambria County** and Conemaugh Township in **Somerset County**, Pittsburgh ACOE District. (Start: Latitude: 40°, 14', 20"; Longitude: 78°, 53', 32"; End: Latitude: 40°, 19', 36"; Longitude: 78°, 54', 55"). The applicant proposes to operate and maintain a 7.0 mile long 36-inch water pipeline along and across Stony Creek (WWF) including stream bank stabilization along approximately 460 feet of Stony Creek and two temporary roadway crossings in Stony Creek. The total length of pipeline crossing is 1,425 feet. The project is off of Carpenter Park.

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

**E37-151. Norfolk Southern Corporation**, 99 Spring Street, SW, Atlanta, GA 30303-0142, Norfolk Southern Railroad Bridge YG-81.99 over Beaver River in Wampum Borough, **Lawrence County**, ACOE Pittsburgh District (New Castle South, PA Quadrangle N: 22.3 inches; W: 11.7 inches).

The purpose of the project is the replacement of the superstructure and pier restoration of Norfolk Southern Bridge YG-81.99. The bridge consists of seven spans, numbered 1—7 from east to west with the following spans lengths: Span 1—127 feet, Spans 2 to 4—116 feet, Span

5—64 feet, Span 6—75 feet and Span 7—51. Spans 1—4 are over the Beaver River, Span 5 is over the west riverbank, Span 6 is over the CSX tracks and Span 7 is over SR 288. The bridge steel superstructure shows extensive deterioration.

The bridge is supported on a substructure of masonry abutments and piers. Piers 1 and 2 have concrete filled cofferdams. Pier 3 needs to be strengthened and protected against scour with a permanent cofferdam around the base.

The existing superstructure will be removed and replaced with a 20-foot 6-inch wide concrete deck supported on steel girders (Spans 1—5) and beams (Span 7). Span 6 over the CSX tracks will be replaced with a 26-foot wide through plate girder span. The new superstructure will be shallower than the existing trusses and will provide higher clearance above the water. The new cofferdam at Pier 3 will be approximately 14 feet by 50 feet by 5.5 feet high and extend 2 feet the water line. No dewatering will be required for construction because an island of land exists around Pier 3.

**E62-389, Commonwealth Forest Investments c/o Forest Investment Associates**, P. O. Box 1474, Smethport, PA 16749. Dunham Run Culvert Replacement in Sheffield Township, **Warren County**, ACOE Pittsburgh District (Sheffield, PA Quadrangle N: 12.85 inches; W: 8.7 inches).

The applicant proposes to remove the existing structure and: (1) to construct and maintain a 40-foot long, 7.25-foot wide by 5.25-foot high aluminum coated steel pipe arch culvert in Dunham Run (CWF, perennial) on a forestry road approximately 1.5 miles northwest of the intersection of SR 948 and U. S. Route 6; and (2) place riprap for scour protection on upstream and downstream slope around the culvert and at the culvert outlet. The project proposes to directly affect a total of 50 linear feet of stream channel.

*Wilkes-Barre District: District Engineer, 2 Public Sq., Floor 5, Wilkes-Barre, PA 18711-0790.*

**E4011-002, Department of Environmental Protection, Bureau of Abandoned Mine Reclamation**, 2 Public Square, Floor 5, Wilkes-Barre, PA 18711-0790. Plymouth Township, **Luzerne County**, ACOE Baltimore District.

To eliminate a public health and safety hazard by removing dangerous highwalls on an abandoned mine site. A wetland area and drainage ditches will be con-

structed to carry flow under an existing bridge that carries SR 0011. A reinforced concrete floor will be constructed beneath the bridge and a concrete u-channel will carry flow downstream of the bridge. The project is approximately 4,000 feet northwest of the intersection of Jersey Hill Road (T-489) and Main Street (SR 0011), Plymouth Township, Luzerne County. A total of 136 acres will be disturbed. (Wilkes-Barre West, Quadrangle N: 19 inches; W: 15.5 inches).

**ENVIRONMENTAL ASSESSMENTS**

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

**EA30-001SW, Stream Restoration, Inc.**, 3016 Unionville Road, Cranberry Township, PA 16066. Dunkard Township, **Greene County**, Pittsburgh ACOE District. (Morgantown North, PA Quadrangle N: 22.3 inches; W: 12.8 inches). The applicant proposes to construct and maintain an approximately 3.5 acre passive treatment system to reduce the iron concentration of an abandoned mine discharge, which is referred to as the Mathews discharge. The project will reportedly affect approximately 2.0 acres of existing wetland (PEM/PSS) and approximately 380 feet to an unnamed tributary to Dunkard Creek (WWF). The project site is on SR 2004, approximately 1,600 feet from its intersection with SR 2011.

**ACTIONS**

**THE 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 for coverage under General Permits. This notice is provided in accordance with regulations at 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 wastes; discharges to 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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## 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. PA0013218**, Industrial Waste, **Tredegar Film Products—Pottsville, Inc.**, P. O. Box 160, Maple Avenue, Mar Lin, PA 17951-0160. This proposed facility is in Norwegian Township, **Schuylkill County**.

Description of Proposed Action/Activity: Renewal of NPDES Permit.

**NPDES Permit No. PA0032859**, Sewage, **Department of Transportation, District 5**, 1713 Lehigh Street, Allentown, PA 18103-4727. This proposed facility is in North Manheim Township, **Schuylkill County**.

Description of Proposed Action/Activity: Renewal of NPDES Permit to discharge treated wastewater into the Schuylkill River.

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

**NPDES Permit No. Pennsylvania-American Water Company**, Industrial Waste, **Pennsylvania-American Water Company, Octoraro Water Treatment Plant**, 800 West Hersheypark Drive, Hershey, PA 17033. This proposed facility is in Colerain Township, **Lancaster County**.

Description of Proposed Action/Activity: Authorization to discharge to the receiving waters of the West Branch of the Octoraro Creek in Watershed 7-K.

**NPDES Permit No. PA0085090**, Industrial Waste, **Berks Products Corporation**, P. O. Box 421, Reading, PA 19603. This proposed facility is in Muhlenberg Township, **Berks County**.

Description of Proposed Action/Activity: Authorization to discharge to Bernhart Creek in Watershed 3-C.

**NPDES Permit No. PA0043257**, Sewage, **New Freedom Borough Authority**, 49 East Main Street, New Freedom, PA 17349. This proposed facility is in Railroad Borough, **York County**.

Description of Proposed Action/Activity: Authorization to discharge to South Branch Codorus Creek in Watershed 7-H.

**NPDES Permit No. PA0081922**, Sewage, **Lewisberry Area Joint Authority, Lewisberry Area WWTP**, P. O. Box 172, Lewisberry, PA 17339. This proposed facility is in Lewisberry Borough, **York County**.

Description of Proposed Action/Activity: Authorization to discharge to Bennett Run in Watershed 7-F.

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

**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. 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. PA0028941**, Sewage, **Evans City Borough**, 220 Wahl Avenue, Evans City, PA 16033. This proposed facility is in Evans City Borough, **Butler County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to Breakneck Creek.

**NPDES Permit No. PA0021504**, Sewage, **Western Butler County Authority**, P. O. Box 427, Zelenople, PA 16063. This proposed facility is in Zelenople Borough, **Butler County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to Connoquenessing Creek, Glade Run and an unnamed tributary to Glade Run.

**NPDES Permit No. PA0238872**, Sewage, **West Wind Village**, P. O. Box 2278, Cranberry, PA 16066. This proposed facility is in Wayne Township, **Lawrence County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to an unnamed tributary to Square Run.

**NPDES Permit No. PA0102245**, Sewage, **Highway 322 Realty Company**, P. O. Box 231, Franklin, PA 16323. This proposed facility is in Cranberry Township, **Venango County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to an unnamed tributary to the Allegheny River.

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

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

**WQM Permit No. 2303404**, Sewerage, **Bethel Township Sewer Authority**, 1082 Bethel Road, Boothwyn, PA 19061. This proposed facility is in Bethel Township, **Delaware County**.

Description of Proposed Action/Activity: Construction of an extension of its existing sewage collection and conveyance system.

**WQM Permit No. 0903407**, Sewerage, **Falls Township**, 188 Lincoln Highway, Fairless Hills, PA 19030. This proposed facility is in Falls Township, **Bucks County**.

Description of Proposed Action/Activity: Construction and operation of a sewage pump for a 40 single family residential homes.

**WQM Permit No. 2303402**, Sewerage, **Suburban Wastewater Company**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010-3489. This proposed facility is in Upper Providence, **Delaware County**.

Description of Proposed Action/Activity: Replacing existing manually cleaned screens with a mechanical screen.

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

**WQM Permit No. 4003401**, Sewerage, **Department of Public Welfare—White Haven Center**, R. R. 2, Box 2195, Oley Valley Road, White Haven, PA 18661. This proposed facility is in Foster Township, **Luzerne County**.

Description of Proposed Action/Activity: Issuance of WQM Permit for installation of an ultraviolet disinfection unit at the White Haven Center's Wastewater Treatment Plant.

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

**WQM Permit No. 6702201 03-1**, Industrial Waste, **York County Solid Waste and Refuse Authority**, 2700

Blackbridge Road, York, PA 17402. This proposed facility is in Manchester Township, **York County**.

Description of Proposed Action/Activity: Approval for the construction/operation of stormwater management facilities and land application facilities.

**WQM Permit No. 0602416**, Sewerage, **Heather Geissler**, 1255 Ironstone Drive, Boyertown, PA 19512. This proposed facility is in Earl Township, **Berks County**.

Description of Proposed Action/Activity: Construction/operation of a small flow sewage treatment system to serve their single family residence.

**WQM Permit No. 6701411 Amendment 03-1**, Sewerage, **Daniel M. Bowers**, 10469 Foust Road, Glen Rock, PA 17327. This proposed facility is in Springfield Township, **York County**.

Description of Proposed Action/Activity: Authorization for the construction/operation of sewage treatment facilities.

**WQM Permit No. 2102402**, Sewerage, **William J. Greene, Chairperson, Hampden Township Sewer Authority**, 230 Sporting Hill Road, Mechanicsburg, PA 17053. This proposed facility is in Hampden Township, **Cumberland County**.

Description of Proposed Action/Activity: Construction of collection system, replacement of pumps, comminutor and generator at pump station, addition of chemical storage tank for odor control and construction of new force main to Roth Lane STP.

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

**WQM Permit No. 2503416**, Sewerage, **Jeffrey R. Scheid**, 9205 Footemill Road, Erie, PA 16509. This proposed facility is in Summit Township, **Erie County**.

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

**WQM Permit No. 1003404**, Sewerage, **Paul Caldwell, Perry Lake Estates**, R. R. 4, Box 278, Greensburg, PA 15601. This proposed facility is in Lancaster Township, **Butler County**.

Description of Proposed Action/Activity: This project is for the construction and operation of a small flow treatment facility.

**WQM Permit No. 4303405**, Sewerage, **Oak Grove Wesleyan Methodist Church**, 10 Oak Grove Road, Mercer, PA 16137. This proposed facility is in Fairview Township, **Mercer County**.

Description of Proposed Action/Activity: This project is for the construction and operation of a small flow treatment facility.

**IV. NPDES Stormwater Discharges from MS4 Permit Actions****V. NPDES Waiver Stormwater Discharges from MS4 Actions****VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions**

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

*Berks County Conservation District, P. O. Box 520, 1238 County Welfare Road, 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>
PAG2000603013	Lewis Frame P. O. Box 490 Honey Brook, PA 19344	Berks	Cumru Township	Angelica Creek CWF
PAR10C401-1	Angelo Corrado 965 Park Rd. Blandon, PA 19510	Berks	Windsor Township	Schuylkill River WWF
PAG2000603020	Denver Development Co. 181 Denver Rd. Denver, PA 17517	Berks	Womelsdorf Borough	Tulpehocken Creek WWF
PAG2000603027	Richard Parese 908 Timber Lane Sinking Spring, PA 19608	Berks	Spring Township	Tributary to Little Muddy Creek TSF

*Blair County Conservation District, 1407 Blair Street, Hollidaysburg, PA 16648, (814) 696-0877.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAG2000703013	Blair County Commissioners 423 Allegheny Street Hollidaysburg, PA 16648	Blair	Frankstown Township	Frankstown Branch of Juniata River WWF
PAG2000703013	Claysburg Vol. Fire Company R. D. 1 Box 466 East Freedom, PA 16637	Blair	Greenfield Township	South Poplar Run CWF
PAG2000703015	Curry-Lee, LLC 3403 Mill Road Duncansville, PA 16635	Blair	Allegheny Township	Spencer Run WWF
PAG2000703016	Sheetz, Inc. 5700 Sixth Avenue Altoona, PA 16602	Blair	City of Altoona Blair Township	Brush Run WWF
PAG2000703017	Furrer Beverage Company 526 Third Avenue Altoona, PA 16602	Blair	Antis Township	UNT Sandy Run CWF
PAG2000703018	Jeff Long R. D. 1 Box 426 Tyrone, PA 16686	Blair	Taylor Township	Halter Creek WWF

*Cumberland County Conservation District, 43 Brookwood Avenue, Suite 4, Carlisle, PA 17013, (717) 240-7812.*

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAG2002103017	Shippensburg Properties, L. P. One Atlantic Avenue Pittsburgh, PA 15202	Cumberland	Shippensburg Township	Burd Run CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI2032103001	Ashton Residential Development Four East High Street Suite 1 Carlisle, PA 17013	Cumberland	South Middletown Township	Yellow Breeches Creek HQ-CWF

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI2030103001	Mike Gastley 65 Mauss Road Biglerville, PA 17307	Adams	Hamiltonban Township	Middle Creek HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041403001	Tom McGeory North-lands Inc. 416 River Ave. PMB233 Williamsport, PA 17701	Centre	Walker and Marion Township	Little Fishing Creek HQ-CWF

*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>Receiving Water/Use</i>
PAS10L028	National Pike Water Authority 4888 National Pike P. O. Box 10 Markleysburg, PA 15459	Fayette County	Wharton, Stewart and Henry Clay Townships Markleysburg Borough	Deadman Run HQ-CWF Meadow Run HQ-CWF Beaver Creek HQ-CWF Noah's Glade HQ-CWF Little Sandy Creek HQ-CWF Pinkham Run WWF Glade Run WWF

*Northwest Region: Oil and Gas 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>Receiving Water/Use</i>
PAI084203003	DL Resources, Inc. 1066 Hoover Road Smicksburg, PA 16256	McKean	Hamilton Township	Little Meade Run HQ-CWF Markham Run HQ-CWF Root Run HQ-CWF

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## **VII. Approvals to Use NPDES and/or Other General Permits**

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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).

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### **List of NPDES and/or Other General Permit Types**

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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>
Lackawanna County Moosic Borough	PAG2003503006	George Plisko 216 Thoreau Dr. Moosic, PA 18507	Lackawanna River WWF	Lackawanna County Conservation District (570) 281-9495
Bradford County Ridgebury and Athens Townships	PAG2000803003	Rachelle A. King Beldem and Blake Corp. 22811 Titusville Rd. Pleasantville, PA 16341	Bentley Creek, UNT, Fall Creek, UNT Fall Creek, Wolcott Creek WWF	Bradford County Conservation District R. R. 5, Box 5030C Stoll Natural Resource Center Towanda, PA 18848 (570) 265-5539, Ext. 205
Columbia County Hemlock Township	PAG2001903011	Bloomsburg Community Center LLC 300 Market St. Johnstown, PA 15901	Fishing Creek WWF Hemlock Creek CWF	Columbia County Conservation District 702 Sawmill Rd., Suite 204 Bloomsburg, PA 17815 (570) 784-1310
Columbia County Benton Township	PAG2001903010	Louis Ward IV 170 Clark Road Benton, PA 17814	West Creek CWF	Columbia County Conservation District 702 Sawmill Rd., Suite 204 Bloomsburg, PA 17815 (570) 784-1310
Tioga County Wellsboro Borough	PAG2005903012	Orion Development 4125 Freedom Way Weirton, WV 26062	Charleston Creek WWF	Tioga County Conservation District 29 East Ave. Wellsboro, PA 16901 (570) 724-1801
Allegheny County Moon and Findlay Townships	PAR10A4562	Allegheny County Airport Authority Landside Terminal P. O. Box 12370 Pittsburgh, PA 15231-0370	McClarens Run TSF Montour Run TSF	Allegheny County Conservation District (412) 241-7645
Allegheny County Frazier, Indiana, Springdale and Indiana Townships	PAG200050203014	The Mills Corporation Pittsburgh Mills LTD 1300 Wilson Blvd. Suite 400 Arlington, VA 22209	Tawney Run WWF Deer Creek CWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Municipality of Monroeville	PAG200050203026	Forbes Regional Hospital 2570 Haymaker Rd. Monroeville, PA 15146	Turtle Creek TSF	Allegheny County Conservation District (412) 241-7645
Allegheny County Findlay Township	PAG200050203032	Elmhurst Corp. 1 Bigelow Square Pittsburgh, PA 15219	Montour Run WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County South Fayette Township	PAG200050203043	William Miller's Sons, Inc. 4377 William Flynn Highway Allison Park, PA 15101	Pine Creek TSF	Allegheny County Conservation District (412) 241-7645
Allegheny County Bethel Park Borough	PAG200050203045	Carl M. Rizzo 551 N. Street Bethel Park, PA 15102	Lick Run WWF	Allegheny County Conservation District (412) 241-7645

<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>
Allegheny County Town of McCandless	PAG200050203046	Town of McCandless 9955 Grubbs Road Wexford, PA 15090	Lowries Run TSF	Allegheny County Conservation District (412) 241-7645
Allegheny County Osborne Borough	PAG200050203051	Quaker Valley School District 203 Graham Street Sewickley, PA 15143	Ohio River WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Scott Township	PAG200050203060	Family Video Movie Club 1022 East Adams Springfield, IL 02703  Rockford Construction 8165 Graphic Drive Blemont, MI 49306-0450	Chartiers Creek WWF	Allegheny County Conservation District (412) 241-7645
Washington County Chartiers Township	PAR10W118R	John Subrick 778 Thomas 84 Rd. Eighty Four, PA 15330	UNT to Chartiers Creek WWF	Washington County Conservation District (724) 228-6774
Westmoreland County North Huntingdon Township	PAR10X284	James M. Tobin 1900 Ardmore Blvd. Pittsburgh, PA 15221	Brush Creek WWF	Westmoreland County Conservation District (724) 837-5271
Westmoreland County Unity Township	PAG2056503004	Arnold Palmer 9000 Bay Hill Blvd. Orlando, FL 32819	UNT to Loyalhanna Creek CWF	Westmoreland County Conservation District (724) 837-5271
Westmoreland County Penn Township	PAG2056503008	Miller Penn Dev. Rt. 2, Box 181 Lake Wolf Road New Alexandria, PA 15670	Tributary to Bushy Run TSF	Westmoreland County Conservation District (724) 837-5271
Crawford County West Mead Township	PAG2002003002	Robert Rozell 18257 Industrial Dr. Meadville, PA 16335	French Creek WWF	Crawford County Conservation District (814) 724-1793
Erie County Millcreek Township	PAG2002503030	Norbert Kazmerek 1109 E. 38th St. Erie, PA 16504	Walnut Creek CWF-MF	Erie County Conservation District (814) 825-6403
Erie County Millcreek Township	PAG2002503031	Grandview Car Wash 5232 Jason Drive Erie, PA 16506	UNT of Lake Erie CWF; MF	Erie County Conservation District (814) 825-6403
Erie County Harborcreek Township	PAG2002503032	Nat'l Church Res. of Hbk., PA 2335 North Bank Dr. Columbus, OH 43220	Lake Erie CWF	Erie County Conservation District (814) 825-6403
Erie County City of Erie	PAG2002503033	302 Assoc. Realty Partnership 300 State St., Suite 302 Erie, PA 16507	Lake Erie WWF	Erie County Conservation District (814) 825-6403
Lawrence County North Beaver Township	PAG2003703005	Flat Rock Dev. Corp. 25 N. Mill St., Suite 403 New Castle, PA 16101	UNT to Hickory Creek TSF	Lawrence County Conservation District (724) 652-4512
Mercer County Pymatuning Township	PAG2004303006	Kapital Realty, LP 1001 Highland Road Sharon, PA 16146	Big Run 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>
York County Mt. Wolf Borough	PAR143523	Georgia Pacific Corporation Mt. Wolf Packaging Facility 25 Walnut Street P. O. Box 906 Mt. Wolf, PA 17347	Hartman Run Manhattan Run WWF	DEP—SCRO 909 Elmerton Ave. Harrisburg, PA 17110 (717) 705-4707



*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>
Summit Township Erie County	PAG048909	Jeffrey R. Scheid 9205 Footemill Road Erie, PA 16509	Unnamed tributary to Walnut Creek	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-8*

<i>Facility Location and Municipality</i>	<i>Permit No.</i>	<i>Applicant Name and Address</i>	<i>Site Name and Location</i>	<i>Contact Office and Telephone No.</i>
Warriors Mark, Spruce Creek and Franklin Townships Huntingdon County	PAG083511 PAG083512	Altoona City Authority 3172 Route 764 Duncansville, PA 16635-7800	William Hoover East Farm	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707
Warriors Mark Township Huntingdon County	PAG083511 PAG083512	Altoona City Authority 3172 Route 764 Duncansville, PA 16635-7800	William Hoover West Farm	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707
Derry Township Dauphin County	PAG083518	Derry Township Municipal Authority 670 Clearwater Drive Hershey, PA 17033	Hershey Trust Farm No. 77	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707
Hellam Township York County	PAG083505	Springettsburg Township 1501 Mt. Zion Road York, PA 17402	John Staubach Farm	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707

*General Permit Type—PAG-12*

<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 Chanceford Township	PAG123557	Michael J. Jasienski Felton Pig Farm 1068 Main Street Extension Felton, PA 17322	UNT to Carter Creek Muddy Creek	DEP—SCRO 909 Elmerton Ave. Harrisburg, PA 17110 (717) 705-4707

**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>
South Strabane Township	550 Washington Road Washington, PA 15301	Washington

**Plan Description:** The approved plan provides for the extension of sanitary sewers to serve 21 lots, many with malfunctioning onlot septic systems in the Lakeview/Beau Street area of South Strabane Township. 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.

**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 environ-

mental 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:

*Northeast Regional Field Office, Joseph A. Brogna, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**Lockhardt Residence**, City of Easton, **Northampton County**. Marshall Miller & Associates, 3913 Hartzdale Drive, Suite 1306, Camp Hill, PA 17011 has submitted a Final Report (on behalf of Curtis Lockhardt, E. Wilkes-Barre Street, Easton, PA) concerning the remediation of soils found or suspected to have been accidentally contaminated with home heating oil as the result of an oil delivery to the wrong address. The report was submitted to demonstrate attainment of the Statewide Health Standard.

**Latter-Day Saints Property**, Oakland Township, **Susquehanna County**. Martin Gilgallon, P. G., Pennsylvania Tectonics, Inc., 826 Main Street, Peckville, PA 18452 has submitted a Final Report (on behalf of The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, 50 East North Temple Street, Salt Lake City, UT 84150) concerning the remediation of soils found or suspected to be contaminated with lead. The report was submitted to demonstrate attainment of the Statewide Health Standard.

**Former Conrail Railroad Property (Main Street and Page Avenue)**, Kingston Borough, **Luzerne County**. Martha Fleming, Technical Manager, Environmental Strategies Corporation, 300 Corporate Center Drive, Suite 200, Moon Township, PA 15108 has submitted a combined Remedial Investigation Report and Final Report (on behalf of the property owner, David A. Kovalchik, Schuyler Avenue, Kingston, PA) concerning the remediation of soils found or suspected of being contaminated with arsenic as the result of former railroad line operations. The report was submitted to demonstrate attainment of the Site-Specific Standard.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Robert Brandt Residence**, Manheim Township, **Lancaster County**. Alternative Environmental Solutions, Inc., 930 Pointview Avenue, Suite B, Ephrata, PA 17522, on behalf of Robert Brandt, 2617 Mondamin Farm Road, Lancaster, PA 17601, submitted a Final Report concerning the remediation of site groundwater contaminated with benzene, cumene, ethylbenzene, fluorene, naphthalene, phenanthrene and toluene. The report is intended to document remediation of the site to the Statewide Health Standard.

**Safety Kleen New Kingstown**, Silver Spring Township, **Cumberland County**. Shaw Environmental &

Infrastructure, Inc., 1161 McDermott Drive, Suite 101, West Chester, PA 19380-4022, on behalf of Safety-Kleen, 11923 Tramway Drive, Cincinnati, OH, submitted a Final Report concerning remediation of site soils and groundwater contaminated with chlorinated solvents and other organics. The report is intended to document remediation of the site to the Statewide Health Standard.

**Former Posey Iron Works and Heritage Trading Company Site**, City of Lancaster, **Lancaster County**. BL Companies, 830 Sir Thomas Court, Harrisburg, PA 17109, on behalf of the Redevelopment Authority of the City of Lancaster, 120 North Duke Street, Lancaster, PA 17608, submitted a Baseline Environmental Report concerning remediation of site soils and groundwater contaminated with PCBs, lead, heavy metals, PHCs, PAHs and solvents. The applicant proposes to remediate the site as a Special Industrial Area.

**Eastern Industries, Inc.—Formerly Douglassville Hot Mix Asphalt Plant**, Amity Township, **Berks County**. EarthRes Group, Inc., P. O. Box 468, Pipersville, PA 18947 on behalf of Eastern Industries, Inc., 4401 Camp Meeting Road, Center Valley, PA 18034-9454, re-submitted a Remedial Investigation Report concerning remediation of site soils and groundwater contaminated with solvents. The applicant seeks to attain a combination of Statewide Health and Site-Specific Standards.

**Defense Distribution Depot Susquehanna PA IRP Site 60**, Fairview Township, **York County**. Defense Distribution Depot Susquehanna, PA, 2001 Mission Drive, Suite 1, New Cumberland, PA 17070-5002 has submitted a Remedial Investigation Report and Cleanup Plan concerning remediation of groundwater contaminated with solvents. The applicant proposes to remediate the site to meet the requirements of the Site-Specific Standard.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995

#### PREAMBLE 3

**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Provisions of 25 Pa. Code § 250.8 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:

*Northeast Region: Joseph A. Brogna, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**Palmer Town Center (former Bethlehem Corporation and Young Volkswagen Mazda)**, Palmer Township, **Northampton County**. Jim LaRegina, P. G., HRP Associates, Inc., 4807 Jonestown Road, Harrisburg, PA 17109 submitted an amended Cleanup Plan (on behalf of Easton Center LLC, 18202 Minnetonka Boulevard, Suite 1, Wayzata, MN 55391) concerning the remediation of onsite shredded asphalt shingle waste materials. The amended report was submitted in partial fulfillment of a combination of the nonresidential Statewide Health and Site-Specific Standards and was approved on June 6, 2003.

**A & E Products Group**, Ringtown Borough, **Schuylkill County**. Gilmore & Associates, Inc., 184 W. Main Street, Suite 300, Trappe, PA 19426 submitted a Final Report (on behalf of A & E Products Group, 75 Main Street, Ringtown, PA 17967) concerning the remediation of site groundwater found to have been contaminated with used motor oil. The report documented attainment of the Statewide Health Standard and was approved on June 16, 2003.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Former Mobil Service Station AN788**, Lower Paxton Township, **Dauphin County**. B & B Diversified Enterprises, Inc., 125 Analomink Street, East Stroudsburg, PA 18301, on behalf of Corner Associates, LLC, 4800 Linglestown Road, Harrisburg, PA 17112, submitted a combined Remedial Investigation and Final Report concerning remediation of site soils and groundwater contaminated with unleaded gasoline and MTBE. The final

report demonstrated attainment of the Site-Specific Standard and the combined report was approved by the Department on June 23, 2003.

**ELCO USA**, Smithfield Township, **Huntingdon County**. Vincent Uhl Associates, Inc., on behalf of AVX Corporation, 801 17th Avenue South, Myrtle Beach, SC 29578, submitted a Final Report concerning remediation of site soils contaminated with heavy metals; groundwater contaminated with solvents and BTEX; and surface water and sediment contaminated with solvents. The final report demonstrated attainment of a combination of Site-Specific and Statewide Health Standards and was approved by the Department on June 26, 2003.

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

**CDR Pigments and Dispersions**, 75 Front St., Ridgway Borough, **Elk County**. Civil & Env. Consultants, Inc., 333 Baldwin Rd., Pittsburgh, PA 15205-9702 (on behalf of CDR Pigments and Dispersions, 75 Front St., Ridgway) has submitted a Cleanup Plan concerning the remediation of soil, groundwater and surface water contaminated with lead, heavy metals solvents and BTEX. The Cleanup Plan was approved.

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

**Permit revoked 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.**

*Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.*

**Permit ID No. WMGR025/SW001. Iser, Inc., Marc Valentine**, 1025 Oakdale Road, Tub Mills Farm. Operation of a residual waste composting facility in Elk Lick Township, **Somerset County**. Permit revoked in the regional office on June 18, 2003.

Persons interested in reviewing the permit may contact the Department of Environmental Protection, Land Recycling and Waste Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000. TDD users may contact the Department through the Pennsylvania Relay Service at (800) 654-5984.

#### **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.**

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Michael Safko, Facilities Permitting Chief, (570) 826-2531.*

**35-320-005GP: The P A Hutchison Co.** (400 Penn Avenue, Mayfield, PA 18433) to construct and operate a nonheat set lithographic printing press at their facility in Mayfield Borough, **Lackawanna 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.**

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**39-399-057: GEO Specialty Chemicals—Trimet Products Group** (2409 North Cedar Boulevard, Allentown, PA 18104-9733) on June 23, 2003, to modify a calcium formate process and associated air cleaning device at their facility in South 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.*

**01-03029A: Utz Quality Foods, Inc.** (900 High Street, Hanover, PA 17331) on June 18, 2003, to construct a tortilla chip fryer controlled by a mist eliminator at their Kindig Lane Plant in Conewago Township, **Adams County**.

**06-03098: Ralph Good, Inc.** (P. O. Box 924, Adamstown, PA 19501) on June 18, 2003, to install a mist eliminator on a potato chip fryer in Adamstown Borough, **Berks County**.

**06-05004C: Baldwin Hardware Corp.** (P. O. Box 15048, Reading, PA 19612) on June 18, 2003, to construct a thermal coating removal unit controlled by a combustion zone and cyclone in their facility at the City of Reading, **Berks County**.

**06-05096A: The Reading Hospital and Medical Center** (Sixth and Spruce Streets, Reading, PA 19612-6052) on June 18, 2003, to modify three 1,500 kW emergency generators in West Reading Borough, **Berks County**.

**29-03008A: H. B. Mellott Estate, Inc.** (100 Mellott Drive, Suite 100, Warfordsburg, PA 17267) on June 23, 2003, to install a replacement fabric filter at a limestone crushing plant in Bethel Township, **Fulton County**. The crushing plant is subject to 40 CFR Part 60, Subpart OOO—Standards of Performance for Nonmetallic Mineral Processing Plants.

**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.*

**09-0087A: Air Products and Chemicals, Inc.** (351 Philadelphia Avenue, Morrisville, PA 19067) on June 30, 2003, to operate an ammonia scrubber in Falls Township, **Bucks County**.

**09-0090: Messer Griesheim Industries, Inc.** (One Steel Road East, Morrisville, PA 19067) on June 30, 2003, to operate residual cylinder gases in Bristol Township, **Bucks County**.

**09-0128: East Coast Sign Advertising** (5058 Route 13 North, Bristol, PA 19007) on June 30, 2003, to operate paint spray booths in Bristol Township, **Bucks County**.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**66-315-041: The Procter and Gamble Paper Products Co.** (P. O. Box 32, Route 87 South, Mehoopany, PA 18629) to construct a diaper raw material delivery systems and associated air cleaning devices at the facility in Washington Township, **Wyoming County**. The plan approval is being extended.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.*

**08-316-013A: CraftMaster Manufacturing, Inc.** (P. O. Box 311, Towanda, PA 18848) on June 16, 2003, to authorize operation of a hardboard press (Line II/Trimboard) and associated air cleaning device (a scrubber) on a temporary basis until October 14, 2003, in Wysox Township, **Bradford County**.

**08-0004A: CraftMaster Manufacturing, Inc.** (P. O. Box 311, Towanda, PA 18848) on June 16, 2003, to authorize operation of a woodwaste fired boiler and associated air cleaning device (an electrostatic precipitator) on a temporary basis until October 14, 2003, in Wysox Township, **Bradford County**.

**08-302-039: CraftMaster Manufacturing, Inc.** (P. O. Box 311, Towanda, PA 18848) on June 16, 2003, to authorize operation of two woodwaste fired boilers and associated air cleaning devices (an electrostatic precipitator and a selective noncatalytic reduction system) on a temporary basis until October 14, 2003, in Wysox Township, **Bradford County**.

**08-316-014: CraftMaster Manufacturing, Inc.** (P. O. Box 311, Towanda, PA 18848) on June 16, 2003, to authorize operation of a wood fiber blending facility and its associated air cleaning device (a fabric collector) and a steam heated hydraulic press (die form press) on a temporary basis until October 14, 2003, in Wysox Township, **Bradford County**. This revision also limits the particulate emissions from the fabric collector to 0.13 pound per hour and 0.57 ton in any 12 consecutive months period.

**08-318-024A: CraftMaster Manufacturing, Inc.** (P. O. Box 311, Towanda, PA 18848) on June 16, 2003, to authorize operation of a hardboard products surface coating operation (Coating II) on a temporary basis until October 14, 2003, in Wysox Township, **Bradford County**.

**41-00010B: Andritz, Inc.** (35 Sherman Street, Muncy, PA 17756) on June 24, 2003, to operate a thermal foundry sand reclamation system and associated air cleaning devices (two fabric collectors) on a temporary basis, until October 22, 2003, in Muncy Borough and Muncy Creek Township, **Lycoming County**. The Plan Approval has been extended.

**53-00005B: Dominion Transmission, Inc.** (625 Liberty Avenue, Pittsburgh, PA 15222) on June 23, 2003, to operate a 4,735 horsepower natural gas-fired reciprocating internal combustion compressor engine on a temporary basis, until October 21, 2003, at the Greenlick Compressor Station in Stewardson Township, **Potter County**. The Plan Approval has been extended.

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

**26-00534A: Fayette Thermal, LLC** (755 Opossum Lake Road, Carlisle, PA 17013) on June 18, 2003, this

plan approval was modified with following conditions at their facility in Luzerne Township, **Fayette County**.

- Condition No. 3 was revised to reflect the modification.
- Condition No. 5 was revised to reflect that a single bin vent collector was installed to control the sand and limestone silos rather than a bin vent collector for each silo.
- Condition No. 14—the word source was changed to coal-fired boilers.
- Conditions No. 16 and 17—the word PM was changed to preventative maintenance.
- Condition No. 21 was revised to remove requirement to track hours of operation on the natural gas-fired boilers.
- Old Condition No. 10 was deleted; restriction on natural gas-fired boiler hours of operation.
- Conditions No. 10—29 were renumbered from 11—30.

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

**06-05040: East Penn Manufacturing Co., Inc.** (P. O. Box 147, Lyon Station, PA 19536) on June 24, 2003, to operate a secondary lead smelter controlled by various control devices in Richmond Township, **Berks County**.

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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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*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Contact: Mark J. Wejksznar, New Source Review Chief, (570) 826-2531.*

**13-00010: Ametek—Westchester Plastic Division** (Route 54, P. O. Box 9, Green Acres Industrial Park, Nesquehoning, PA 18240) on June 20, 2003, a State-only Operating Permit for their facility in Nesquehoning Borough, **Carbon County**.

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

**21-03007: Purina Mills LLC** (P. O. Box 66812, St. Louis, MO 63166) on June 11, 2003, to operate their livestock feed production facility in Hampden Township, **Cumberland County**.

**21-03023: Ames True Temper, Inc.** (465 Railroad Avenue, Camp Hill, PA 17011) on June 18, 2003, to operate their lawn and garden tools manufacturing facility in Hampden Township, **Cumberland County**.

**36-03024: Astro Machine Works** (470 Wenger Drive, Ephrata, PA 17522) on June 24, 2003, to operate a manufacturing facility in Ephrata Borough, **Lancaster County**.

**67-03004: The Maple Press Co.** (480 Willow Springs Lane, P. O. Box 2695, York, PA 17405) on June 16, 2003, to operate their book manufacturing facility in Manchester Township, **York County**.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Contact: Mark Wayner, Facilities Permitting Chief, (412) 442-4174.*

**11-00242: Westmont Hilltop School District** (827 Diamond Boulevard, Johnstown, PA 15905) for the Westmont Hilltop High School, Upper Yoder Township, **Cambria County**. The facility's sources of emissions include two tri-fuel boilers. This is a synthetic minor.

**11-00003: Westmont Hilltop School District** (827 Diamond Boulevard, Johnstown, PA 15905) for the Westmont Elementary School, **Cambria County**. The facility's sources of emissions include two tri-fuel boilers.

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

**37-00272: Kerry Coal Co.** (R. R. 2, Box 2139, Wampum, PA 16157). Natural Minor Operating Permit for emissions from a coal processing plant and diesel-fueled generator in New Beaver Borough, **Lawrence County**.

**37-00261: Hickman Williams and Co.** (Route 18, Wampum Industrial Park, Wampum, PA 16157) on April 2, 2003, for a Natural Minor Permit to operate their metallurgical coke packaging facility in New Beaver Borough, **Lawrence County**.

**10-00309: Hekett Multiserv, Plant No. 16** (c/o A. K. Steel, Route 8 South, Butler, PA 16001) on April 9, 2003, for a Natural Minor Permit to operate their slag processing plant in Butler Township, **Butler County**.

**33-00016: PW Hardwood, LLC** (11424, Route 36, Brookville, PA 15825) on April 2, 2003, for a Natural Minor Permit to operate their sawmill, planning equipment and drying kilns in Oliver Township, **Jefferson County**.

**16-00134: Car Mate Trailers, Inc.** (Route 66, Leeper, PA 16233) on June 25, 2003, for a Natural Minor Permit to operate their trailers manufacturing facility in the Township of Farmington, **Clarion County**. Emissions sources associated with this facility include two spray paint booths, one natural gas-fired boiler and one natural gas fueled heating furnace.

**24-00124: PA Industrial Heat Treaters** (P. O. Box 348, St. Marys, PA 15857) on May 19, 2003, for a Natural Minor Permit to operate their metal heat-treating facility in St. Marys, **Elks County**. Emissions sources associated with this facility include 23 natural gas furnaces and 2 electrostatic precipitators.

**62-00032: National Forge Co.** (Erie Street, Irvine, PA 16329) on August 6, 2001, for a Synthetic Minor Operating Permit in Brokenstraw Township, **Warren County**.

**43-00259: United Community Hospital** (631 North Broad Street Extension, Grove City, PA 16127) on May 19, 2003, for a Natural Minor Permit to operate their general medical hospital with surgical facilities in the Township of Pine, **Mercer County**. Emissions sources associated with this facility include dual fuel steam boilers, natural gas fired hot water boilers, hot water heaters and one emergency generator.

**10-00139: J. S. McCormick Co.** (1043 Branchton Rd., Boyers, PA 16020) Natural Minor Operating Permit for emissions from coke-breeze processing in Cherry Township, **Butler County**.

**24-00022: St. Marys Carbon Company, Inc.—Carbon Division** (1939 State Street, St. Marys, PA 15857) to issue a Natural Minor Operating Permit. The

facility's primary sources of emissions are the carbon baking kilns and associated equipment in the City of St. Marys, **Elk County**.

**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.**

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; Contact: David Aldenderfer, Program Manager, (570) 327-3637.*

**60-00001: Bucknell University** (Physical Plant, Lewisburg, PA 17837) on June 18, 2003, issued a revised Operating Permit, Revision No. 1, for their power plant and campus in East Buffalo Township, **Union County**. The revision of this permit is to incorporate the terms and conditions of plan approval 60-0001B into the State-only (Synthetic Minor) Operating Permit. The State-only Operating Permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

**ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS**

**Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); 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).**

*Coal Permit Actions*

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

**11860701. NPDES Permit PA0214981, Cooney Bros. Coal Co.** (Box 246, Cresson, PA 16630), to renew the permit for the Sonman Coal Refuse Disposal Area in Portage Township, **Cambria County**, for renewal of existing 87 acres site, 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. Permit issued June 25, 2003.

**11860701. NPDES Permit PA0214981, Fuel Recovery, Inc.** (2591 Wexford-Bayne Road, Suite 204, Sewickley, PA 15143), to transfer the permit for the Sonman Refuse in Portage Township, **Cambria County**, from Cooney Bros. Coal Co., 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. Permit issued June 25, 2003.

**32831602. NPDES Permit PA0214515, Reliant Energy Northeast Management Company** (1001 Broad Street, Johnstown, PA 15907), to renew the permit for the Central Preparation Plant in West Wheatfield Township, **Indiana 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. Permit issued June 25, 2003.

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

**16020102 and NPDES Permit No. PA0242128. Ancient Sun, Inc.** (P. O. Box 129, Shippenville, PA 16254). Commencement, operation and restoration of a bituminous strip operation in Toby Township, **Clarion County** affecting 27.9 acres. Receiving streams: unnamed tributary to Little Licking Creek. Application received May 3, 2002. Permit issued June 19, 2003.

**33970103 and NPDES Permit No. PA0227391. MSM Coal Company, Inc.** (P. O. Box 243, DuBois, PA 15801). Renewal of bituminous strip operation in Oliver Township, **Jefferson County** affecting 26.9 acres. This renewal is issued for reclamation only. Receiving streams: unnamed tributary to Beaver Run and Beaver Run. Application received May 1, 2003. Permit issued June 20, 2003.

**33970111 and NPDES Permit No. PA0227536. Falls Creek Energy Co., Inc.** (R. D. 6, Box 231, Kittanning, PA 16201). Renewal of bituminous strip operation in McCalmont and Winslow Townships, **Jefferson County** affecting 94.3 acres. This renewal is issued for reclamation only. Receiving streams: Laurel Run and Big Run. Application received April 30, 2003. Permit issued June 26, 2003.

*Noncoal Permit Actions*

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

**40030802. David A. Kotsur** (131 Gouge Street, Plains, PA 18705), commencement, operation and restoration of a quarry operation in Salem Township, **Luzerne County**, affecting 2.0 acres, receiving stream: none. Application received May 6, 2003. Permit issued June 24, 2003.

**64020802. Bruce R. Stanton** (R. R. 1 Box 1350, Starrucca, PA 18462), commencement, operation and restoration of a quarry operation in Preston Township, **Wayne County**, affecting 3.0 acres, receiving stream: none. Application received June 3, 2002. Permit issued June 26, 2003.

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

**3076SM8. Conneaut Lake Sand & Gravel, Inc.** (P. O. Box 233, West Middlesex, PA 16159). Transfer of an existing sand and gravel operation from Jack R. and Robert L. Foust in Sadsbury Township, **Crawford County** affecting 18.8 acres. Receiving streams: unnamed tributary to Watson Run. Application received February 19, 2003. Permit issued June 16, 2003.

**37970302. Quality Aggregates, Inc.** (200 Neville Road, Pittsburgh, PA 15225). Renewal of NPDES Permit No. PA0227579, Slippery Rock Township, **Lawrence**

**County.** Receiving streams: unnamed tributaries to Slippery Rock Creek. Application received April 28, 2003. Permit issued June 20, 2003.

**4672SM10. I. A. Construction Corp.** (P. O. Box 8, Concordville, PA 19331). Renewal of NPDES Permit No. PA0089194, Limestone Township, **Warren County.** Receiving streams: Myers Run and Allegheny River. Application received May 1, 2003. Permit issued June 20, 2003.

**37880304. Quality Aggregates, Inc.** (200 Neville Road, Pittsburgh, PA 15225). Renewal of NPDES Permit No. PA0204906, Slippery Rock Township, **Lawrence County.** Receiving streams: unnamed tributary of Slippery Rock Creek. Application received April 28, 2003. Permit issued June 20, 2003.

**16860310. Glen Gery Corporation** (P. O. Box 7001, Wyomissing, PA 19610). Renewal of NPDES Permit No. PA0107395, Limestone and Monroe Townships, **Clarion County.** Receiving streams: unnamed tributary to Piney Creek and Piney Creek, unnamed tributary to Little Piney Creek and Little Piney Creek. Application received May 7, 2003. Permit issued June 25, 2003.

#### ACTIONS ON BLASTING ACTIVITY APPLICATIONS

**Actions on applications under the Explosives Acts of 1937 and 1957 (43 P. S. §§ 151–161); and 25 Pa. Code § 211.124. 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.*

**48034017. Ed Wean Drilling & Blasting** (112 Ravine Road, Stewartsville, NJ 08886), construction blasting in Forks Township, **Northampton County** with an expiration date of September 10, 2003. Permit issued June 24, 2003.

**21034024. R & M Excavating** (403 Hilltop Road, Newburg, PA 17240), construction blasting in West Pennsboro Township, **Cumberland County** with an expiration date of December 3, 2004. Permit issued June 24, 2003.

**46034018. Schlouch Inc.** (Excelsior Industrial Park, P. O. Box 69, Blandon, PA 19510), construction blasting in Douglass Township, **Montgomery County** with an expiration date of July 3, 2004. Permit issued June 24, 2003.

**40034018. Charlie Weaver** (R. R. 1 Box 248W, White Haven, PA 18661) and **Hayduk Enterprises** (P. O. Box 554, Dalton, PA 18414), construction blasting in Sugarloaf Township, **Luzerne County** with an expiration date of August 27, 2003. Permit issued June 24, 2003.

**15034016. Horst Drilling & Blasting, Inc.** (141 Ranck's Church Road, New Holland, PA 17557), construction blasting in Charlestown Township, **Chester County** with an expiration date of July 4, 2007. Permit issued June 24, 2003.

**15034017. Horst Drilling & Blasting, Inc.** (141 Ranck's Church Road, New Holland, PA 17557), construction blasting in East Whiteland Township, **Chester County** with an expiration date of July 4, 2005. Permit issued June 24, 2003.

**06034030. Horst Drilling & Blasting, Inc.** (141 Ranck's Church Road, New Holland, PA 17557), construc-

tion blasting in Marion Township, **Berks County** with an expiration date of July 4, 2008. Permit issued June 24, 2003.

**15034018. Horst Drilling & Blasting, Inc.** (141 Ranck's Church Road, New Holland, PA 17557), construction blasting in West Bradford Township, **Chester County** with an expiration date of July 4, 2005. Permit issued June 24, 2003.

**64034006. D. H. Blattner & Sons, Inc.** (400 County Road 50, Avon, MN 56310) and **Austin Powder Company** (P. O. Box 289, Northampton, PA 18067), construction blasting in Canaan, Carbondale and Clinton Township, **Wayne and Lackawanna Counties** with an expiration date of January 11, 2004. Permit issues: June 26, 2003.

**46034019. Rock Work, Inc.** (1257 DeKalb Pike, R. D. 2, Blue Bell, PA 19422), construction blasting in Cheltenham Township, **Montgomery County** with an expiration date of September 4, 2003. Permit issued June 26, 2003.

**67034032. Stewart & Tate, Inc.** (1020 North Hartley Street, P. O. Box 2587, York, PA 17405) and **D. C. Guelich Explosive Company** (P. O. Box 245, Thomasville, PA 17364), construction blasting in Manchester Township, **York County** with an expiration date of July 4, 2004. Permit issued June 26, 2003.

**15034019. J. Roy's, Inc.** (Box 125, Bowmansville, PA 17507), construction blasting in Kennett Township, **Chester County** with an expiration date of December 31, 2004. Permit issued June 26, 2003.

**67034033. J. Roy's, Inc.** (Box 125, Bowmansville, PA 17507), construction blasting in Manchester Township, **York County** with an expiration date of December 31, 2004. Permit issued June 26, 2003.

**67034034. J. Roy's, Inc.** (Box 125, Bowmansville, PA 17507), construction blasting in Springfield Township, **York County** with an expiration date of December 31, 2004. Permit issued June 26, 2003.

**09034014. Eastern Blasting Company, Inc.** (1292 Street Road, New Hope, PA 18938), construction blasting in Northampton Township, **Bucks County** with an expiration date of January 11, 2004. Permit issued June 26, 2003.

**66034003. Borel Builders, Inc.** (Meshoppen, PA 18630) and **Hayduk Enterprises** (P. O. Box 554, Dalton, PA 18414), construction blasting in Tunkhannock Township, **Wyoming County** with an expiration date of August 30, 2003. Permit issued June 26, 2003.

**48034019. Allan A. Myers, L. P.** (P. O. Box 98, Worcester, PA 19490), construction blasting in Palmer Township and Tatamy Borough, **Northampton County** with an expiration date of July 13, 2004. Permit issued June 26, 2003.

**48034018. Rick Rufe Drilling & Blasting** (R. R. Box 6360B, Saylorsburg, PA 18353) and **Austin Powder Company** (P. O. Box 289, Northampton, PA 18067), construction blasting in Hanover Township, **Northampton County** with an expiration date of April 22, 2004. Permit issued June 26, 2003.

**40034019. No. 1 Contracting Corporation** (49 South Main Street, Ashley, PA 18706) and **Austin Powder Company** (P. O. Box 289, Northampton, PA 18067), construction blasting in Hanover Township, **Luzerne County** with an expiration date of October 31, 2003. Permit issued June 26, 2003.

**39034007. Clair Stahley, Inc.** (P. O. Box 526, Orefield, PA 18069-0526) and **Austin Powder Company** (P. O. Box 289, Northampton, PA 18067), construction blasting in North Whitehall Township, **Lehigh County** with an expiration date of July 12, 2004. Permit issued June 26, 2003.

**64034007. Explosive Services, Inc.** (7 Pine Street, Bethany, PA 18431), construction blasting in Scott Township, **Wayne County** with an expiration date of June 1, 2004. Permit issued June 26, 2003.

**36034055. Gerlach's Drilling & Blasting, Inc.** (172 Bender Mill Road, Lancaster, PA 17603), construction blasting in Strasburg Township, **Lancaster County** with an expiration date of December 31, 2003. Permit issued June 26, 2003.

**67034035. Gerlach's Drilling & Blasting, Inc.** (172 Bender Mill Road, Lancaster, PA 17603), construction blasting in Windsor Township, **York County** with an expiration date of July 5, 2008. Permit issued June 26, 2003.

**21034025. Gerlach's Drilling & Blasting, Inc.** (172 Bender Mill Road, Lancaster, PA 17603), construction blasting in Carlisle Borough, **Cumberland County** with an expiration date of July 9, 2008. Permit issued June 26, 2003.

**38034012. Gerlach's Drilling & Blasting, Inc.** (172 Bender Mill Road, Lancaster, PA 17603), construction blasting in North Cornwall Township, **Lebanon County** with an expiration date of July 9, 2008. Permit issued June 26, 2003.

**09034015. Brubacher Excavating, Inc.** (P. O. Box 528, 825 Reading Road, Bowmansville, PA 17507), construction blasting in West Rockhill Township, **Bucks County** with an expiration date of July 15, 2004. Permit issued June 26, 2003.

**01034007. Brubacher Excavating, Inc.** (P. O. Box 528, 825 Reading Road, Bowmansville, PA 17507), construction blasting in Oxford Township, **Adams County** with an expiration date of July 10, 2004. Permit issued June 26, 2003.

**45034018. E. R. Linde Construction Corporation** (R. R. 6 Box 6825, Honesdale, PA 18431), construction blasting in Stroud Township, **Monroe County** with an expiration date of July 15, 2004. Permit issued June 26, 2003.

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

**10034001. Knoch Farms Development LLC** (222 Airport Road, Butler, PA 16002). Blasting activity permit to blast for the construction of a sewage line project at the Plantation at Saxonburg in Clinton Township, **Butler County** for 30 days. Application received June 13, 2003. Application issued June 26, 2003.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**32034001. Evergreen Landfill, Inc.**, Box 195, Coral, PA 15731, landfill expansion—waste management—Evergreen Landfill, Center Township, **Indiana County**. Duration June 19, 2003, through June 19, 2004. Permit Issued June 24, 2003.

*Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.*

**30034001. Lomik Construction Corp.** (15 Rock springs Rd., Delmont, PA 15626), for construction in Franklin Township, **Greene County** with an expected duration of 60 days. Permit issued June 24, 2003.

**65034001. Mascaro Constructing** (4455 William Penn Highway, Murrysville, PA 15668), for construction in Murrysville Township, **Westmoreland County** with an expected duration of 120 days. Permit issued June 24, 2003.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

## FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

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.

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**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 §§ 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).**

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*Permits, Environmental Assessments and 401 Water Quality Certifications Issued*

#### **WATER OBSTRUCTIONS AND ENCROACHMENTS**

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

**E54-304. Trans Western Polymers, Inc.**, 6645 Las Positas Boulevard, Livermore, CA 94550. Rush Township, **Schuylkill County**, Army Corps of Engineers Philadelphia District.

To place fill in 0.44 acre of wetlands, which results in an additional 0.33 acre of secondary impacts to wetlands in the Nesquehoning Creek watershed, for the purpose of expanding an existing plastics manufacturing facility. The total wetland impact for the project is 0.77 acre. The permittee is required to provide 0.27 acre of replacement wetlands onsite and 0.50 acre of replacement wetlands by participating in the Pennsylvania Wetland Replacement Project. The project is on the south side of Township Road T929 (Progress Avenue) in Tidewood Industrial Park (Tamaqua, PA Quadrangle N: 14.6 inches; W: 15.2 inches).

**E35-361. City of Scranton**, 340 North Washington Avenue, Scranton, PA 18503. City of Scranton, **Lackawanna County**, Army Corps of Engineers Baltimore District.

To construct and maintain a stream enclosure consisting of 3,165 feet of 60-inch diameter reinforced concrete pipe and 36 feet of 76-inch by 48-inch reinforced concrete arch pipe and to construct and maintain a stream enclosure consisting of a 140-foot long concrete box, having cell dimensions of 14-foot by 3.5-foot in a tributary to Stafford Meadow Brook (WWF) for the purpose of constructing the Meadow Avenue Flood Control Project. The project begins at a point on the east side of Interstate 81, immediately south of the River Street Exit (Exit 184) (Scranton, PA Quadrangle N: 3.0 inches; W: 3.9 inches) and ends at the confluence of the tributary and Stafford Meadow Brook (Scranton, PA Quadrangle N: 2.5 inches; W: 5.4 inches) (Subbasin 5A).

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

**E21-337. Hampden Township Sewer Authority**, 230 South Sporting Hill Road, Mechanicsburg, PA 17055 in Hampden and East Pennsboro Townships, **Cumberland County**, ACOE Baltimore District.

To construct and maintain: (1) five sanitary sewer line crossings in Pine Run, five sanitary sewer line crossings of associated wetlands along Pine Run and two ford crossings in Pine Run (WWF); (2) one sanitary sewer line crossing in Sears Run (WWF); (3) one sanitary sewer line crossing of Holtz Run (WWF); and (4) one ford crossing in Holtz Run all for the purpose of constructing the Pine Run Interceptor and Pumping Station project on the eastern side of Interstate Route 81 at the Wertzville Road interchange and situated north and south of Wertzville Road SR 0944 (Harrisburg West, PA Quadrangle N: 6.5 inches; W: 13.0 inches) in Hampden and East Pennsboro Townships, Cumberland County.

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

**E49-268. Tony and Laurie Grafius**, 123 East 11th Street, Watsontown, PA 17777. Water Obstruction and Encroachment Permit in Watsontown Borough, **Northumberland County**, ACOE Susquehanna River Basin District (Milton, PA Quadrangle N: 16.48 inches; W: 16.01 inches).

To maintain a 25-foot long by 4-foot wide wooden bridge over Spring Run (WWF). The project is along 11th Street approximately 0.5 mile east of SR 0405 and 11th Street in Watsontown Borough, Northumberland County. This permit was issued under section 105.13(e) Small Projects.

#### **WATER QUALITY CERTIFICATIONS**

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

Certification Request Initiated by **James A. Kendter, P. E., District Engineer, Engineering District 3-0, Department of Transportation**, P. O. Box 218, Montoursville, PA 17754-0218.

Date of Initial *Pennsylvania Bulletin* Notice: May 24, 2003

Project Description: The proposed project is to construct approximately 6.5 miles of new four-lane limited access highway on a new alignment in Tioga and Lawrence Townships and Lawrenceville Borough, **Tioga County**. The new highway will be part of the U. S. Route 15 Transportation Improvement Project and will continue into Steuben County, New York. The Commonwealth portion of the project will extend from approximately the intersection of existing Route 15 and SR 287 to the New York state line. A total of 11.09 acres of wetlands are proposed to be impacted by the project (9.41 acres PEM, 0.65 acre PSS, 1.02 acre PFO and 0.01 acre POW). In addition, the project will impact the following streams: Bentley Creek, Tioga River, Cowanesque River and 13 unnamed tributaries to the Tioga River. All impacted streams have a Chapter 93 water use protection designation of WWF. Stream and wetland mitigation will be required.

Final Action on Request: Approved

## STORAGE TANKS

### SITE-SPECIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permits, under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504, 6021.1101 and 6021.1102) and under 25 Pa. Code Chapter 245, Subchapter C, have been issued by the Bureau of Land Recycling and Waste Management, Director, P. O. Box 8763, Harrisburg, PA 17105-8763.

#### SSIP Permit

No.	Applicant Name and Address	County	Municipality	Tank Type	Tank Capacity
03-51-012	Anneliese A. Honsinger Westway Terminal Company Inc. 365 Canal Street, Suite 2900 New Orleans, LA 70130	Philadelphia	Philadelphia	One AST storing regulated substance	70,000 gallons

[Pa.B. Doc. No. 03-1358. Filed for public inspection July 11, 2003, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Infant Hearing Screening Advisory Committee Meeting

The Infant Hearing Screening Advisory Committee, established under the Infant Hearing Education, Assessment, Reporting and Referral Act (11 P. S. §§ 876-1—876-9) will hold a public meeting on Wednesday, July 30, 2003, from 1 to 4 p.m. in Conference Room 812, Health and Welfare Building, 7th and Forster Streets, Harrisburg, PA.

The Department of Health reserves the right to cancel this meeting without prior notice.

For additional information or individuals with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so should contact Karl Hoffman, Program Administrator, Hearing Program, Division of Newborn Disease Prevention and Identification, (717) 783-8143 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. 03-1359. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Laboratories Approved to Determine Analyses of Blood and/or Serum for Controlled Substances

The following laboratories are licensed by the Department of Health (Department) under the Clinical Laboratory Act (35 P. S. §§ 2151—2165) and/or the Federal Clinical Laboratory Improvement Act of 1967 (42 U.S.C.A. § 263a) and are currently approved by the Department under 28 Pa. Code § 5.50 (relating to approval to provide special analytical services) to perform analyses of blood and/or serum for the determination of controlled substances. This approval is based on demonstrated proficiency in tests conducted by the Bureau of Laboratories of the Department. These laboratories are also approved and designated for purposes of the Vehicle Code, 75 Pa.C.S. §§ 1547 and 3755 (relating to chemical testing to determine amount of alcohol or controlled substance; reports by emergency room personnel), the Fish and Boat Code, 30 Pa.C.S. § 5125 (relating to chemical testing to

determine amount of alcohol or controlled substance) and the Game and Wildlife Code, 34 Pa.C.S. § 2502 (relating to chemical test to determine amount of alcohol) as qualified to perform the types of services which will reflect the presence of controlled substances or their biotransformation products in blood and/or serum.

Depending upon their capability and performance in proficiency surveys, laboratories are approved to perform screening and/or confirmatory analyses on blood and/or serum. Laboratories approved to perform screening analyses are designated on the approval list by an "S" followed by the letters "B" for blood and/or "Se" for serum. Laboratories approved to screen both blood and serum would therefore have "SBSe" listed after their laboratory name. Laboratories approved to offer confirmatory analyses will be designated on the approval list by a "C" followed by the letters "B" for blood and/or "Se" for serum. Laboratories approved to perform confirmatory analyses on both serum and blood would therefore have "CBSe" listed after the name of their laboratory. Screening analyses provide a presumptive indication that a controlled substance is present. Confirmatory testing is used to substantiate screening results.

The name of a laboratory is sometimes changed but the location, personnel and testing procedures of the facility remain unchanged. When changes of this type occur, the clinical laboratory permit number does not change. If questions arise about the identity of a laboratory due to a name change, the clinical laboratory permit number should be used as the primary identifier. To assist in identifying a laboratory that performed a test if the name of the facility changed, the clinical laboratory permit numbers of the facilities are included in the lists of approved laboratories before the name of the laboratory at the time the list was prepared.

Persons seeking forensic blood and/or serum analysis services from any of the listed laboratories should determine that the laboratory employs techniques and procedures acceptable for the medicolegal purposes. They should also determine that the director of the facility is agreeable to performing analyses for forensic purposes. Persons seeking the analyses are responsible for specifying the extent to which the presence of a controlled substance is to be verified. That specification should be predicated upon the purpose for which the analysis is being sought.

The list of approved laboratories will be revised approximately semiannually and published in the *Pennsylvania Bulletin*. Questions regarding this list should be

directed to M. Jeffery Shoemaker, Ph.D., Director, Division of Chemistry and Toxicology, Department of Health, Bureau of Laboratories, P. O. Box 500, Exton, PA 19341-0500, (610) 280-3464.

Persons with a disability who require an alternative format of this notice (for example, large print, audiotape, Braille) should contact Dr. Shoemaker at the previously referenced address or phone number or persons who are speech or hearing impaired may use V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

000671  
ALLEG CNTY CORONERS DIV OF LABS—SBSe, CBSe  
542 FORBES AVENUE  
ROOM 10, COUNTY OFFICE BUILDING  
PITTSBURGH, PA 15219  
412-350-6873

000452  
ANALYTIC BIO-CHEMISTRIES INC—SBSe, CBSe  
1680-D LORETTA AVENUE  
FEASTERVILLE, PA 19053  
215-322-9210

000009  
CLINICAL LABORATORIES INC—SBSe, CBSe  
901 KEYSTONE INDUSTRIAL PARK  
THROOP, PA 18512-1534  
570-346-1759

000266  
DEPT OF PATHOLOGY & LAB MED-HUP—SSe, CSe  
3400 SPRUCE STREET  
PHILADELPHIA, PA 19104  
215-662-6880

000977  
DRUGSCAN INC—SBSe, CBSe  
1119 MEARNS RD  
PO BOX 2969  
WARMINSTER, PA 18974  
215-674-9310

000299  
GOOD SAMARITAN HOSPITAL—SSe  
4TH & WALNUT STS  
PO BOX 1281  
LEBANON, PA 17042-1218  
717-270-7500

000654  
GUTHRIE CLINIC PATH LAB—SSe  
GUTHRIE SQUARE  
SAYRE, PA 18840  
570-888-5858

024655  
HEALTH NETWORK LABORATORIES—SBSe, CBSe  
2024 LEHIGH STREET  
ALLENTOWN, PA 18103-4798  
610-402-8150

020512  
LABCORP OCCUPATIONAL TESTING SER—SBSe, CBSe  
1904 ALEXANDER DRIVE  
PO BOX 12652  
RESRCH TRNGL PARK, NC 27709  
919-572-7465

000167  
LANCASTER REGIONAL MED CENTER—SSe  
250 COLLEGE AVENUE  
PO BOX 3434  
LANCASTER, PA 17604  
717-291-8022

005574  
MEDTOX LABORATORIES INC—SBSe, CBSe  
402 WEST COUNTY ROAD D  
ST PAUL, MN 55112  
612-636-7466

000203  
MERCY HEALTH LAB/MFH—SSe  
1500 LANSDOWNE AVENUE  
DARBY, PA 19023  
610-237-4262

000247  
MERCY HEALTH LAB/MHOP—SSe  
54 AND CEDAR AVENUE  
PHILADELPHIA, PA 19143  
215-748-9181

000504  
NATIONAL MED SERVICES INC LAB—SBSe, CBSe  
3701 WELSH ROAD  
WILLOW GROVE, PA 19090  
215-657-4900

000520  
PITTSBURGH CRIMINALISTICS—SBSe, CBSe  
1320 FIFTH AVENUE  
PITTSBURGH, PA 15219  
412-391-6118

001136  
QUEST DIAGNOSTICS NICHOLS INSTITUTE—SBSe, CBSe  
14225 NEWBROOK DRIVE  
PO BOX 10841  
CHANTILLY, VA 20153-0841  
703-802-6900

000482  
QUEST DIAGNOSTICS OF PA INC—SBSe, CBSe  
875 GREENTREE RD  
4 PARKWAY CENTER  
PITTSBURGH, PA 15220-3610  
412-920-7600

025461  
QUEST DIAGNOSTICS VENTURE LLC—SBSe, CBSe  
875 GREENTREE ROAD  
4 PARKWAY CENTER  
PITTSBURGH, PA 15220-3610  
412-920-7631

000151  
ST JOSEPH QUALITY MEDICAL LAB—SBSe, CBSe  
215 NORTH 12TH STREET, BOX 316  
READING, PA 19603  
610-378-2200

007731  
WESTERN RESERVE CARE SYSTEM—SSe, CSe  
500 GYPSY LANE  
YOUNGSTOWN, OH 44504  
216-740-3794

000018  
WVHCS HOSP PENNANT LABORATORY—SSe  
575 NORTH RIVER STREET  
WILKES BARRE, PA 18764  
570-829-8111

000141  
 YORK HOSPITAL—SSe  
 1001 SOUTH GEORGE STREET  
 YORK, PA 17405  
 717-851-2345

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Acting Secretary*

[Pa.B. Doc. No. 03-1360. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Laboratories Approved to Determine Blood Alcohol Content

The following laboratories are licensed by the Department of Health (Department) under the Clinical Laboratory Act (35 P.S. §§ 2151—2165) and are currently approved by the Department under 28 Pa. Code §§ 5.50 and 5.103 (relating to approval to provide special analytical services; and blood tests for blood alcohol content) to perform alcohol analyses of blood and/or serum and plasma. This approval is based on demonstrated proficiency in periodic tests conducted by the Department's Bureau of Laboratories.

Since procedures for determining the alcohol content of serum and plasma are identical and results obtained from serum or plasma derived from a blood sample are the same, laboratories that demonstrate reliability in the analysis of serum proficiency testing specimens are approved to analyze both serum and plasma. These laboratories are also approved and designated under the Vehicle Code, 75 Pa.C.S. §§ 1547 and 3755 (relating to chemical testing to determine amount of alcohol or controlled substance; and reports by emergency room personnel), the Fish and Boat Code, 30 Pa.C.S. § 5125 (relating to chemical testing to determine amount of alcohol or controlled substance) and the Game and Wildlife Code, 34 Pa.C.S. § 2502 (relating to chemical test to determine amount of alcohol) as qualified to perform the types of specialized services which will reflect the presence of alcohol in blood and/or serum and plasma. Laboratories located outside this Commonwealth may not provide blood and/or serum and plasma alcohol testing services in this Commonwealth unless they are specifically licensed by the Department under the Clinical Laboratory Act.

Persons seeking forensic blood and/or serum and plasma analysis services from the following designated laboratories should determine that the laboratory employs techniques and procedures acceptable for forensic purposes, and that the director of the facility is agreeable to performing determinations for this purpose. The list of approved laboratories will be revised approximately semi-annually and published in the *Pennsylvania Bulletin*.

The name of a laboratory is sometimes changed but the location, personnel and testing procedures of the facility remain unchanged. When changes of this type occur, the clinical laboratory permit number does not change. If questions arise about the identity of a laboratory due to a name change, the clinical laboratory permit number should be used as the primary identifier. To assist in identifying a laboratory that performed a test if the name of the facility changed, the clinical laboratory permit numbers of the facilities are included in the lists of approved laboratories before the name of the laboratory at the time the list was prepared.

The Department's blood alcohol and serum/plasma alcohol proficiency testing programs are approved by the United States Department of Health and Human Services in accordance with the requirements contained in the Clinical Laboratory Improvement Amendments of 1988 (42 CFR 493.901 and 493.937) which are administered by the Centers for Medicare and Medicaid Services. Participation in these programs may therefore be used to demonstrate acceptable performance for approval purposes under both Federal and Commonwealth statutes.

Questions regarding this list should be directed to Dr. M. Jeffery Shoemaker, Division of Chemistry and Toxicology, Department of Health, Bureau of Laboratories, P. O. Box 500, Exton, PA 19341-0500, (610) 280-3464.

Persons with a disability who require an alternative format of this notice (for example, large print, audiotape, Braille) should contact Dr. Shoemaker at the previously referenced address or phone number or persons who are speech or hearing impaired may use V/TT: (717) 783-6514 or the Pennsylvania AT&T Relay Service (800) 654-5984 [TT].

The symbols S and B indicate the following:

S = approved for serum and plasma analyses

B = approved for blood analyses

SB = approved for serum, plasma and blood analyses

000212

ABINGTON MEMORIAL HOSPITAL-S  
 1200 OLD YORK ROAD  
 ABINGTON, PA 19001  
 215-576-2350

027180

ADVANCED TOXICOLOGY NETWORK-B  
 3560 AIR CENTER COVE SUITE 101  
 MEMPHIS, TN 38118  
 901-794-5770

000233

ALBERT EINSTEIN MED CTR NORTH-S  
 5501 OLD YORK ROAD  
 PHILADELPHIA, PA 19141  
 215-456-6100

000040

ALIQUIPPA COMM HOSP PATHOLOGY DEPT-B  
 2500 HOSPITAL DR—PATHOLOGY DEPT  
 ALIQUIPPA, PA 15001  
 724-857-1240

000671

ALLEG CNTY CORONERS DIV OF LABS-SB  
 542 FORBES AVENUE  
 ROOM 10 COUNTY OFFICE BUILDING  
 PITTSBURGH, PA 15219  
 412-350-6873

028233

ALLEGHENY GENERAL HOSP DEPT OF LAB MED-B  
 320 E NORTH AVENUE  
 PITTSBURGH, PA 15212  
 412-359-6886

000077

ALLEGHENY GENERAL HOSPITAL LABORATORIES-B  
 1307 NORTH FEDERAL STREET  
 PITTSBURGH, PA 15212  
 412-359-3521

000100

ALLEGHENY VALLEY HOSPITAL LAB-SB  
 1300 CARLISLE ST  
 NATRONA HEIGHTS, PA 15065  
 724-224-5100

- 000119  
ALTOONA HOSPITAL-SB  
620 HOWARD AVENUE  
ALTOONA, PA 16601-4899  
814-946-2340
- 000452  
ANALYTIC BIO-CHEMISTRIES INC-SB  
1680-D LORETTA AVENUE  
FEASTERVILLE, PA 19053  
215-322-9210
- 000041  
ARMSTRONG COUNTY MEMORIAL HOSP-S  
1 NOLTE DRIVE  
KITANNING, PA 16201  
724-543-8122
- 000047  
ASSOCIATED CLINICAL LABORATORIES-SB  
1526 PEACH STREET  
ERIE, PA 16501  
814-461-2400
- 000085  
AUH—FORBES REGIONAL-SB  
2570 HAYMAKER ROAD  
MONROEVILLE, PA 15146  
412-858-2560
- 000251  
AYER CLINICAL LAB—PENN HOSPITAL-S  
8TH & SPRUCE STS  
PHILADELPHIA, PA 19107  
215-829-3541
- 000320  
BARNES KASSON COUNTY HOSPITAL-S  
400 TURNPIKE STREET  
SUSQUEHANNA, PA 18847  
570-853-3135
- 000120  
BON SECOURS-HOLY FAMILY REG HLTH-SB  
2500 SEVENTH AVENUE  
ALTOONA, PA 16602-2099  
814-949-4495
- 000033  
BRADFORD HOSPITAL LAB-SB  
116-156 INTERSTATE PKWY  
BRADFORD, PA 16701-0218  
814-362-8247
- 000296  
BRANDYWINE HOSPITAL-S  
201 REECEVILLE ROAD  
ATTN: LABORATORY  
COATESVILLE, PA 19320  
610-383-8000
- 000102  
BROWNSVILLE GENERAL HOSPITAL LAB-S  
125 SIMPSON RD  
BROWNSVILLE, PA 15417  
724-785-7200
- 000301  
BUTLER MEMORIAL HOSPITAL-S  
911 EAST BRADY STREET  
BUTLER, PA 16001  
724-284-4510
- 000107  
CANONSBURG GENERAL HOSPITAL-SB  
100 MEDICAL BOULEVARD  
CANONSBURG, PA 15317  
724-745-6100
- 000131  
CARLISLE REGIONAL MEDICAL CENTER-S  
246 PARKER ST  
CARLISLE, PA 17013  
717-249-1212
- 000215  
CENTRAL MONTGOMERY MEDICAL CENTER-S  
100 MEDICAL CAMPUS DRIVE  
LANSDALE, PA 19446  
215-368-2100
- 000025  
CENTRE COMMUNITY HOSPITAL-B  
1800 EAST PARK AVENUE  
STATE COLLEGE, PA 16803  
814-234-6117
- 000132  
CHAMBERSBURG HOSPITAL-S  
112 NORTH SEVENTH ST  
CHAMBERSBURG, PA 17201  
717-267-7152
- 000310  
CHARLES COLE MEMORIAL HOSPITAL-S  
1001 EAST SECOND STREET  
COUDERSPORT, PA 16915  
814-274-9300
- 000198  
CHESTER COUNTY HOSPITAL-S  
701 E MARSHALL ST  
WEST CHESTER, PA 19380  
610-431-5182
- 000227  
CHESTNUT HILL HOSPITAL-S  
8835 GERMANTOWN AVENUE  
DEPT OF PATHOLOGY  
PHILADELPHIA, PA 19118  
215-248-8630
- 000228  
CHILDRENS HOSP OF PHILADELPHIA-S  
ONE CHILDREN'S CENTER 34TH & CIVIC  
PHILADELPHIA, PA 19104  
215-590-1000
- 000329  
CLARION HOSPITAL-SB  
1 HOSPITAL DRIVE  
CLARION, PA 16214  
814-226-9500
- 000026  
CLEARFIELD HOSPITAL LABORATORY-S  
809 TURNPIKE AVE  
PO BOX 992  
CLEARFIELD, PA 16830  
814-768-2280
- 000009  
CLINICAL LABORATORIES INC-SB  
901 KEYSTONE INDUSTRIAL PARK  
THROOP, PA 18512-1534  
570-346-1759
- 000034  
COMMUNITY HOSPITAL-B  
NORTH FRALEY STREET  
KANE, PA 16735  
814-837-4575

000166  
COMMUNITY HOSPITAL OF LANCASTER-S  
1100 EAST ORANGE STREET  
LANCASTER, PA 17602  
717-397-3711

000005  
COMMUNITY MEDICAL CENTER-S  
1800 MULBERRY STREET  
SCRANTON, PA 18510  
570-969-8000

000125  
CONEMAUGH VALLEY MEMORIAL HOSP-SB  
1086 FRANKLIN STREET  
JOHNSTOWN, PA 15905-4398  
814-534-9000

000326  
CORY MEMORIAL HOSPITAL-S  
612 WEST SMITH STREET  
CORY, PA 16407  
814-664-4641

000201  
CROZER CHESTER MED CENTER-S  
1 MEDICAL CENTER BOULEVARD  
UPLAND, PA 19013  
610-447-2000

000209  
CROZER-CHESTER MED CTR—SPRINGFLD-S  
190 WEST SPROUL ROAD  
SPRINGFIELD, PA 19064  
610-447-2000

000204  
DELAWARE COUNTY MEMORIAL HOSP-S  
501 NORTH LANSDOWNE AVENUE  
DREXEL HILL, PA 19026-1186  
610-284-8100

000266  
DEPT OF PATHOLOGY & LAB MED—HUP-SB  
3400 SPRUCE STREET  
PHILADELPHIA, PA 19104  
215-662-6880

000194  
DOYLESTOWN HOSPITAL-S  
595 WEST STATE STREET  
DOYLESTOWN, PA 18901  
215-345-2250

000977  
DRUGSCAN INC-SB  
1119 MEARNES RD  
PO BOX 2969  
WARMINSTER, PA 18974  
215-674-9310

000027  
DUBOIS REG MED CTR—WEST UNIT-S  
100 HOSPITAL AVE  
DUBOIS, PA 15801  
814-371-2200

000175  
EASTON HOSPITAL-B  
250 SOUTH 21ST ST  
EASTON, PA 18042-3892  
610-250-4140

000214  
ELKINS PARK HOSPITAL-S  
60 EAST TOWNSHIP LINE ROAD  
ELKINS PARK, PA 19027  
215-663-6102

000332  
ELLWOOD CITY GENERAL HOSPITAL-S  
724 PERSHING ST  
ELLWOOD CITY, PA 16117  
724-752-0081

000164  
EPHRATA COMMUNITY HOSPITAL-S  
169 MARTIN AVE  
PO BOX 1002  
EPHRATA, PA 17522  
717-733-0311

000032  
ERHC ST MARYS LABORATORY-B  
763 JOHNSONBURG RD  
SAINT MARYS, PA 15857  
814-788-8525

000181  
EVANGELICAL COMMUNITY HOSPITAL-S  
1 HOSPITAL DRIVE  
LEWISBURG, PA 17837  
570-522-2510

000192  
FRANKFORD HOSP BUCKS CO CAMPUS-S  
380 NORTH OXFORD VALLEY ROAD  
LANGHORNE, PA 19047-8304  
215-934-5227

000236  
FRANKFORD HOSPITAL FRANK DIV-S  
FRANKFORD AVE & WAKELING ST  
PHILADELPHIA, PA 19124  
215-831-2068

000341  
FRANKFORD HOSPITAL-TORRES DIV-S  
RED LION & KNIGHTS ROADS  
PHILADELPHIA, PA 19114  
215-612-4000

000115  
FRICK HOSPITAL-S  
508 SOUTH CHURCH STREET  
MOUNT PLEASANT, PA 15666  
724-547-1500

000330  
FULTON COUNTY MEDICAL CENTER-S  
216 SOUTH FIRST STREET  
MCCONNELLSBURG, PA 17233  
717-485-3155

000173  
GEISINGER MEDICAL CENTER-SB  
N ACADEMY RD  
DANVILLE, PA 17822  
570-271-6338

000019  
GEISINGER WYOMING VALLEY MED CTR-S  
1000 E MOUNTAIN DRIVE  
WILKES BARRE, PA 18711  
570-826-7830

000104  
GEORGE TOLSTOI LAB—UNIONTOWN HSP-S  
500 WEST BERKELEY STREET  
UNIONTOWN, PA 15401  
724-430-5143

000237  
GERMANTOWN COMM HLTH WILLOW TERR-S  
ONE PENN BOULEVARD  
PHILADELPHIA, PA 19144  
215-951-8800

000122  
GETTYSBURG HOSPITAL-SB  
147 GETTYS STREET  
GETTYSBURG, PA 17325  
717-334-2121

000152  
GNADEN HUETTEN MEMORIAL HOSP-SB  
11TH & HAMILTON STS  
LEHIGHTON, PA 18235  
610-377-1300

000299  
GOOD SAMARITAN HOSPITAL-B  
4TH & WALNUT STS  
PO BOX 1281  
LEBANON, PA 17042-1218  
717-270-7500

000182  
GOOD SAMARITAN REGIONAL MED CTR-S  
700 EAST NORWEGIAN STREET  
POTTSVILLE, PA 17901  
570-621-4032

000238  
GRADUATE HOSPITAL-S  
1800 LOMBARD STREET  
PHILADELPHIA, PA 19146  
215-893-2240

000196  
GRAND VIEW HOSPITAL-S  
700 LAWN AVE  
SELLERSVILLE, PA 18960  
215-257-3611

000105  
GREENE COUNTY MEMORIAL HOSPITAL-S  
BONAR AVENUE  
WAYNESBURG, PA 15370  
724-627-2608

000654  
GUTHRIE CLINIC PATH LAB-S  
GUTHRIE SQUARE  
SAYRE, PA 18840  
570-888-5858

000239  
HAHNEMANN UNIVERSITY HOSPITAL-S  
BROAD & VINE STS MS 113  
PHILADELPHIA, PA 19102  
215-762-1783

000046  
HAMOT MEDICAL CENTER-S  
201 STATE STREET  
ERIE, PA 16550  
814-877-3131

000139  
HANOVER GENERAL HOSPITAL-SB  
300 HIGHLAND AVE  
HANOVER, PA 17331  
717-637-3711

000155  
HARRISBURG HOSPITAL LABORATORY-SB  
SOUTH FRONT STREET  
HARRISBURG, PA 17101  
717-782-2832

000010  
HAZLETON GENERAL HOSPITAL-SB  
EAST BROAD STREET  
HAZLETON, PA 18201  
570-501-4152

000169  
HEALTH NETWORK LABORATORIES-S  
1627 WEST CHEW STREET  
ALLENTOWN, PA 18102  
610-402-2236

000549  
HEALTH NETWORK LABORATORIES-S  
1200 SOUTH CEDAR CREST BLVD  
ALLENTOWN, PA 18103  
610-402-8150

000600  
HEALTH NETWORK LABORATORIES-S  
2545 SCHOENERSVILLE ROAD  
BETHLEHEM, PA 18017-7384  
484-884-2259

024655  
HEALTH NETWORK LABORATORIES-SB  
2024 LEHIGH STREET  
ALLENTOWN, PA 18103-4798  
610-402-8150

000103  
HIGHLANDS HOSPITAL-S  
401 EAST MURPHY AVENUE  
CONNELLSVILLE, PA 15425  
724-628-1500

000130  
HOLY SPIRIT HOSPITAL-SB  
503 N 21ST STREET  
CAMP HILL, PA 17011-2288  
717-763-2206

000052  
INDIANA REGIONAL MEDICAL CENTER-S  
HOSPITAL ROAD  
PO BOX 788  
INDIANA, PA 15701-0788  
724-357-7167

000135  
J C BLAIR MEMORIAL HOSPITAL-S  
WARM SPRINGS AVE  
HUNTINGDON, PA 16652  
814-643-8645

000054  
JAMESON MEMORIAL HOSPITAL-S  
1211 WILMINGTON AVENUE  
NEW CASTLE, PA 16105  
724-656-4080

000240  
JEANES HOSPITAL-S  
7600 CENTRAL AVE  
PHILADELPHIA, PA 19111  
215-728-2347

000113  
JEANNETTE DISTRICT MEMORIAL HOSP-S  
600 JEFFERSON AVENUE  
JEANNETTE, PA 15644  
724-527-9330

000038  
JEFFERSON REGIONAL MEDICAL CENTER-S  
575 COAL VALLEY ROAD  
P. O. BOX 18119  
PITTSBURGH, PA 15236  
412-469-5723

000200  
JENNERSVILLE REGIONAL HOSPITAL-S  
1015 WEST BALTIMORE PIKE  
WEST GROVE, PA 19390  
610-869-1080

000053  
JRHS—BROOKVILLE HOSPITAL-S  
100 HOSPITAL RD  
BROOKVILLE, PA 15825  
814-849-2312

000532  
KENSINGTON HOSPITAL-S  
136 WEST DIAMOND STREET  
PHILADELPHIA, PA 19122  
215-426-8100

021306  
LAB CORP OCCUPATIONAL TEST SRVCS-B  
1120 STATELINE ROAD WEST  
SOUTHAVEN, MS 38671  
886-827-8042

005618  
LAB CORP OF AMERICA HOLDINGS-SB  
6370 WILCOX ROAD  
DUBLIN, OH 43016-1296  
800-282-7300

001088  
LABCORP OF AMERICA HOLDINGS-SB  
69 FIRST AVE  
PO BOX 500  
RARITAN, NJ 08869  
201-526-2400

022715  
LABONE INC-SB  
10101 RENNER BOULEVARD  
LENEXA, KS 66219-9752  
913-888-1770

000165  
LANCASTER GENERAL HOSPITAL-S  
555 N DUKE ST  
PO BOX 3555  
LANCASTER, PA 17603  
717-299-5511

000163  
LANCASTER GENERAL HOSP—SUS DIV-S  
306 NORTH SEVENTH STREET  
COLUMBIA, PA 17512  
717-684-2841

000167  
LANCASTER REGIONAL MED CENTER-S  
250 COLLEGE AVENUE  
PO BOX 3434  
LANCASTER, PA 17604  
717-291-8022

000114  
LATROBE AREA HOSPITAL-S  
121 WEST 2ND AVENUE  
LATROBE, PA 15650  
724-537-1550

000138  
LEWISTOWN HOSPITAL-B  
HIGHLAND AVENUE  
LEWISTOWN, PA 17044  
717-248-5411

000030  
LOCK HAVEN HOSPITAL-B  
24 CREE DRIVE  
LOCK HAVEN, PA 17745  
570-893-5000

000213  
MAIN LINE CLIN LABS BRYN MAWR CP-S  
130 BRYN MAWR AVENUE  
BRYN MAWR, PA 19010  
610-526-3554

000242  
MAIN LINE CLIN LABS LANKENAU CP-S  
100 EAST LANCASTER AVENUE  
WYNNEWOOD, PA 19096  
610-645-2615

000199  
MAIN LINE CLIN LABS PAOLI MEM CP-S  
255 WEST LANCASTER AVENUE  
PAOLI, PA 19301  
610-648-1000

000004  
MARIAN COMMUNITY HOSPITAL-S  
100 LINCOLN AVENUE  
CARBONDALE, PA 18407  
717-281-1042

000049  
MEADVILLE MED CTR—LIBERTY ST-S  
751 LIBERTY STREET  
MEADVILLE, PA 16335  
814-336-3121

000268  
MEDICAL COLLEGE OF PA HOSPITAL-S  
3300 HENRY AVENUE  
PHILADELPHIA, PA 19129  
215-842-7306

005574  
MEDTOX LABORATORIES INC-SB  
402 WEST COUNTY ROAD D  
ST PAUL, MN 55112  
612-636-7466

000140  
MEMORIAL HOSPITAL CLINICAL LAB-SB  
325 S BELMONT ST  
PO BOX 15118  
YORK, PA 17403  
717-843-8623

000023  
MEMORIAL HOSPITAL LAB-SB  
1 HOSPITAL DRIVE  
TOWANDA, PA 18848  
570-265-2191

000203  
MERCY HEALTH LAB/MFH-S  
1500 LANSDOWNE AVENUE  
DARBY, PA 19023  
610-237-4262

000247  
MERCY HEALTH LAB/MHOP-S  
54 AND CEDAR AVENUE  
PHILADELPHIA, PA 19143  
215-748-9181

000219  
MERCY HEALTH LAB/MSH-S  
2701 DEKALB PIKE  
NORRISTOWN, PA 19401  
610-278-2090



000336  
MERCY HEALTH PARTNERS-S  
746 JEFFERSON AVE  
SCRANTON, PA 18510  
570-348-7100

000082  
MERCY HOSPITAL LABORATORY-S  
PRIDE & LOCUST STREETS  
PITTSBURGH, PA 15219  
412-232-7831

000017  
MERCY HOSPITAL LABORATORY-S  
25 CHURCH STREET  
PO BOX 658  
WILKES BARRE, PA 18765  
570-826-3100

000079  
MERCY PROVIDENCE HOSPITAL LAB-S  
1004 ARCH STREET  
PITTSBURGH, PA 15212  
412-323-5783

000245  
METHODIST HOSP DIVISION/TJUH INC-S  
2301 SOUTH BROAD STREET  
PHILADELPHIA, PA 19148  
215-952-9059

000231  
MEYERSDALE COMMUNITY HOSPITAL-S  
200 HOSPITAL DR  
MEYERSDALE, PA 15552  
814-634-5911

000269  
MIDVALLEY HOSPITAL-S  
1400 MAIN STREET  
PECKVILLE, PA 18452  
570-383-5520

000128  
MINERS MEDICAL CENTER-S  
290 HAIDA AVENUE  
PO BOX 689  
HASTINGS, PA 16646  
814-948-7171

000108  
MONONGAHELA VALLEY HOSP INC-S  
COUNTRY CLUB RD RT 88  
MONONGAHELA, PA 15063  
724-258-1000

000323  
MONSOUR MEDICAL CENTER-S  
70 LINCOLN WAY E  
JEANNETTE, PA 15644  
724-527-1511

000217  
MONTGOMERY HOSPITAL LAB-S  
POWELL & FORNANCE STS  
NORRISTOWN, PA 19401  
610-270-2173

000007  
MOSES TAYLOR HOSPITAL-S  
700 QUINCY AVENUE  
SCRANTON, PA 18510  
570-340-2100

000035  
MUNCY VALLEY HOSPITAL-S  
215 EAST WATER ST  
MUNCY, PA 17756  
570-546-8282

000304  
NASON HOSPITAL-B  
NASON DRIVE  
ROARING SPRING, PA 16673  
814-224-6215

000504  
NATIONAL MED SERVICES INC LAB-SB  
3701 WELSH ROAD  
WILLOW GROVE, PA 19090  
215-657-4900

000248  
NAZARETH HOSPITAL-S  
2601 HOLME AVE  
PHILADELPHIA, PA 19152  
215-335-6245

000099  
OHIO VALLEY GENERAL HOSPITAL-S  
25 HECKEL RD  
MCKEES ROCKS, PA 15136  
412-777-6161

000807  
OMEGA MEDICAL LABORATORIES INC-SB  
2001 STATE HILL ROAD SUITE 100  
WYOMISSING, PA 19610-1699  
610-378-1900

000334  
PALMERTON HOSPITAL-S  
135 LAFAYETTE AVE  
PALMERTON, PA 18071  
610-826-3141

000309  
PARKVIEW HOSPITAL-S  
1331 EAST WYOMING AVENUE  
PHILADELPHIA, PA 19124  
215-537-7430

000316  
PENN STATE MILTON S HERSHEY MED CTR-S  
500 UNIVERSITY DRIVE  
DEPT OF PATHOLOGY & LAB MEDICINE  
HERSHEY, PA 17033  
717-531-8353

022533  
PENNSYLVANIA DEPT OF HEALTH-SB  
110 PICKERING WAY  
LIONVILLE, PA 19353  
610-280-3464

022306  
PHILIPSBURG AREA HOSPITAL-SB  
210 LOCH LOMOND ROAD  
PHILIPSBURG, PA 16866  
814-342-7112

000197  
PHOENIXVILLE HOSPITAL LABORATORY-S  
140 NUTT RD  
DEPT OF PATHOLOGY  
PHOENIXVILLE, PA 19460-0809  
610-983-1612

000157  
PINNACLEHLTH/COMM GEN OSTEO HOSP-S  
4300 LONDONDERRY RD  
PO BOX 3000  
HARRISBURG, PA 17109  
717-657-7214

000520  
PITTSBURGH CRIMINALISTICS-SB  
1320 FIFTH AVENUE  
PITTSBURGH, PA 15219  
412-391-6118

000022  
POCONO MEDICAL CENTER LAB-SB  
206 EAST BROWN STREET  
EAST STROUDSBURG, PA 18301  
570-476-3544

000221  
POTTSTOWN MEMORIAL MED CTR MAIN LAB-S  
1600 EAST HIGH STREET  
POTTSTOWN, PA 19464  
610-327-7000

000183  
POTTSVILLE HOSP AND WARNE CLINIC-SB  
420 SOUTH JACKSON STREET  
POTTSVILLE, PA 17901  
570-621-5262

000258  
PRESBYTERIAN MED CNTR OF UNIV OF PA HLTH  
51 NORTH 39TH ST  
5TH FLR RM 530  
DEPARTMENT OF PATHOLOGY & LAB  
PHILADELPHIA, PA 19104-2640  
215-662-3435

000300  
PUNXSUTAWNEY AREA HOSPITAL-S  
81 HILLCREST DRIVE  
PUNXSUTAWNEY, PA 15767  
814-938-4500

000315  
QUEST DIAGNOSTICS CLINICAL LABS INC-SB  
900 BUSINESS CENTER DRIVE  
HORSHAM, PA 19044  
215-957-9300

027461  
QUEST DIAGNOSTICS INC-SB  
400 EGYPT ROAD  
NORRISTOWN, PA 19403  
610-631-4219

001136  
QUEST DIAGNOSTICS NICHOLS INSTITUTE-SB  
14225 NEWBROOK DRIVE  
PO BOX 10841  
CHANTILLY, VA 20153-0841  
703-802-6900

000482  
QUEST DIAGNOSTICS OF PA INC-SB  
875 GREENTREE RD  
4 PARKWAY CENTER  
PITTSBURGH, PA 15220-3610  
412-920-7600

025461  
QUEST DIAGNOSTICS VENTURE LLC-SB  
875 GREENTREE ROAD  
4 PARKWAY CENTER  
PITTSBURGH, PA 15220-3610  
412-920-7631

000150  
READING HOSPITAL & MED CTR-S  
6TH AND SPRUCE STREETS  
WEST READING, PA 19611  
610-988-8080

000206  
RIDDLE MEMORIAL HOSPITAL-S  
BALTIMORE PIKE HIGHWAY 1  
MEDIA, PA 19063  
610-566-9400

000243  
ROXBOROUGH MEMORIAL HOSPITAL-S  
5800 RIDGE AVE  
PHILADELPHIA, PA 19128  
215-487-4394

000171  
SACRED HEART HOSPITAL-S  
4TH & CHEW STS  
ALLENTOWN, PA 18102  
610-776-4727

000259  
SAINT AGNES MEDICAL CENTER-S  
1900 SOUTH BROAD STREET  
PHILADELPHIA, PA 19145  
215-339-4360

000087  
SAINT CLAIR MEMORIAL HOSPITAL-S  
1000 BOWER HILL RD  
PITTSBURGH, PA 15243  
412-561-4900

000174  
SAINT LUKES HOSPITAL-S  
801 OSTRUM ST  
BETHLEHEM, PA 18015  
610-954-4558

000328  
SAINT MARY MEDICAL CENTER-S  
LANGHORNE—NEWTOWN RD  
LANGHORNE, PA 19047  
215-750-2162

000048  
SAINT VINCENT HEALTH CENTER-S  
232 WEST 25TH STREET  
ERIE, PA 16544  
814-452-5383

000101  
SEWICKLEY VALLEY HOSPITAL LAB-S  
BLACKBURN RD & FITCH DRIVE  
SEWICKLEY, PA 15143  
412-741-6600

000064  
SHARON REGIONAL HEALTH SYSTEM-SB  
740 EAST STATE STREET  
SHARON, PA 16146  
724-983-3911

000039  
SOLDIERS & SAILORS MEM HOSP-S  
CENTRAL AVE  
WELLSBORO, PA 16901  
570-724-1631

000297  
SOMERSET HOSPITAL LAB-B  
225 S CENTER AVE  
SOMERSET, PA 15501  
814-443-5000

022376  
SPECIALTY LABORATORIES-SB  
2211 MICHIGAN AVENUE  
SANTA MONICA, CA 90404  
310-828-6543

000151  
ST JOSEPH QUALITY MEDICAL LAB-SB  
215 NORTH 12TH STREET BOX 316  
READING, PA 19603  
610-378-2200

000261  
ST JOSEPH'S HOSPITAL-DIV NPHS-S  
16TH ST & GIRARD AVE  
PHILADELPHIA, PA 19130  
215-787-9000

000318  
ST LUKES HOSP ALLENTOWN CAMPUS-S  
1736 HAMILTON STREET  
ALLENTOWN, PA 18104  
610-770-8300

000195  
ST LUKES QUAKERTOWN HOSPITAL-S  
11TH ST & PARK AVE  
PO BOX 9003  
QUAKERTOWN, PA 18951  
215-538-4681

000094  
SUBURBAN GENERAL HOSPITAL-S  
100 SOUTH JACKSON AVENUE  
BELLEVUE, PA 15202  
412-734-6000

000207  
TAYLOR HOSPITAL DIV OF CCMC-S  
175 E CHESTER PIKE  
RIDLEY PARK, PA 19078  
610-595-6450

000249  
TEMPLE EAST INC NE-S  
2301 EAST ALLEGHENY AVENUE  
PHILADELPHIA, PA 19134  
215-291-3671

000193  
TEMPLE LOWER BUCKS HOSPITAL LAB-S  
501 BATH ROAD  
BRISTOL, PA 19007  
215-785-9200

000235  
TEMPLE UNIV HOSPITAL EPISCOPAL CAMPUS-S  
100 EAST LEHIGH AVENUE  
PHILADELPHIA, PA 19125-1098  
215-427-7333

000265  
TEMPLE UNIVERSITY HOSPITAL-S  
3401 N BROAD ST  
PHILADELPHIA, PA 19140  
215-707-4353

000205  
THE MEDICAL CENTER BEAVER PA-SB  
1000 DUTCH RIDGE ROAD  
BEAVER, PA 15009-9700  
724-728-7000

000241  
THOMAS JEFFERSON UNIVERSITY HOSP-S  
125 SOUTH 11TH ST 204 PAVILION  
PHILADELPHIA, PA 19107  
215-955-6374

000051  
TITUSVILLE AREA HOSPITAL-S  
406 WEST OAK STREET  
TITUSVILLE, PA 16354  
814-827-1851

000313  
TYLER MEMORIAL HOSPITAL-S  
880 SR 6 W  
TUNKHANNOCK, PA 18657  
570-836-2161

000124  
TYRONE HOSPITAL-SB  
CLAY AVENUE EXTENSION  
TYRONE, PA 16686  
814-684-0484

000061  
UNITED COMMUNITY HOSPITAL-SB  
631 NORTH BROAD STREET EXT  
GROVE CITY, PA 16127  
724-450-7125

000121  
UPMC BEDFORD MEMORIAL-SB  
10455 LINCOLN HIGHWAY  
EVERETT, PA 15537  
814-623-3506

000096  
UPMC BRADDOCK-S  
400 HOLLAND AVENUE  
BRADDOCK, PA 15104  
412-636-5291

000059  
UPMC HORIZON GREENVILLE-SB  
110 NORTH MAIN STREET  
GREENVILLE, PA 16125  
724-588-2100

000057  
UPMC HORIZON SHENANGO-SB  
2200 MEMORIAL DRIVE  
FARRELL, PA 16121  
724-981-3500

000126  
UPMC LEE REGIONAL HOSPITAL-SB  
320 MAIN STREET  
JOHNSTOWN, PA 15901  
814-533-0130

000098  
UPMC MCKEESPORT LABORATORY-S  
1500 FIFTH AVENUE  
MCKEESPORT, PA 15132  
412-664-2233

000058  
UPMC NORTHWEST-SB  
1 SPRUCE STREET  
FRANKLIN, PA 16323  
814-437-7000

000084  
UPMC PASSAVANT-S  
9100 BABCOCK BLVD  
PITTSBURGH, PA 15237  
412-367-6700

005784  
UPMC PASSAVANT LABORATORY CRANBERRY-S  
ONE ST FRANCIS WAY  
CRANBERRY TOWNSHIP, PA 16066  
724-772-5370

000083  
UPMC PRESBYTERIAN SHADYSIDE CP PUH-S  
ROOM 5929 MAIN TOWER CHP  
200 LOTHROP STREET  
PITTSBURGH, PA 15213-2582  
412-648-6000

000092  
UPMC PRESBYTERIAN SHADYSIDE LAB SHDY-S  
5230 CENTRE AVENUE  
PITTSBURGH, PA 15232  
412-622-2315

000091  
UPMC SAINT MARGARET HOSPITAL-S  
815 FREEPORT ROAD  
PITTSBURGH, PA 15215  
412-784-4000

000622  
WARMINSTER HOSPITAL-S  
225 NEWTOWN ROAD  
WARMINSTER, PA 18974  
215-441-6700

000066  
WARREN GENERAL HOSPITAL-SB  
2 CRESCENT PARK  
WARREN, PA 16365  
814-723-3300

000111  
WASHINGTON HOSPITAL-S  
155 WILSON AVE  
WASHINGTON, PA 15301  
724-223-3136

000298  
WAYNE MEMORIAL HOSPITAL-S  
601 PARK STREET  
HONESDALE, PA 18431  
570-253-1300

000133  
WAYNESBORO HOSPITAL-S  
501 E MAIN STREET  
WAYNESBORO, PA 17268  
717-765-3403

000095  
WESTERN PENNSYLVANIA HOSPITAL-S  
4800 FRIENDSHIP AVE  
PITTSBURGH, PA 15224  
412-578-5779

007731  
WESTERN RESERVE CARE SYSTEM-S  
500 GYPSY LANE  
YOUNGSTOWN, OH 44504  
216-740-3794

000112  
WESTMORELAND HOSPITAL-S  
532 W PITTSBURGH ST  
GREENSBURG, PA 15601  
724-832-4365

000037  
WILLIAMSPORT HOSP & MED CENTER-SB  
777 RURAL AVENUE  
WILLIAMSPORT, PA 17701-3198  
570-321-2300

000106  
WINDBER MEDICAL CENTER-B  
600 SOMERSET AVE  
WINDBER, PA 15963  
814-467-6611

000018  
WVHCS HOSP PENNANT LABORATORY-SB  
575 NORTH RIVER STREET  
WILKES BARRE, PA 18764  
570-829-8111

025064  
WVU HOSPITAL CLINICAL LABS-S  
1 MEDICAL CENTER DR  
PO BOX 8009  
MORGANTOWN, WV 26506-8009  
304-598-4241

000141  
YORK HOSPITAL-SB  
1001 SOUTH GEORGE STREET  
YORK, PA 17405  
717-851-2345

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Acting Secretary*

[Pa.B. Doc. No. 03-1361. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Laboratories Approved to Determine Urine Controlled Substance Content

The following laboratories are licensed by the Department of Health (Department) under the Clinical Laboratory Act (35 P.S. §§ 2151—2165) and/or the Federal Clinical Laboratory Improvement Act of 1967 (42 U.S.C.A. § 263a) and are currently approved by the Department under 28 Pa. Code § 5.50 (relating to approval to provide special analytical services) to perform analyses of urine for the determination of controlled substances or their biotransformation products. This approval is based on demonstrated proficiency in tests conducted by the Bureau of Laboratories of the Department. These laboratories are also approved and designated for purposes of the Vehicle Code, 75 Pa.C.S. §§ 1547 and 3755 (relating to chemical testing to determine amount of alcohol or controlled substance; reports by emergency room personnel), the Fish and Boat Code, 30 Pa.C.S. § 5125 (relating to chemical testing to determine amount of alcohol or controlled substance) and the Game and Wildlife Code, 34 Pa.C.S. § 2502 (relating to chemical test to determine amount of alcohol) as qualified to perform the types of services which will reflect the presence of controlled substances or their biotransformation products in urine.

Depending upon their capability and performance in proficiency surveys, laboratories are approved to perform screening and/or confirmatory urine drug analyses. Laboratories approved to perform screening tests only are designated on the approval list by an "S" after the laboratory's name. Laboratories approved to perform confirmatory testing only are designated by a "C" following the laboratory's name. Those approved to perform both screening and confirmatory analyses are designated by the letters "SC." Screening analyses provide a presumptive indication that a controlled substance is present. Confirmatory testing is used to substantiate screening results.

Persons seeking forensic urine drug analysis services from any of the listed laboratories should determine that the laboratory employs techniques and procedures acceptable for the purpose. They should also determine that the director of the facility is agreeable to performing analyses for that purpose. Persons seeking the analyses are re-

sponsible for specifying the extent to which the presence of a controlled substance is to be verified. That specification should be predicated upon the purpose for which the analysis is being sought.

The list of approved laboratories will be revised approximately semiannually and published in the *Pennsylvania Bulletin*. The name of a laboratory is sometimes changed but the location, personnel and testing procedures of the facility remain unchanged. When changes of this type occur, the clinical laboratory permit number does not change. If questions arise about the identity of a laboratory due to a name change, the clinical laboratory permit number should be used as the primary identifier. To assist in identifying a laboratory that performed a test if the name of the facility changed, the clinical laboratory permit numbers of the facilities are included in the lists of approved laboratories above the name of the laboratory at the time the list was prepared.

Questions regarding this list should be directed to M. Jeffery Shoemaker, Ph.D., Director, Division of Chemistry and Toxicology, Department of Health, Bureau of Laboratories, P. O. Box 500, Exton, PA 19341-0500, (610) 280-3464.

Persons with a disability who require an alternative format of this notice (for example, large print, audiotope, Braille) should contact Dr. Shoemaker at V/TT: (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

000212  
ABINGTON MEMORIAL HOSPITAL-S  
1200 OLD YORK ROAD  
ABINGTON, PA 19001  
215-576-2350

027908  
ACM MEDICAL LABORATORY-SC  
160 ELMGROVE PARK  
ROCHESTER, NY 14624  
716-429-2264

023114  
ACT LAB SERVICES INC-SC  
345 DRESHER ROAD  
HORSHAM, PA 19044  
215-674-0420

027180  
ADVANCED TOXICOLOGY NETWORK-SC  
3560 AIR CENTER COVE SUITE 101  
MEMPHIS, TN 38118  
901-794-5770

000233  
ALBERT EINSTEIN MED CTR NORTH-S  
5501 OLD YORK ROAD  
PHILADELPHIA, PA 19141  
215-456-6100

000040  
ALQUIPPA COMM HOSP PATHOLOGY DEPT-S  
2500 HOSPITAL DR—PATHOLOGY DEPT  
ALQUIPPA, PA 15001  
724-857-1240

000671  
ALLEG CNTY CORONERS DIV OF LABS-S  
542 FORBES AVENUE  
ROOM 10 COUNTY OFFICE BUILDING  
PITTSBURGH, PA 15219  
412-350-6873

028233  
ALLEGHENY GENERAL HOSP DEPT OF LAB MED-S  
320 E NORTH AVENUE  
PITTSBURGH, PA 15212  
412-359-6886

000077  
ALLEGHENY GENERAL HOSPITAL LABORATORIES-S  
1307 NORTH FEDERAL STREET  
PITTSBURGH, PA 15212  
412-359-3521

000119  
ALTOONA HOSPITAL-S  
620 HOWARD AVENUE  
ALTOONA, PA 16601-4899  
814-946-2340

026620  
AMMON ANALYTICAL LABORATORY-SC  
600 BLOY STREET  
HILLSIDE, NJ 07205  
908-624-0004

000452  
ANALYTIC BIO-CHEMISTRIES INC-SC  
1680-D LORETTA AVENUE  
FEASTERVILLE, PA 19053  
215-322-9210

000047  
ASSOCIATED CLINICAL LABORATORIES-SC  
1526 PEACH STREET  
ERIE, PA 16501  
814-461-2400

000085  
AUH—FORBES REGIONAL-S  
2570 HAYMAKER ROAD  
MONROEVILLE, PA 15146  
412-858-2560

000251  
AYER CLINICAL LAB-PENN HOSPITAL-S  
8TH & SPRUCE STS  
PHILADELPHIA, PA 19107  
215-829-3541

000320  
BARNES KASSON COUNTY HOSPITAL-S  
400 TURNPIKE STREET  
SUSQUEHANNA, PA 18847  
570-853-3135

021553  
BENDINER & SCHLESINGER INC-SC  
47 THIRD AVENUE  
NEW YORK, NY 10003  
212-254-2300

027615  
BIOLOGICAL SPECIALTY CORPORATION-S  
2165 NORTH LINE STREET  
COLMAR, PA 18915  
215-997-8771

027616  
BIOLOGICAL SPECIALTY CORPORATION-S  
3671 HULMEVILLE ROAD  
BENSALEM, PA 19020  
215-245-9855

027617  
BIOLOGICAL SPECIALTY CORPORATION-S  
502 PENN STREET  
READING, PA 19602  
610-375-9862

022757

BIOREFERENCE LABORATORIES INC-SC  
481B EDWARD H ROSS DRIVE  
ELMWOOD PARK, NJ 07407  
201-791-3600

000120

BON SECOURS—HOLY FAMILY REG HLTH-S  
2500 SEVENTH AVENUE  
ALTOONA, PA 16602-2099  
814-949-4495

000033

BRADFORD HOSPITAL LAB-S  
116-156 INTERSTATE PKWY  
BRADFORD, PA 16701-0218  
814-362-8247

000296

BRANDYWINE HOSPITAL-S  
201 REECEVILLE ROAD  
ATTN: LABORATORY  
COATESVILLE, PA 19320  
610-383-8000

000102

BROWNSVILLE GENERAL HOSPITAL LAB-S  
125 SIMPSON RD  
BROWNSVILLE, PA 15417  
724-785-7200

000107

CANONSBURG GENERAL HOSPITAL-S  
100 MEDICAL BOULEVARD  
CANONSBURG, PA 15317  
724-745-6100

000131

CARLISLE REGIONAL MEDICAL CENTER-S  
246 PARKER ST  
CARLISLE, PA 17013  
717-249-1212

000751

CEDAR CREST EMERGICENTER-S  
1101 SOUTH CEDAR CREST BOULEVARD  
ALLENTOWN, PA 18103  
610-433-4260

000215

CENTRAL MONTGOMERY MEDICAL CENTER-S  
100 MEDICAL CAMPUS DRIVE  
LANSDALE, PA 19446  
215-368-2100

000025

CENTRE COMMUNITY HOSPITAL-S  
1800 EAST PARK AVENUE  
STATE COLLEGE, PA 16803  
814-234-6117

000132

CHAMBERSBURG HOSPITAL-S  
112 NORTH SEVENTH ST  
CHAMBERSBURG, PA 17201  
717-267-7152

000310

CHARLES COLE MEMORIAL HOSPITAL-S  
1001 EAST SECOND STREET  
COUDERSPORT, PA 16915  
814-274-9300

000198

CHESTER COUNTY HOSPITAL-S  
701 E MARSHALL ST  
WEST CHESTER, PA 19380  
610-431-5182

000227

CHESTNUT HILL HOSPITAL-S  
8835 GERMANTOWN AVENUE  
DEPT OF PATHOLOGY  
PHILADELPHIA, PA 19118  
215-248-8630

000228

CHILDRENS HOSP OF PHILADELPHIA-S  
ONE CHILDREN'S CENTER 34TH & CIVIC  
PHILADELPHIA, PA 19104  
215-590-1000

000329

CLARION HOSPITAL-S  
1 HOSPITAL DRIVE  
CLARION, PA 16214  
814-226-9500

000009

CLINICAL LABORATORIES INC-SC  
901 KEYSTONE INDUSTRIAL PARK  
THROOP, PA 18512-1534  
570-346-1759

024916

CLINICAL SCIENCE LABORATORY INC-SC  
51 FRANCIS AVENUE  
MANSFIELD, MA 02048  
508-339-6106

000166

COMMUNITY HOSPITAL OF LANCASTER-S  
1100 EAST ORANGE STREET  
LANCASTER, PA 17602  
717-397-3711

000005

COMMUNITY MEDICAL CENTER-S  
1800 MULBERRY STREET  
SCRANTON, PA 18510  
570-969-8000

000125

CONEMAUGH VALLEY MEMORIAL HOSP-S  
1086 FRANKLIN STREET  
JOHNSTOWN, PA 15905-4398  
814-534-9000

025256

CORPORATE HEALTH SERVICES-S  
1914 MERCER AVENUE  
PO BOX 330  
FARRELL, PA 16121  
724-346-6425

000326

CORRY MEMORIAL HOSPITAL-S  
612 WEST SMITH STREET  
CORRY, PA 16407  
814-664-4641

000201

CROZER CHESTER MED CENTER-S  
1 MEDICAL CENTER BOULEVARD  
UPLAND, PA 19013  
610-447-2000

000363

DE JOHN MED LABORATORY INC-S  
1570 GARRETT ROAD  
UPPER DARBY, PA 19082  
610-626-2112

- 000204  
DELAWARE COUNTY MEMORIAL HOSP-S  
501 NORTH LANSDOWNE AVENUE  
DREXEL HILL, PA 19026-1186  
610-284-8100
- 024016  
DENVER FAMILY PRACTICE-S  
63 WEST CHURCH STREET  
STEVENS, PA 17578  
717-335-3311
- 000266  
DEPT OF PATHOLOGY & LAB MED-HUP-SC  
3400 SPRUCE STREET  
PHILADELPHIA, PA 19104  
215-662-6880
- 000194  
DOYLESTOWN HOSPITAL-S  
595 WEST STATE STREET  
DOYLESTOWN, PA 18901  
215-345-2250
- 000977  
DRUGSCAN INC-SC  
1119 MEARNES RD  
PO BOX 2969  
WARMINSTER, PA 18974  
215-674-9310
- 000175  
EASTON HOSPITAL-S  
250 SOUTH 21ST ST  
EASTON, PA 18042-3892  
610-250-4140
- 000214  
ELKINS PARK HOSPITAL-S  
60 EAST TOWNSHIP LINE ROAD  
ELKINS PARK, PA 19027  
215-663-6102
- 000164  
EPHRATA COMMUNITY HOSPITAL-S  
169 MARTIN AVE PO BOX 1002  
EPHRATA, PA 17522  
717-733-0311
- 000031  
ERHC RIDGWAY LABORATORY-S  
94 HOSPITAL STREET  
RIDGWAY, PA 15853  
814-788-8525
- 000032  
ERHC ST MARYS LABORATORY-S  
763 JOHNSONBURG RD  
SAINT MARYS, PA 15857  
814-788-8525
- 000181  
EVANGELICAL COMMUNITY HOSPITAL-S  
1 HOSPITAL DRIVE  
LEWISBURG, PA 17837  
570-522-2510
- 021431  
FITNESS FOR DUTY CENTER-S  
PA POWER & LIGHT CO  
PO BOX 467  
BERWICK, PA 18603  
570-542-3336
- 000192  
FRANKFORD HOSP BUCKS CO CAMPUS-S  
380 NORTH OXFORD VALLEY ROAD  
LANGHORNE, PA 19047-8304  
215-934-5227
- 000236  
FRANKFORD HOSPITAL FRANK DIV-S  
FRANKFORD AVE & WAKELING ST  
PHILADELPHIA, PA 19124  
215-831-2068
- 000341  
FRANKFORD HOSPITAL—TORRES DIV-S  
RED LION & KNIGHTS ROADS  
PHILADELPHIA, PA 19114  
215-612-4000
- 000115  
FRICK HOSPITAL-S  
508 SOUTH CHURCH STREET  
MOUNT PLEASANT, PA 15666  
724-547-1500
- 020644  
FRIENDS HOSPITAL-S  
4641 ROOSEVELT BOULEVARD  
PHILADELPHIA, PA 19124-2399  
215-831-4771
- 009163  
FRIENDS MEDICAL LAB INC-SC  
5820 SOUTHWESTERN BLVD  
BALTIMORE, MD 21227  
412-247-4417
- 024914  
GAUDENZIA ERIE INC-S  
414 WEST 5TH STREET  
ERIE, PA 16507  
814-459-4775
- 000173  
GEISINGER MEDICAL CENTER-SC  
N ACADEMY RD  
DANVILLE, PA 17822  
570-271-6338
- 000019  
GEISINGER WYOMING VALLEY MED CTR-S  
1000 E MOUNTAIN DRIVE  
WILKES BARRE, PA 18711  
570-826-7830
- 000237  
GERMANTOWN COMM HLTH WILLOW TERR-S  
ONE PENN BOULEVARD  
PHILADELPHIA, PA 19144  
215-951-8800
- 026799  
GHHA OCCUPATIONAL HEALTH CENTER LAB-S  
1000 ALLIANCE DRIVE  
HAZLETON, PA 18202  
570-459-1028
- 000152  
GNADEN HUETTEN MEMORIAL HOSP-S  
11TH & HAMILTON STS  
LEHIGHTON, PA 18235  
610-377-1300
- 000299  
GOOD SAMARITAN HOSPITAL-S  
4TH & WALNUT STS  
PO BOX 1281  
LEBANON, PA 17042-1218  
717-270-7500

000182  
GOOD SAMARITAN REGIONAL MED CTR-S  
700 EAST NORWEGIAN STREET  
POTTSVILLE, PA 17901  
570-621-4032

000238  
GRADUATE HOSPITAL-S  
1800 LOMBARD STREET  
PHILADELPHIA, PA 19146  
215-893-2240

025957  
GRAHAM-MASSEY ANALYTICAL LABS-SC  
60 TODD ROAD  
SHELTON, CT 06484  
203-926-1100

000654  
GUTHRIE CLINIC PATH LAB-S  
GUTHRIE SQUARE  
SAYRE, PA 18840  
570-888-5858

000239  
HAHNEMANN UNIVERSITY HOSPITAL-S  
BROAD & VINE STS MS 113  
PHILADELPHIA, PA 19102  
215-762-1783

000139 HANOVER GENERAL HOSPITAL-S  
300 HIGHLAND AVE  
HANOVER, PA 17331  
717-637-3711

000155  
HARRISBURG HOSPITAL LABORATORY-S  
SOUTH FRONT STREET  
HARRISBURG, PA 17101  
717-782-2832

000010  
HAZLETON GENERAL HOSPITAL-S  
EAST BROAD STREET  
HAZLETON, PA 18201  
570-501-4152

000169  
HEALTH NETWORK LABORATORIES-S  
1627 WEST CHEW STREET  
ALLENTOWN, PA 18102  
610-402-2236

000549  
HEALTH NETWORK LABORATORIES-S  
1200 SOUTH CEDAR CREST BLVD  
ALLENTOWN, PA 18103  
610-402-8150

000600  
HEALTH NETWORK LABORATORIES-S  
2545 SCHOENERSVILLE ROAD  
BETHLEHEM, PA 18017-7384  
484-884-2259

024655  
HEALTH NETWORK LABORATORIES-SC  
2024 LEHIGH STREET  
ALLENTOWN, PA 18103-4798  
610-402-8150

000216  
HOLY REDEEMER HOSPITAL-S  
1648 HUNTINGDON PIKE  
MEADOWBROOK, PA 19046  
215-947-3000

000130  
HOLY SPIRIT HOSPITAL-SC  
503 N 21ST STREET  
CAMP HILL, PA 17011-2288  
717-763-2206

000052  
INDIANA REGIONAL MEDICAL CENTER-S  
HOSPITAL ROAD  
PO BOX 788  
INDIANA, PA 15701-0788  
724-357-7167

000135  
J C BLAIR MEMORIAL HOSPITAL-S  
WARM SPRINGS AVE  
HUNTINGDON, PA 16652  
814-643-8645

000054  
JAMESON MEMORIAL HOSPITAL-S  
1211 WILMINGTON AVENUE  
NEW CASTLE, PA 16105  
724-656-4080

000240  
JEANES HOSPITAL-S  
7600 CENTRAL AVE  
PHILADELPHIA, PA 19111  
215-728-2347

000113  
JEANNETTE DISTRICT MEMORIAL HOSP-S  
600 JEFFERSON AVENUE  
JEANNETTE, PA 15644  
724-527-9330

000038  
JEFFERSON REGIONAL MEDICAL CENTER-S  
575 COAL VALLEY ROAD  
P. O. BOX 18119  
PITTSBURGH, PA 15236  
412-469-5723

000200  
JENNERSVILLE REGIONAL HOSPITAL-S  
1015 WEST BALTIMORE PIKE  
WEST GROVE, PA 19390  
610-869-1080

000312  
JERSEY SHORE HOSPITAL-S  
1020 THOMPSON STREET  
JERSEY SHORE, PA 17740  
717-398-0100

000532  
KENSINGTON HOSPITAL-S  
136 WEST DIAMOND STREET  
PHILADELPHIA, PA 19122  
215-426-8100

026008  
KROLL LABORATORY SPECIALISTS-SC  
1111 NEWTON STREET  
GRETNA, LA 70053  
504-361-8989

021306  
LAB CORP OCCUPATIONAL TEST SRVCS-SC  
1120 STATELINE ROAD WEST  
SOUTHAVEN, MS 38671  
886-827-8042



000260  
LAB OF PATHOLOGY & LAB MEDICINE-S  
3601 A STREET  
PHILADELPHIA, PA 19134  
215-427-5337

020512  
LABCORP OCCUPATIONAL TESTING SER-SC  
1904 ALEXANDER DRIVE  
PO BOX 12652  
RESRCH TRNGL PARK, NC 27709  
919-572-7465

001088  
LABCORP OF AMERICA HOLDINGS-SC  
69 FIRST AVE PO BOX 500  
RARITAN, NJ 08869  
201-526-2400

022715  
LABONE INC-SC  
10101 RENNER BOULEVARD  
LENEXA, KS 66219-9752  
913-888-1770

000165  
LANCASTER GENERAL HOSPITAL-S  
555 N DUKE ST  
PO BOX 3555  
LANCASTER, PA 17603  
717-299-5511

000163  
LANCASTER GENERAL HOSP-SUS DIV-S  
306 NORTH SEVENTH STREET  
COLUMBIA, PA 17512  
717-684-2841

000167  
LANCASTER REGIONAL MED CENTER-S  
250 COLLEGE AVENUE  
PO BOX 3434  
LANCASTER, PA 17604  
717-291-8022

000114  
LATROBE AREA HOSPITAL-S  
121 WEST 2ND AVENUE  
LATROBE, PA 15650  
724-537-1550

000138  
LEWISTOWN HOSPITAL-S  
HIGHLAND AVENUE  
LEWISTOWN, PA 17044  
717-248-5411

000030  
LOCK HAVEN HOSPITAL-S  
24 CREE DRIVE  
LOCK HAVEN, PA 17745  
570-893-5000

000639  
MAGEE-WOMENS HOSPITAL OF UPMC-S  
300 HALKET STREET  
PITTSBURGH, PA 15213  
412-647-4651

000213  
MAIN LINE CLIN LABS BRYN MAWR CP-S  
130 BRYN MAWR AVENUE  
BRYN MAWR, PA 19010  
610-526-3554

000242  
MAIN LINE CLIN LABS LANKENAU CP-S  
100 EAST LANCASTER AVENUE  
WYNNEWOOD, PA 19096  
610-645-2615

000199  
MAIN LINE CLIN LABS PAOLI MEM CP-S  
255 WEST LANCASTER AVENUE  
PAOLI, PA 19301  
610-648-1000

000004  
MARIAN COMMUNITY HOSPITAL-S  
100 LINCOLN AVENUE  
CARBONDALE, PA 18407  
717-281-1042

000049  
MEADVILLE MED CTR-LIBERTY ST-S  
751 LIBERTY STREET  
MEADVILLE, PA 16335  
814-336-3121

000268  
MEDICAL COLLEGE OF PA HOSPITAL-S  
3300 HENRY AVENUE  
PHILADELPHIA, PA 19129  
215-842-7306

005574  
MEDTOX LABORATORIES INC-SC  
402 WEST COUNTY ROAD D  
ST PAUL, MN 55112  
612-636-7466

000023  
MEMORIAL HOSPITAL LAB-S  
1 HOSPITAL DRIVE  
TOWANDA, PA 18848  
570-265-2191

000203  
MERCY HEALTH LAB/MFH-S  
1500 LANSDOWNE AVENUE  
DARBY, PA 19023  
610-237-4262

000247  
MERCY HEALTH LAB/MHOP-S  
54 AND CEDAR AVENUE  
PHILADELPHIA, PA 19143  
215-748-9181

000219  
MERCY HEALTH LAB/MSH-S  
2701 DEKALB PIKE  
NORRISTOWN, PA 19401  
610-278-2090

000336  
MERCY HEALTH PARTNERS-S  
746 JEFFERSON AVE  
SCRANTON, PA 18510  
570-348-7100

000017  
MERCY HOSPITAL LABORATORY-S  
25 CHURCH STREET  
PO BOX 658  
WILKES BARRE, PA 18765  
570-826-3100

000082  
MERCY HOSPITAL LABORATORY-S  
PRIDE & LOCUST STREETS  
PITTSBURGH, PA 15219  
412-232-7831

000245  
METHODIST HOSP DIVISION/TJUH INC-S  
2301 SOUTH BROAD STREET  
PHILADELPHIA, PA 19148  
215-952-9059

000128  
MINERS MEDICAL CENTER-S  
290 HAIDA AVENUE  
PO BOX 689  
HASTINGS, PA 16646  
814-948-7171

000108  
MONONGAHELA VALLEY HOSP INC-S  
COUNTRY CLUB RD RT 88  
MONONGAHELA, PA 15063  
724-258-1000

000217  
MONTGOMERY HOSPITAL LAB-S  
POWELL & FORNANCE STS  
NORRISTOWN, PA 19401  
610-270-2173

000035  
MUNCY VALLEY HOSPITAL-S  
215 EAST WATER ST  
MUNCY, PA 17756  
570-546-8282

000304  
NASON HOSPITAL-S  
NASON DRIVE  
ROARING SPRING, PA 16673  
814-224-6215

000504  
NATIONAL MED SERVICES INC LAB-SC  
3701 WELSH ROAD  
WILLOW GROVE, PA 19090  
215-657-4900

000248  
NAZARETH HOSPITAL-S  
2601 HOLME AVE  
PHILADELPHIA, PA 19152  
215-335-6245

027246  
NORCHEM DRUG TESTING LABORATORY-SC  
1760 EAST ROUTE 66, SUITE 1  
FLAGSTAFF, AZ 86004  
520-526-1011

000807  
OMEGA MEDICAL LABORATORIES INC-SC  
2001 STATE HILL ROAD SUITE 100  
WYOMISSING, PA 19610-1699  
610-378-1900

000309  
PARKVIEW HOSPITAL-S  
1331 EAST WYOMING AVENUE  
PHILADELPHIA, PA 19124  
215-537-7430

000250  
PARKWAY CLINICAL LABORATORIES-S  
3448 B PROGRESS DRIVE  
BENSALEM, PA 19020  
215-245-5112

000316  
PENN STATE MILTON S HERSHEY MED CTR-S  
500 UNIVERSITY DRIVE  
DEPT OF PATHOLOGY & LAB MEDICINE  
HERSHEY, PA 17033  
717-531-8353

022533  
PENNSYLVANIA DEPT OF HEALTH-SC  
110 PICKERING WAY  
LIONVILLE, PA 19353  
610-280-3464

027512  
PHARCHEM INC TEXAS DIVISION-SC  
4600 N BEACH STREET  
HALTOM CITY, TX 76137  
817-215-8826

000197  
PHOENIXVILLE HOSPITAL LABORATORY-S  
140 NUTT RD  
DEPT OF PATHOLOGY  
PHOENIXVILLE, PA 19460-0809  
610-983-1612

000157  
PINNACLEHLTH/COMM GEN OSTEO HOSP-S  
4300 LONDONDERRY RD  
PO BOX 3000  
HARRISBURG, PA 17109  
717-657-7214

000520  
PITTSBURGH CRIMINALISTICS-SC  
1320 FIFTH AVENUE  
PITTSBURGH, PA 15219  
412-391-6118

000022  
POCONO MEDICAL CENTER LAB-S  
206 EAST BROWN STREET  
EAST STROUDSBURG, PA 18301  
570-476-3544

000221  
POTTSTOWN MEMORIAL MED CTR MAIN LAB-S  
1600 EAST HIGH STREET  
POTTSTOWN, PA 19464  
610-327-7000

000183  
POTTSVILLE HOSP AND WARNE CLINIC-S  
420 SOUTH JACKSON STREET  
POTTSVILLE, PA 17901  
570-621-5262

000258  
PRESBYTERIAN MED CNTR OF UNIV OF PA HLTH  
51 NORTH 39TH ST  
5TH FLR RM 530  
DEPARTMENT OF PATHOLOGY & LAB  
PHILADELPHIA, PA 19104-2640  
215-662-3435

000516  
PRINCETON BIOMEDICAL LABS INC-S  
2921 NEW RODGERS ROAD  
BRISTOL, PA 19007  
215-785-5200

021648  
PSYCHEMEDICS COPORATION-SC  
5832 UPLANDER WAY  
CULVER CITY, CA 90230  
800-522-7424

- 000300  
PUNXSUTAWNEY AREA HOSPITAL-S  
81 HILLCREST DRIVE  
PUNXSUTAWNEY, PA 15767  
814-938-4500
- 009620  
QUEST DIAGNOSTICS CLIN LABS INC-SC  
7600 TYRONE AVENUE  
VAN NUYS, CA 91405  
818-376-6195
- 000315  
QUEST DIAGNOSTICS CLINICAL LABS INC-S  
900 BUSINESS CENTER DRIVE  
HORSHAM, PA 19044  
215-957-9300
- 027461  
QUEST DIAGNOSTICS INC-SC  
400 EGYPT ROAD  
NORRISTOWN, PA 19403  
610-631-4219
- 001136  
QUEST DIAGNOSTICS NICHOLS INSTITUTE-SC  
14225 NEWBROOK DRIVE  
PO BOX 10841  
CHANTILLY, VA 20153-0841  
703-802-6900
- 000482  
QUEST DIAGNOSTICS OF PA INC-SC  
875 GREENTREE RD  
4 PARKWAY CENTER  
PITTSBURGH, PA 15220-3610  
412-920-7600
- 025461  
QUEST DIAGNOSTICS VENTURE LLC-SC  
875 GREENTREE ROAD  
4 PARKWAY CENTER  
PITTSBURGH, PA 15220-3610  
412-920-7631
- 024249  
QUINTILES LABORATORIES LTD-SC  
5500 HIGHLANDS PARKWAY SUITE 600  
SMYRNA, GA 30082  
770-434-8492
- 000150  
READING HOSPITAL & MED CTR-S  
6TH AND SPRUCE STREETS  
WEST READING, PA 19611  
610-988-8080
- 025348  
REDWOOD TOXICOLOGY LABORATORY-SC  
3650 WESTWIND BOULEVARD  
SANTA ROSA, CA 95403  
707-577-7958
- 000206  
RIDDLE MEMORIAL HOSPITAL-S  
BALTIMORE PIKE HIGHWAY 1  
MEDIA, PA 19063  
610-566-9400
- 001247  
ROTHSVILLE FAMILY PRACTICE-S  
2320 ROTHSVILLE ROAD  
LITITZ, PA 17543  
717-627-1214
- 000243  
ROXBOROUGH MEMORIAL HOSPITAL-S  
5800 RIDGE AVE  
PHILADELPHIA, PA 19128  
215-487-4394
- 000171  
SACRED HEART HOSPITAL-S  
4TH & CHEW STS  
ALLENTOWN, PA 18102  
610-776-4727
- 000087  
SAINT CLAIR MEMORIAL HOSPITAL-S  
1000 BOWER HILL RD  
PITTSBURGH, PA 15243  
412-561-4900
- 000174  
SAINT LUKES HOSPITAL-S  
801 OSTRUM ST  
BETHLEHEM, PA 18015  
610-954-4558
- 000328  
SAINT MARY MEDICAL CENTER-S  
LANGHORNE—NEWTOWN RD  
LANGHORNE, PA 19047  
215-750-2162
- 024496  
SCIENTIFIC TESTING LABS INC-SC  
450 SOUTHLAKE BOULEVARD  
RICHMOND, VA 23236  
804-378-9130
- 028471  
SECON A DIVISION OF CIVIGENICS-S  
316 MECCA DRIVE  
LAFAYETTE, LA 70508  
337-291-9501
- 000101  
SEWICKLEY VALLEY HOSPITAL LAB-S  
BLACKBURN RD & FITCH DRIVE  
SEWICKLEY, PA 15143  
412-741-6600
- 000064  
SHARON REGIONAL HEALTH SYSTEM-S  
740 EAST STATE STREET  
SHARON, PA 16146  
724-983-3911
- 000039  
SOLDIERS & SAILORS MEM HOSP-S  
CENTRAL AVE  
WELLSBORO, PA 16901  
570-724-1631
- 000297  
SOMERSET HOSPITAL LAB-S  
225 S CENTER AVE  
SOMERSET, PA 15501  
814-443-5000
- 022376  
SPECIALTY LABORATORIES-S  
2211 MICHIGAN AVENUE  
SANTA MONICA, CA 90404  
310-828-6543
- 000151  
ST JOSEPH QUALITY MEDICAL LAB-SC  
215 NORTH 12TH STREET BOX 316  
READING, PA 19603  
610-378-2200

000261  
ST JOSEPH'S HOSPITAL-DIV NPHS-S  
16TH ST & GIRARD AVE  
PHILADELPHIA, PA 19130  
215-787-9000

000318  
ST LUKES HOSP ALLENTOWN CAMPUS-S  
1736 HAMILTON STREET  
ALLENTOWN, PA 18104  
610-770-8300

000094  
SUBURBAN GENERAL HOSPITAL-S  
100 SOUTH JACKSON AVENUE  
BELLEVUE, PA 15202  
412-734-6000

000187  
SUNBURY COMMUNITY HOSPITAL-S  
350 N 11TH ST  
SUNBURY, PA 17801  
570-286-3333

000207  
TAYLOR HOSPITAL DIV OF CCMC-S  
175 E CHESTER PIKE  
RIDLEY PARK, PA 19078  
610-595-6450

024997  
TECHNOW INC-S  
31 INDUSTRIAL HIGHWAY  
ESSINGTON, PA 19029  
610-362-0610

000249  
TEMPLE EAST INC NE-S  
2301 EAST ALLEGHENY AVENUE  
PHILADELPHIA, PA 19134  
215-291-3671

000193  
TEMPLE LOWER BUCKS HOSPITAL LAB-S  
501 BATH ROAD  
BRISTOL, PA 19007  
215-785-9200

000235  
TEMPLE UNIV HOSPITAL EPISCOPAL CAMPUS-S  
100 EAST LEHIGH AVENUE  
PHILADELPHIA, PA 19125-1098  
215-427-7333

000265  
TEMPLE UNIVERSITY HOSPITAL-S  
3401 N BROAD ST  
PHILADELPHIA, PA 19140  
215-707-4353

000205  
THE MEDICAL CENTER BEAVER PA-S  
1000 DUTCH RIDGE ROAD  
BEAVER, PA 15009-9700  
724-728-7000

000241  
THOMAS JEFFERSON UNIVERSITY HOSP-S  
125 SOUTH 11TH ST 204 PAVILION  
PHILADELPHIA, PA 19107  
215-955-6374

000051  
TITUSVILLE AREA HOSPITAL-S  
406 WEST OAK STREET  
TITUSVILLE, PA 16354  
814-827-1851

023608  
UHS OF FAIRMOUNT INC-S  
561 FAIRTHORNE AVENUE  
PHILADELPHIA, PA 19128  
215-487-4078

000061  
UNITED COMMUNITY HOSPITAL-S  
631 NORTH BROAD STREET EXT  
GROVE CITY, PA 16127  
724-450-7125

000121  
UPMC BEDFORD MEMORIAL-S  
10455 LINCOLN HIGHWAY  
EVERETT, PA 15537  
814-623-3506

000096  
UPMC BRADDOCK-S  
400 HOLLAND AVENUE  
BRADDOCK, PA 15104  
412-636-5291

000059  
UPMC HORIZON GREENVILLE-S  
110 NORTH MAIN STREET  
GREENVILLE, PA 16125  
724-588-2100

000057  
UPMC HORIZON SHENANGO-S  
2200 MEMORIAL DRIVE  
FARRELL, PA 16121  
724-981-3500

000126  
UPMC LEE REGIONAL HOSPITAL-S  
320 MAIN STREET  
JOHNSTOWN, PA 15901  
814-533-0130

000098  
UPMC MCKEESPORT LABORATORY-S  
1500 FIFTH AVENUE  
MCKEESPORT, PA 15132  
412-664-2233

000058  
UPMC NORTHWEST-S  
1 SPRUCE STREET  
FRANKLIN, PA 16323  
814-437-7000

005784

1 UPMC PASSAVANT LABORATORY CRANBERRY-S  
ONE ST FRANCIS WAY  
CRANBERRY TOWNSHIP, PA 16066  
724-772-5370

000083  
UPMC PRESBYTERIAN SHADYSIDE CP PUH-SC  
ROOM 5929 MAIN TOWER CHP  
200 LOTHROP STREET  
PITTSBURGH, PA 15213-2582  
412-648-6000

000092  
UPMC PRESBYTERIAN SHADYSIDE LAB SHDY-S  
5230 CENTRE AVENUE  
PITTSBURGH, PA 15232  
412-622-2315

000091  
UPMC SAINT MARGARET HOSPITAL-S  
815 FREEPORT ROAD  
PITTSBURGH, PA 15215  
412-784-4000

027225  
US DRUG TESTING LABORATORIES INC-SC  
1700 SOUTH MOUNT PROSPECT ROAD  
DES PLAINES, IL 60018  
847-375-0770

000335  
VALLEY FORGE MED CTR & HOSP-S  
1033 W GERMANTOWN PIKE  
NORRISTOWN, PA 19403  
610-539-8500

000622  
WARMINSTER HOSPITAL-S  
225 NEWTOWN ROAD  
WARMINSTER, PA 18974  
215-441-6700

000066  
WARREN GENERAL HOSPITAL-S  
2 CRESCENT PARK  
WARREN, PA 16365  
814-723-3300

000133  
WAYNESBORO HOSPITAL-S  
501 E MAIN STREET  
WAYNESBORO, PA 17268  
717-765-3403

000095  
WESTERN PENNSYLVANIA HOSPITAL-S  
4800 FRIENDSHIP AVE  
PITTSBURGH, PA 15224  
412-578-5779

007731  
WESTERN RESERVE CARE SYSTEM-SC  
500 GYPSY LANE  
YOUNGSTOWN, OH 44504  
216-740-3794

000112  
WESTMORELAND HOSPITAL-S  
532 W PITTSBURGH ST  
GREENSBURG, PA 15601  
724-832-4365

000037  
WILLIAMSPORT HOSP & MED CENTER-S  
777 RURAL AVENUE  
WILLIAMSPORT, PA 17701-3198  
570-321-2300

000018  
WVHCS HOSP PENNANT LABORATORY-SC  
575 NORTH RIVER STREET  
WILKES BARRE, PA 18764  
570-829-8111

000141  
YORK HOSPITAL-S  
1001 SOUTH GEORGE STREET  
YORK, PA 17405  
717-851-2345

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Acting Secretary*

[Pa.B. Doc. No. 03-1362. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Laboratories Approved to Perform Blood Lead and/or Erythrocyte Protoporphyrin

The following laboratories are licensed in accordance with the Clinical Laboratory Act (35 P. S. §§ 2151—2165) and/or the Federal Clinical Laboratory Improvement Act of 1967 (42 U.S.C.A. § 263a) and are currently approved under 28 Pa. Code § 5.50 (relating to approval to provide special analytical services) to perform analyses of blood for lead or erythrocyte protoporphyrin content. This approval is based on demonstrated proficiency in periodic evaluations conducted by the Bureau of Laboratories of the Department of Health (Department).

Lead poisoning is a reportable noncommunicable disease. Approved laboratories which offer blood lead testing services are required to inform the Department of actual or possible incidents of this condition in accordance with 28 Pa. Code § 27.34 (relating to reporting cases of lead poisoning.) These regulations specify the following requirements for reporting by clinical laboratories.

(1) A clinical laboratory shall report all blood lead test results on both venous and capillary specimens for persons under 16 years of age to the Department's Childhood Lead Poisoning Prevention Program, Division of Maternal and Child Health, Bureau of Family Health.

(2) A clinical laboratory shall report an elevated blood lead level in a person 16 years of age or older to the Department's Division of Environmental Health Epidemiology, Bureau of Epidemiology or to other locations as designated by the Department. An elevated blood lead level is defined by the National Institute for Occupational Safety and Health (NIOSH). As of January 26, 2002, NIOSH defines an elevated blood lead level as a venous blood lead level of 25 micrograms per deciliter ( $\mu\text{g/dL}$ ) or higher. The Department will publish in the *Pennsylvania Bulletin* any NIOSH update of the definition within 30 days of NIOSH's notification to the Department.

(3) A clinical laboratory which conducts blood lead tests on 100 or more specimens per month shall submit results electronically in a format specified by the Department.

(4) A clinical laboratory which conducts blood lead tests on less than 100 blood lead specimens per month shall submit results either electronically or by hard copy in the format specified by the Department.

(5) A laboratory which performs blood lead tests on blood specimens collected in this Commonwealth shall be licensed as a clinical laboratory and shall be specifically approved by the Department to conduct those tests.

(6) Blood lead analyses requested for occupational health purposes on blood specimens collected in this Commonwealth shall be performed only by laboratories which are licensed and approved as specified in paragraph (5) and which are also approved by the Occupational Safety and Health Administration of the United

States Department of Labor under 29 CFR 1910.1025(j)(2)(iii) (relating to lead).

(7) A clinical laboratory shall complete a blood lead test within 5 work days of the receipt of the blood specimen and shall submit the case report to the Department by the close of business of the next work day after the day on which the test was performed. The clinical laboratory shall submit a report of lead poisoning using either the hard copy form or electronic transmission format specified by the Department.

(8) When a clinical laboratory receives a blood specimen without all of the information required for reporting purposes, the clinical laboratory shall test the specimen and shall submit the incomplete report to the Department.

Erythrocyte protoporphyrin determinations may be performed as an adjunct determination to substantiate blood lead levels of 25 µg/dL or higher. Since erythrocyte protoporphyrin concentrations may not increase as a result of low-level exposures to lead, direct blood lead analysis is the only reliable method for identifying individuals with blood lead concentrations below 25 µg/dL.

Persons seeking blood lead or erythrocyte protoporphyrin analyses should determine that the laboratory employs techniques and procedures acceptable for the purpose for which the analyses are sought. Laboratories offering blood lead analysis only are designated with the letter "L" following the name of the laboratory. Those offering erythrocyte protoporphyrin analysis only are designated with the letter "P." Laboratories offering both services are designated with the letters "LP."

The list of approved laboratories will be revised approximately semiannually and published in the *Pennsylvania Bulletin*. The name of a laboratory is sometimes changed but the location, personnel and testing procedures of the facility remain unchanged. When changes of this type occur, the clinical laboratory permit number does not change. If questions arise about the identity of a laboratory due to a name change, the clinical laboratory permit number should be used as the primary identifier. To assist in identifying a laboratory that performed a test if the name of the facility changed, the clinical laboratory permit numbers of the facilities are included in the lists of approved laboratories before the name of the laboratory at the time the list was prepared.

The Department's blood lead proficiency testing program is approved by the United States Department of Health and Human Services in accordance with the requirements contained in the Clinical Laboratory Improvement Amendments of 1988 (42 CFR 493.901 and 493.937) which are administered by the Centers for Medicare and Medicaid Services. Participation in these programs may therefore be used to demonstrate acceptable performance for approval purposes under both Federal and Commonwealth statutes.

Questions regarding this list should be directed to Dr. M. Jeffery Shoemaker, Director, Division of Chemistry and Toxicology, Department of Health, Bureau of Laboratories, P. O. Box 500, Exton, PA 19341-0500, (610) 280-3464.

Persons with a disability who require an alternative format of this notice (for example, large print, audiotope, Braille) should contact Dr. Shoemaker at V/TT: (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT].

000671  
ALLEG CNTY CORONERS DIV OF LABS-L  
542 FORBES AVENUE  
ROOM 10 COUNTY OFFICE BUILDING  
PITTSBURGH, PA 15219  
412-350-6873

000016  
ANGELINE KIRBY MEM HEALTH CENTER-L  
71 NORTH FRANKLIN STREET  
WILKES BARRE, PA 18701  
570-823-5450

022912  
AURORA CONSOLIDATED LABORATORIES-LP  
8901 WEST LINCOLN AVE  
WEST ALLIS, WI 53227  
414-328-7945

020506  
CENTRAL PA ALLIANCE LABORATORY-LP  
1803 MT ROSE AVENUE  
SUITE C3-C4  
YORK, PA 17403  
717-851-1426

000009  
CLINICAL LABS INC A LAB CORP CO-LP  
901 KEYSTONE INDUSTRIAL PARK  
THROOP, PA 18512-1534  
570-346-1759

027845  
CLINICAL REFERENCE LABORATORY-LP  
8433 QUIVIRA ROAD  
LENEXA, KS 66215  
913-492-3652

000561  
EAST PENN MFG CO INC-LP  
DEKA RD KELLER TECH CENTER  
LYONS STATION, PA 19536  
610-682-6361

000332  
ELLWOOD CITY GENERAL HOSPITAL-LP  
724 PERSHING ST  
ELLWOOD CITY, PA 16117  
724-752-0081

001950  
EMSF PATSY J BRUNO MD LABORATORY-L  
369 NORTH 11TH STREET  
SUNBURY, PA 17801  
570-286-7755

027744  
EVANGELICAL MEDICAL SERVICES BUILDING-L  
905 US 522  
SELINSGROVE, PA 17870  
570-372-6119

000173  
GEISINGER MEDICAL CENTER-L  
N ACADEMY RD  
DANVILLE, PA 17822  
570-271-6338

000104  
GEORGE TOLSTOI LAB-UNIONTOWN HSP-L  
500 WEST BERKELEY STREET  
UNIONTOWN, PA 15401  
724-430-5143

025914  
GREAT SMOKIES DIAGNOSTIC LAB-L  
63 ZILICOA STREET  
ASHEVILLE, NC 28801  
828-253-0621

020802  
HAGERSTOWN MEDICAL LABORATORY-L  
11110 MEDICAL CAMPUS RD STE 230  
HAGERSTOWN, MD 21742  
301-790-8670

024655  
HEALTH NETWORK LABORATORIES-LP  
2024 LEHIGH STREET  
ALLENTOWN, PA 18103-4798  
610-402-8150

005618  
LAB CORP OF AMERICA HOLDINGS-LP  
6370 WILCOX ROAD  
DUBLIN, OH 43016-1296  
800-282-7300

021885  
LAB CORP OF AMERICA HOLDINGS-LP  
1447 YORK COURT  
BURLINGTON, NC 27215  
800-334-5161

001088  
LABCORP OF AMERICA HOLDINGS-LP  
69 FIRST AVE PO BOX 500  
RARITAN, NJ 08869  
201-526-2400

022715  
LABONE INC-LP  
10101 RENNER BOULEVARD  
LENEXA, KS 66219-9752  
913-888-1770

009523  
LABORATORY CORP OF AMERICA-L  
13900 PARK CENTER ROAD  
HERNDON, VA 20171  
703-742-3100

028006  
LEAD LAB AT LASALLE UNIVERSITY-L  
500 ADAMS AVENUE  
PHILADELPHIA, PA 19120  
215-728-6404

000242  
MAIN LINE CLIN LABS LANKENAU CP-L  
100 EAST LANCASTER AVENUE  
WYNNEWOOD, PA 19096  
610-645-2615

009003  
MAYO CLINIC-LP  
200 FIRST ST SW HILTON 530  
ROCHESTER, MN 55905  
507-284-3018

026302  
MEDICAL ASSOCIATES PC-P  
935 HIGHLAND BLVD SUITE 4400  
BOZEMAN, MT 59715  
406-587-5123

005574  
MEDTOX LABORATORIES INC-LP  
402 WEST COUNTY ROAD D  
ST PAUL, MN 55112  
612-636-7466

000203  
MERCY HEALTH LAB/MFH-L  
1500 LANSDOWNE AVENUE  
DARBY, PA 19023  
610-237-4262

000082  
MERCY HOSPITAL LABORATORY-L  
PRIDE & LOCUST STREETS  
PITTSBURGH, PA 15219  
412-232-7831

000504  
NATIONAL MED SERVICES INC LAB-LP  
3701 WELSH ROAD  
WILLOW GROVE, PA 19090  
215-657-4900

000807  
OMEGA MEDICAL LABORATORIES INC-L  
2001 STATE HILL ROAD SUITE 100  
WYOMISSING, PA 19610-1699  
610-378-1900

023801  
PACIFIC TOXICOLOGY LABORATORIES-LP  
9348 DE SOTO AVENUE  
CHATSWORTH, CA 91311  
818-598-3110

022533  
PENNSYLVANIA DEPT OF HEALTH-LP  
110 PICKERING WAY  
LIONVILLE, PA 19353  
610-280-3464

000022  
POCONO MEDICAL CENTER LAB-L  
206 EAST BROWN STREET  
EAST STROUDSBURG, PA 18301  
570-476-3544

000324  
PRIMARY CARE HLTH SERV INC LAB-L  
7227 HAMILTON AVE  
PITTSBURGH, PA 15208  
412-244-4728

000255  
PUBLIC HEALTH LAB CITY OF PHILA-L  
500 SOUTH BROAD STREET  
PHILADELPHIA, PA 19146  
215-685-6812

009620  
QUEST DIAGNOSTICS CLIN LABS INC-L  
7600 TYRONE AVENUE  
VAN NUYS, CA 91405  
818-376-6195

000315  
QUEST DIAGNOSTICS CLINICAL LABS INC-LP  
900 BUSINESS CENTER DRIVE  
HORSHAM, PA 19044  
215-957-9300

022174  
QUEST DIAGNOSTICS INCORPORATED-LP  
33608 ORTEGA HIGHWAY  
SAN JUAN CAPISTRANO, CA 92690-6130  
949-728-4000

001136  
QUEST DIAGNOSTICS NICHOLS INSTITUTE-LP  
14225 NEWBROOK DRIVE  
PO BOX 10841  
CHANTILLY, VA 20153-0841  
703-802-6900

000482  
 QUEST DIAGNOSTICS OF PA INC-LP  
 875 GREENTREE RD  
 4 PARKWAY CENTER  
 PITTSBURGH, PA 15220-3610  
 412-920-7600

025461  
 QUEST DIAGNOSTICS VENTURE LLC-LP  
 875 GREENTREE ROAD  
 4 PARKWAY CENTER  
 PITTSBURGH, PA 15220-3610  
 412-920-7631

000150  
 READING HOSPITAL & MED CTR-L  
 6TH AND SPRUCE STREETS  
 WEST READING, PA 19611  
 610-988-8080

022376  
 SPECIALTY LABORATORIES-L  
 2211 MICHIGAN AVENUE  
 SANTA MONICA, CA 90404  
 310-828-6543

000151  
 ST JOSEPH QUALITY MEDICAL LAB-L  
 215 NORTH 12TH STREET BOX 316  
 READING, PA 19603  
 610-378-2200

025103  
 TAMARAC MEDICAL-LP  
 7000 SOUTH BROADWAY SUITE 2C  
 LITTLETON, CO 80122  
 303-794-1083

000083  
 UPMC PRESBYTERIAN SHADYSIDE CP PUH-L  
 ROOM 5929 MAIN TOWER CHP  
 200 LOTHROP STREET  
 PITTSBURGH, PA 15213-2582  
 412-648-6000

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Acting Secretary*

[Pa.B. Doc. No. 03-1363. Filed for public inspection July 11, 2003, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Finding Allegheny County

Under section 2002(b) of The Administrative Code of 1929 (71 P. S. § 512(b)), the Secretary of Transportation makes the following written finding:

The Department of Transportation (Department) plans to replace the existing Mosside Boulevard Bridge carrying SR 0048 over Turtle Creek in the Borough of Monroeville, Allegheny County. The existing Mosside Boulevard Bridge has been determined eligible for the National Register of Historic Places. The effect of this project on the Mosside Boulevard Bridge will be mitigated by the following measures to minimize harm to the resource.

1. Prior to the replacement of the Mosside Boulevard Bridge, the structure will be recorded following State

level recordation guidelines. The Department shall ensure that all documentation is completed and accepted by the State Historic Preservation Officer (SHPO) prior to implementation of the undertaking and that copies of the recordation are available to the SHPO and appropriate local archives designated by the SHPO.

2. Presentation or display boards, which highlight the significant engineering features of the Mosside Boulevard Bridge will be made available to either the International Bridge Conference or to a National conference for bridge, structural or civil engineers. The presentation or display boards will be completed in consultation with the SHPO.

The Secretary has considered the environmental, economic, social and other effects of the proposed project as enumerated in section 2002 of The Administrative Code of 1929 and has concluded that there is no feasible and prudent alternative to the project as designed, and all reasonable steps have been taken to minimize the effect.

ALLEN D. BIEHLER, P. E.,  
*Secretary*

[Pa.B. Doc. No. 03-1364. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Finding Allegheny County

Under section 2002(b) of The Administrative Code of 1929 (71 P. S. § 512(b)), the Secretary of Transportation makes the following written finding:

The Federal Highway Administration (FHWA), the Department of Transportation and Allegheny County are planning to replace the Greensburg Pike Bridge which carries vehicular and pedestrian traffic over Turtle Creek and several railroad lines in North Versailles Township and Turtle Creek Borough, Allegheny County.

The Greensburg Pike Bridge is eligible for listing on the National Register of Historic Places and therefore qualifies as a Section 2002/Section 4(f) resource. The State Historic Preservation Officer (SHPO) has concurred in a determination of "adverse effect" upon the resource.

The subject project is considered a Level 2 Categorical Exclusion in accordance with 23 CFR 771.117(d), Item 3 (relating to categorical exclusions) as published in the August 28, 1987, *Federal Register*.

Based upon studies, there is no prudent and feasible alternative to the proposed action. Mitigation measures will be taken to minimize harm as stipulated in the Categorical Exclusion Evaluation/Programmatic Section 4(f) Evaluation and the Memorandum of Agreement between the FHWA and the SHPO.

The environmental, economic, social and other effects of the proposed project as enumerated in section 2002 of The Administrative Code of 1929 have been considered. It has been concluded that there is no feasible and prudent alternative to the project as designed and all reasonable steps have been taken to minimize effects.

ALLEN D. BIEHLER, P. E.,  
*Secretary*

[Pa.B. Doc. No. 03-1365. Filed for public inspection July 11, 2003, 9:00 a.m.]



**Finding  
Allegheny and Westmoreland Counties**

Under section 2002(b) of The Administrative Code of 1929 (71 P. S. § 512(b)), the Secretary of Transportation makes the following written finding:

The Federal Highway Administration (FHWA) and the Department of Transportation are planning to replace the bridge which carries SR 2076 over Pucketa Creek between Plum Borough in Allegheny County and Upper Burrell Township in Westmoreland County.

The bridge is eligible for listing on the National Register of Historic Places and therefore qualifies as a Section 2002/Section 4(f) resource. The State Historic Preservation Officer (SHPO) has concurred in a determination of "adverse effect" upon the resource.

The subject project is considered a Level 2 Categorical Exclusion in accordance with 23 CFR 771.117(d), Items 1 and 3 (relating to categorical exclusions) as published in the August 28, 1987, *Federal Register*.

Based upon studies, there is no prudent and feasible alternative to the proposed action. Mitigation measures will be taken to minimize harm as stipulated in the Categorical Exclusion Evaluation/Programmatic Section 4(f) Evaluation and the Memorandum of Agreement between the FHWA and the SHPO.

The environmental, economic, social and other effects of the proposed project as enumerated in section 2002 of The Administrative Code of 1929 have been considered. It has been concluded that there is no feasible and prudent alternative to the project as designed and all reasonable steps have been taken to minimize effects.

ALLEN D. BIEHLER, P. E.,  
*Secretary*

[Pa.B. Doc. No. 03-1366. Filed for public inspection July 11, 2003, 9:00 a.m.]

**ENVIRONMENTAL  
HEARING BOARD**

**Titanium Hearth Technologies, Inc. d/b/a Timet v.  
DEP; EHB Doc. No. 2003-140-L**

Titanium Hearth Technologies, Inc. d/b/a/ Timet has appealed the issuance by the Department of Environmental Protection of an NPDES permit to same for a facility in Caernarvon Township, Berks County.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board (Board) at its office on the Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457 and may be reviewed by interested parties on request during normal business hours. If information concerning this notice is required in an alternative form, contact the Secretary to the Board at (717) 787-3483. TDD users may telephone the Board through the AT&T Pennsylvania Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code § 1021.81 (relating to intervention). Copies of the Board's rules of practice and procedure are available upon request from the Board.

MICHAEL L. KRANCER,  
*Chairperson*

[Pa.B. Doc. No. 03-1367. Filed for public inspection July 11, 2003, 9:00 a.m.]

**FISH AND BOAT COMMISSION**

**Triploid Grass Carp Permit Applications**

Under 58 Pa. Code § 71.7 (relating to triploid grass carp), the Fish and Boat Commission (Commission) may issue permits to stock triploid grass carp in Commonwealth waters. Triploid grass carp are sterile fish that may, in appropriate circumstances, help control aquatic vegetation. The Commission has determined consistent with 58 Pa. Code § 71.7(e)(3) to seek public input with respect to any proposed stockings of triploid grass carp in waters having a surface area of more than 5 acres.

Interested persons are invited to submit written comments, objections or suggestions about the notice to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 10 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted. Comments also may be submitted electronically to ra-pfbcregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

The following application to stock triploid grass carp in waters having a surface area of more than 5 acres is currently undergoing staff review:

<i>Applicant</i>	<i>Water</i>	<i>Location of Water</i>	<i>Description of Water</i>	<i>Nature of Vegetation to be Controlled</i>
Cobbs Lake Preserve	Cobbs Lake (a.k.a. Cobbs Pond)	Lake Township Wayne County	40 acre lake which discharges into Wangum Creek	See following list

List of plant species and their respective lake coverages:

- 1. *Dulichium arundinaceum*(three-way sedge) <1%
- 2. *Ceratophyllum demersum*(coontail) <5%
- 3. *Nymphaea odorata*(American white waterlily) <5%
- 4. *Brasenia schreberi*(watershield) <1%
- 5. *Nuphar luteum*(yellow waterlily or spatterdock) <5%
- 6. *Typha latifolia*(broadleaf cattail) <1%
- 7. *Utricularia sp.*(bladderwort) <1%
- 8. *Potamogeton fluitans*(longleaf pondweed) 90%
- 9. *Sparangium sp.*(burreed) <1%
- 10. *Filamentous algae*(various species) 95-100%

PETER A. COLANGELO,  
*Executive Director*

[Pa.B. Doc. No. 03-1368. Filed for public inspection July 11, 2003, 9:00 a.m.]

## HISTORICAL AND MUSEUM COMMISSION

### State Surplus Property Program; Deaccession Auction

The Historical and Museum Commission will be auctioning items from its permanent collection. These items are being auctioned because they are duplicates and/or do not pertain to Commonwealth history. The public auction will be held on July 30, 2003, by Ziegler's Auction Company, Inc. in Hummelstown, PA. Items being auctioned include a diversity of objects such as porcelain figures, books, tools, dressers and an assortment of 19th century household objects.

JOHN WESLEY,  
*Interim Executive Director*

[Pa.B. Doc. No. 03-1369. Filed for public inspection July 11, 2003, 9:00 a.m.]

## INDEPENDENT REGULATORY REVIEW COMMISSION

### Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulations on the dates indicated. To obtain the date and time of the meeting at which the Commission will consider these regulations, contact the Commission at (717) 783-5417 or visit its website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). To obtain a copy of the regulation, contact the promulgating agency.

<i>Final-Form Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
10-165	Department of Health Hearing Aid Sales and Registration	6/30/03
10-169	Department of Health Supplemental Nutrition Program for Women, Infants and Children	6/30/03

JOHN R. MCGINLEY, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 03-1370. Filed for public inspection July 11, 2003, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Children's Health Insurance Program; Advisory Council Meeting

The Insurance Department (Department) has scheduled a meeting of the Children's Health Advisory Council (Council) on Tuesday, July 29, 2003, at 10 a.m., in the Rachel Carson State Office Building, Room 105, Harrisburg, PA 17120. The Children's Health Care Act (40 P. S. §§ 991.2301—991.2361) charges the Council with the responsibilities of overseeing outreach activities and evaluating access and quality of service provided to children enrolled in the Children's Health Insurance Program. The public is invited to attend. Persons who need accommodations due to a disability who wish to attend the meeting should contact Tracey Pontius, Insurance Department, 1300 Strawberry Square, Harrisburg, PA 17120, (717) 787-4298, at least 24 hours in advance so that arrangements can be made.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 03-1371. Filed for public inspection July 11, 2003, 9:00 a.m.]

**Liberty Mutual Fire Insurance Company; Homeowners Policy Program; Rate Filing**

On June 25, 2003, the Insurance Department received from Liberty Mutual Fire Insurance Company a filing for a rate level change for homeowners insurance.

The company requests an overall revenue neutral rate filing to be effective September 15, 2003.

Unless formal administrative action is taken prior to August 24, 2003, the subject filing may be deemed approved by operation of law.

Copies of the filing will be available for public inspection, by appointment, during normal working hours at the Insurance Department's regional offices in Harrisburg, Philadelphia, Pittsburgh and Erie.

Interested parties are invited to submit written comments, suggestions or objections to Michael W. Burkett, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, mburkett@state.pa.us within 15 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,  
*Insurance Commissioner*

[Pa.B. Doc. No. 03-1372. Filed for public inspection July 11, 2003, 9:00 a.m.]

**William Meis, D.O.; Prehearing**

**Appeal of William Meis, D.O. under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM03-06-012**

On or before July 31, 2003, the appellant shall file a concise statement setting forth the factual and/or legal basis for his disagreement with MCARE'S April 29, 2003, determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages.

A prehearing telephone conference initiated by this office is scheduled for August 21, 2003. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before July 11, 2003. A hearing date will be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before August 7, 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 August 14, 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. 03-1373. Filed for public inspection July 11, 2003, 9:00 a.m.]

**Penn Treaty Network America Insurance Company (PTNA); Rate Increase Filing for Long Term Care Series LTC94**

Penn Treaty Network America Insurance Company (PTNA) is requesting approval to increase the premium 40% for the Long Term Care Series LTC94 and the associated riders. The average premium will increase from \$1,980 to \$2,151 and will affect 98 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. 03-1374. Filed for public inspection July 11, 2003, 9:00 a.m.]

**Review Procedure Hearings; Cancellation or Refusal of Insurance**

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68), in connection with 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 offices in Harrisburg and Philadelphia, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearing will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 N. Seventh Street, Harrisburg, PA 17102.

Appeal of Andrew John Weaver; file no. 03-181-04138; State Farm Mutual Automobile Insurance; doc. no. P03-06-018; July 31, 2003, 1:30 p.m.

The following hearings will be held in the Philadelphia Regional Office, Room 1701 State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

Appeal of Frank D. Caligiuri; file no. 03-210-02067; Travelers Insurance Company; doc. no. PH03-06-024; August 6, 2003, 11:30 a.m.

Appeal of Dennis Clark; file no. 03-267-02425; Nationwide Mutual Fire Insurance Company; doc. no. PH03-06-031; August 6, 2003, 12:30 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. 03-1375. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Review Procedure Hearings under the Unfair Insurance Practices Act

The following insureds have requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with their companies' termination of the insureds' policies. The administrative hearings will be held in the Insurance Department's regional offices in Philadelphia and 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 Philadelphia Regional Office, Room 1701 State Office Building, 1400 Spring Garden Street, Philadelphia, PA 19130.

Appeal of Michael A. and Jessie M. Brooks; file no. 03-215-02191; State Farm Fire and Casualty Insurance Company; doc. no. PH03-06-020; August 6, 2003, 10 a.m.

The following hearings will be held in the Pittsburgh Regional Office, Room 304 State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222.

Appeal of Theresa L. LeSuer; file no. 03-494-90706; Old Guard Insurance Company; doc. no. PI03-06-029; August 14, 2003, 1 p.m.

Appeal of the Estate of Bessie Brewer; file no. 03-181-05489; State Farm Fire and Casualty Insurance Company; doc. no. PI03-06-019; August 14, 2003, 3:30 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. 03-1376. Filed for public inspection July 11, 2003, 9:00 a.m.]

## LIQUOR CONTROL BOARD

### Expiration of Leases

The following Liquor Control Board lease will expire:

Chester County, Wine & Spirits Shoppe #1503, 831 W. Baltimore Pike, West Grove, PA 19390.

*Lease Expiration Date:* May 31, 2007

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 3,600 net useable square feet of new or existing retail commercial space within a 1 mile radius of the intersection of Routes 1 and 796.

*Proposals due:* August 1, 2003, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, 8305 Ridge Avenue, Philadelphia, PA 19128  
**Contact:** James M. Bradley, (215) 482-9671

The Liquor Control Board seeks the following new site:

Montgomery County, Wine & Spirits Shoppe #4621, 1301 Skippack Pike, Blue Bell, PA 19422.

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 5,000 net useable square feet of new or existing retail commercial space within a 1 mile radius on Skippack Pike near the intersection of Routes 73 and 202, Whitpain Township.

*Proposals due:* August 1, 2003, at 12 p.m.

**Department:** Liquor Control Board  
**Location:** Real Estate Division, 8305 Ridge Avenue, Philadelphia, PA 19128  
**Contact:** Robert Jolly, (215) 482-9671

JONATHAN H. NEWMAN,  
*Chairperson*

[Pa.B. Doc. No. 03-1377. Filed for public inspection July 11, 2003, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Amended Reliability Benchmarks and Standards for Electric Distribution Companies

Public Meeting held  
 June 26, 2003

*Commissioners Present:* Terrance J. Fitzpatrick, Chairperson; Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.; Glen R. Thomas, statement follows; Kim Pizzigrilli

*Amended Reliability Benchmarks and Standards for the Electric Distribution Companies; Doc. No. M-00991220*

#### Tentative Order

*By the Commission:*

Today, in conjunction with our proposed rulemaking order, at Docket No. L-00030161 we seek to tighten our standards for performance reliability in the electric distribution industry and reiterate the Commission's regulations regarding qualifying an interruption as a major event as well as the process for filing formal requests for waivers from having to submit reliability data for any reporting period.

#### *Procedural History*

The Electricity Generation Customer Choice and Competition Act (act), 1996, Dec. 3, P. L. 802, No. 138 § 4, became effective January 1, 1997. The act amends Title 66 of the *Pennsylvania Consolidated Statutes* (Public Utility Code or Code) by adding Chapter 28 to establish standards and procedures to create direct access by retail customers to the competitive market for the generation of electricity, while maintaining the safety and reliability of the electric system. Specifically, the Commission was given a legislative mandate to ensure that levels of reliability that were present prior to the restructuring of the electric utility industry would continue in the new competitive markets.

In response to this legislative mandate, the Commission adopted a final rulemaking order on April 23, 1998, at Docket No. L-00970120, setting forth various reporting requirements designed to ensure the continuing safety, adequacy and reliability of the generation, transmission and distribution of electricity in this Commonwealth. See 52 Pa. Code §§ 57.191—57.197. The final rulemaking order acknowledged that the Commission could reevaluate its monitoring efforts at a later time as deemed appropriate.

On December 16, 1999, the Commission entered a Final Order at M-00991220, which established reliability bench-

marks and standards for the electric distribution companies in accordance with 52 Pa. Code § 57.194(h).

#### *Discussion*

#### *Electric Reliability Benchmarks and Standards*

The Commission's regulations for Electric Reliability Standards at § 57.194(h)(1) state that:

"In cooperation with an electric distribution company and other affected parties, the Commission will, from time to time, establish numerical values for each reliability index or other measure of reliability performance that identify the benchmark performance of an electric distribution company, and performance standards."

In a series of orders at Docket No. M-00991220, the Commission established reliability Benchmarks and Standards regarding: (1) Customer Average Interruption Duration Index (CAIDI); (2) System Average Interruption Frequency Index (SAIFI); (3) System Average Interruption Duration Index (SAIDI); and (4) Momentary Average Interruption Index (MAIFI).<sup>1</sup> The benchmark is the average of the historical annual averages for these indices for the 5-year period of 1994-1998 and is company specific. The standard is two standard deviations from the benchmark. These benchmarks and standards have remained in effect since their issuance in December 1999.

In June 2002, the Legislative Budget and Finance Committee (LB&FC) issued a report entitled *Assessing the Reliability of Pennsylvania's Electric Transmission and Distribution Systems*. The report, in part, concluded that the 2-standard deviation minimum performance standard is too loose and should be tightened as it does not assure that reliability performance will be maintained at levels experienced prior to the act.

A Staff Internal Working Group on Electric Service Reliability (Staff Internal Working Group) prepared a report entitled *Review of the Commission's Monitoring Process For Electric Distribution Service Reliability*, dated July 18, 2002, which reviewed the Commission's monitoring process for electric distribution service reliability and commented on the recommendations from the LB&FC report. In its report, the Staff Internal Working Group recommended, in part, that "the Commission should develop minimum performance standards that achieve the Commission's policy objective (See Recommendation III-1, p. 7)." A subsequent Commission Order at Docket No. D-02SPS021, August 29, 2002, directed:

"That the Commission staff shall undertake the preparation of such orders, policy statements, and proposed rulemakings as may be necessary to implement the recommendations contained within the Staff Internal Working Group . . . Report (p. 4)."

The Staff Internal Working Group was assigned this task and conducted field visits to electric distribution companies (EDCs) to identify the current capabilities of each EDC for measuring and reporting reliability performance. These field visits began in October 2002 and

<sup>1</sup>CAIDI is Customer Average Interruption Duration Index. It is the average duration of sustained interruptions for those customers who experience interruptions during the analysis period. CAIDI represents the average time required to restore service to the average customer per sustained interruption. It is determined by dividing the sum of all sustained customer interruption durations, in minutes, by the total number of interrupted customers. SAIFI is System Average Interruption Frequency Index. SAIFI measures the average frequency of sustained interruptions per customer occurring during the analysis period. SAIDI is System Average Interruption Duration Index. SAIDI measures the average duration of sustained customer interruptions per customer occurring during the analysis period. MAIFI (Momentary Average Interruption Frequency Index) measures the average frequency of momentary interruptions per customer occurring during the analysis period. These indices are accepted national reliability performance indices as adopted by the Institute of Electrical and Electronics Engineers, Inc. (IEEE), and are defined with formulas at 52 Pa. Code § 57.192.

continued intermittently through March 2003. As a result of the field visits, various forms of reliability reports and reliability data were received from the EDCs and analyzed by the Staff Internal Working Group to determine the most effective and reasonable approach for the Commission to monitor electric distribution service reliability. Ultimately, the Staff Internal Working Group concluded that sufficient data would be available to assess whether each EDC is meeting the statutory requirement to maintain reliability at precompetition levels.

#### *Recalculation of Reliability Benchmarks*

During the Staff Internal Working Group's review of the reliability performance standards it became apparent there were two sources of variability in the computation of the permanent benchmarks that made it difficult to set new performance standards equitably across the EDCs. The first source of variability was that some EDCs (that is, PECO) used one, systemwide operating area to compute their reliability metrics, while other EDCs (that is, PPL and GPU) subdivided their service territories and used multiple operating areas to compute their metrics. The number, size and composition of operating areas used for metric computations introduced variability into the criterion used to exclude major events from the reliability metrics reported to the Commission.

The regulations in § 57.192 define an operating area as "a geographical area, as defined by an electric distribution company, of its franchise service territory for its transmission and distribution operations." The definition of a major event in § 57.192 includes: "An interruption of electric service resulting from conditions beyond the control of the electric distribution company which affects at least 10% of the customers in an operating area during the course of an event for a duration of five minutes each or greater." Based on these definitions, an EDC that subdivided its service territory into several small geographic operating areas could exclude major events from its metric calculations based on a criterion of an interruption affecting 10% of the customers in an operating area; whereas another EDC, employing only one, service territory-wide operating area had to meet a much higher criterion of an interruption affecting 10% of the total EDC customer base. The result of this variability was that the metric calculations computed by the EDCs and reported to the Commission were not based on a uniform methodology.<sup>2</sup> This in turn made it impossible for the Commission to develop an equitable performance standard that is derived from each EDC's benchmark.

The proposed solution to the benchmark variability problem was to develop one uniform calculation method for computing and reporting reliability metrics to the Commission. Two of the EDCs suggested to the Staff Internal Working Group that reliability performance be measured and reported based on systemwide performance (the performance for the entire service territory) as opposed to multiple operating areas that are defined differently by each EDC. The two EDCs indicated that their daily system operations and maintenance programs are managed on a systemwide basis as opposed to individual operating areas. In fact, the two EDCs indicated that they have to recompute their annual reliability data based on multiple operating areas when reporting their annual performance measures to the Commission. Based upon this input, the concept of measuring and

reporting reliability performance on a service territory basis was proposed to the remaining EDCs and was accepted.

Therefore, the Staff Internal Working Group decided that the best uniform calculation method is for each EDC to compute and report its reliability metrics to the Commission considering the entire service territory as one operating area and the major event exclusion of an interruption that affects 10% of the entire customer base for a duration of 5 minutes or longer. Consistent with this decision, the Staff Internal Working Group requested those EDCs that had developed their metrics using more than one operating area to recalculate their metrics for the 1994-2002 period using the entire service territory criterion. Commission staff received very good cooperation from the EDCs in fulfilling this data request. The data recalculations were used by Commission staff to recompute the current benchmarks using a uniform methodology across the EDCs. Appendix A contains a table of the benchmarks as originally calculated and the recomputed benchmarks based on excluding major event data using the entire service territory criterion.

The Commission emphasizes that the recomputed benchmarks do not represent a lowering or raising of the historical benchmarks in any sense. All of the EDCs were asked to apply a uniform exclusion criterion to their original data. The EDCs indicated that the original data was available to perform the recalculation analysis and subsequently provided the results to the Commission. The only major events excluded from the recomputed benchmarks are unscheduled interruptions that affected 10% or more of the customers in the entire service territory for a duration of 5 minutes or longer. For EDCs that had previously excluded major events based on the multiple operating area criterion, the recomputed benchmark values may be higher than the original benchmark values. While the benchmark numerical values did change in some years in which prior exclusions existed on a multiple operating basis (but do not under the entire service territory criterion), the recomputed benchmarks should be viewed as representing the actual reliability performance during the historical period as calculated using a uniform methodology.

A second source of variability known to the Commission in the computation of the permanent benchmarks for Citizens' Electric and Penn Power made it difficult to set new performance standards equitably across the EDCs. Citizens' Electric Company did not exclude major events from their metric calculations for 1994-2002 as permitted by the regulations. This was in contrast to the calculations of all the other EDCs and, therefore, was a source of variability to only Citizens'. In the case of Penn Power, the metrics for the 1994-1997 period were not computed using the definition of a major event as contained in § 57.192. For this period, Penn Power used the First Energy (the parent of Penn Power) definition of a major event, which is different than the definition used by the Commission. In the cases of Citizens' and Penn Power, Commission staff requested that the metrics be recomputed so that they were calculated using the same uniform methodology that other EDCs used. Commission staff received good cooperation from Citizens' and Penn Power, which provided recomputed figures upon request.

It is also important to note that the Commission is proposing the reporting of worst performing circuit reliability data based on reliability indices and other relevant performance data (for example, lockouts) from each of the major EDCs, since the methodology using the entire

<sup>2</sup>PPL volunteered to perform a series of analyses for Commission staff that included how much variability was introduced by these two calculation methods. PPL computed their metrics using both methods and provided the results to Commission staff. Staff concluded that the two methods can yield significantly different results.

service territory criterion eliminates the measuring and reporting of reliability performance for individual operating areas within an EDC's service territory. This reporting of circuit data will prevent any masking of poor reliability performance in small pockets of a major EDC's service territory. Masking is not an issue with the small EDCs since they have smaller service territories. The specific requirements are addressed in § 57.195(b)(5) and (e)(3) and (4).

#### *Revisiting Performance Standards*

In its July 2002 report entitled *Review of the Commission's Monitoring Process for Electric Distribution Service Reliability*, Commission staff identified two shortcomings in the methodology used to establish minimum reliability performance standards (pages 6 and 7). The first shortcoming was statistical in nature in that the method of setting the standard by applying two standard deviations to the benchmarks yielded a result so that an EDC can perform worse on an index after 1998 than in any year during the 1994-1998 benchmark period and still be within the standard. This creates the second shortcoming, namely that the statistical outcome appears to be contrary to the policy objective of the Commission setting standards for reliability that maintain the same level of reliability after restructuring as was experienced prior to restructuring. A similar conclusion was reached by the LB & FC.

Also, according to the LB&FC Report, on page 46, the percent differences between the EDCs' historic performance levels and the Commission's minimum performance standards for CAIDI and SAIFI for the large companies<sup>3</sup> were as follows.

<i>Company</i>	<i>CAIDI</i>	<i>SAIFI</i>
PECO	29%	38%
PPL	21	30
Allegheny Power	25	61
GPU <sup>4</sup>	25	46
Duquesne	18	27
Penn Power	26	40

Notably there is some wide variation between the historic benchmarks and the minimum performance standards for the EDCs. This table shows us how far from the benchmark the 2-standard deviations lie. SAIFI, on average, has a 2-standard deviation that is 40% greater than the benchmark. Whereas, CAIDI has an average 2-standard deviation that is 24% greater than the benchmark.

Based on the previous findings, Commission staff recommended that the Commission move toward setting a standard that is more closely tied to the benchmark but also allows for some degree of year-to-year variability. Therefore, the Commission is proposing a two-tiered reliability performance standard, one tier for rolling 3-year performance and one tier for rolling 12-month performance.

Under the first tier of the standard, an EDC's rolling 3-year average performance for systemwide annual reliability indices should be no higher than 10% above the benchmark level (110% multiplied by the benchmark).<sup>5</sup> The proposed rolling 3-year standard was set at the threshold of 110% of the benchmark to ensure that the rolling 3-year standard is not worse than the worst

annual performance experienced during the years prior to restructuring (1994-1998). Rolling 3-year performance would be measured against the standard at the end of each calendar year. Appendix B contains a table comparing each EDC's current benchmarks and standards to the proposed recomputed benchmarks and the rolling 3-year standards. The table also shows the worst annual performance experienced by each EDC during the period 1994-1998 prior to restructuring. In addition, the table shows whether the EDCs would have met the rolling 3-year standard for the periods of 1999-2001 and 2000-2002.

A rolling 12-month standard is also being proposed by the Commission to monitor performance on a shorter term basis. For the large EDCs<sup>6</sup> (companies with 100,000 or more customers), the Commission is proposing that the rolling 12-month averages of systemwide indices be within 20% of the benchmark. For small EDCs<sup>7</sup> (companies with less than 100,000 customers), the Commission is proposing that rolling 12-month averages of systemwide indices should be within 35% of the historical benchmarks. A greater degree of short-term latitude is being proposed for the small EDCs because a single event can have more of a significant impact on the reliability performance of the small EDCs' distribution systems. Small EDCs have fewer customers and fewer circuits than the large EDCs. Thus, their sample sizes are smaller, and they have higher standards of deviation. Rolling 12-month performance would be measured against the standard on a quarterly basis. Appendix C contains two different tables, which show how the rolling 12-month standard would compare to the current methodology used to establish annual reliability standards (two standard deviations above the benchmark). One table shows the results for the major EDCs (120% of benchmark), while the other table shows the results for the small EDCs (135% of benchmark). In the vast majority of cases (21 of 22), the proposed rolling 12-month standard set points for SAIFI and CAIDI are closer to the benchmarks than the standard set points when applying the two standard deviation methodology. Therefore, the Commission is tightening its standards.

Consistent with proposed changes to the language of the Commission's Electric Reliability Standards in § 57.194(h)(3), the role of the standard is being revised. A failure on the part of an EDC to meet the first tier standard is a trigger for additional involvement of Commission staff in the form of remedial review and perhaps additional reporting by the EDC until performance is within the standard or Commission staff is satisfied that performance over time is not significantly deteriorating. Repeated violations of the 2-tiered standard shall result in the Commission staff pursuing an enforcement action including fines and other remedies available.

The proposed two-tier standard set points were selected for a number of reasons. First, the standards allow for some variability from the benchmarks because reliability performance is influenced by weather conditions and other factors that are inherently variable in nature. Second, a review of historical reliability performance reveals a certain degree of variance from year to year. However, the use of rolling averages, particularly for the 3-year rolling average standard, will tend to even out some of the inherent variances in performance metrics. The longer the period under review, the more year-to-year high and low variations will tend to cancel each other out. As such the 3-year rolling average standard should

<sup>3</sup>See definition of large and small companies on page 10.

<sup>4</sup>This chart lists GPU instead of the breakdown of Met Ed and Penelec.

<sup>5</sup>When referring to the establishment of new performance standards based on a percentage of the benchmark, it is important to note that this is the recomputed benchmark based on excluding major event data using the entire service territory criterion.

<sup>6</sup> Large EDCs currently include: Allegheny Power, Duquesne Light, Met-Ed, Penelec, Penn Power, PECO and PPL.

<sup>7</sup>Small EDCs include: UGI, Citizens', Pike County and Wellsboro.

promote reliability performance to gravitate closer to the benchmark over time. Finally, the set points were selected so that the Commission staff would be actively involved when performance deviates significantly from the benchmark but would not be as involved when the variations were within the more typical range.

It is important to understand the interplay between the rolling 3-year and rolling 12-month standards or trigger points contemplated in this Order, and how a combined approach to monitoring reliability differs from the two standard deviation standard, which is the current trigger point established in the previous Commission Order. Under the two standard deviation standard, some EDCs could continuously perform worse than the worst performance experienced during the 1994-1998 period and still fall within the bounds of minimum acceptable performance. Under the proposed rolling 12-month standard (as measured each quarter), it is still possible for the performance of certain EDCs to be worse than the worst performance during the 1994-1998 period. However, this performance could not be sustained for more than a few quarters without triggering Commission action based on these EDCs falling outside the rolling 3-year standard (110% of the benchmark as measured each calendar year). The intent of the two-tiered approach to setting standards is to allow for some variability in performance over a short period of time while pushing that performance towards the benchmark over a longer period of time.

The Commission wants to be clear about how it views the role of benchmarks and standards in relation to long-term expectations for EDC reliability performance. The recomputed benchmarks represent the average performance of each EDC in the 1994-1998 period prior to the introduction of Electric Choice. The Commission's statutory obligation is to have each EDC achieve a level of performance after the introduction of Electric Choice that is at least as good as it was prior to competition. Therefore, the Commission's ultimate goal is to have each EDC achieve benchmark performance in the long-term. At the same time, the Commission acknowledges that, in short-term periods, reliability performance can be variable. By establishing 12-month and 3-year standards, we are noting that we will view performance that falls within the bandwidth between the benchmark and the standards as acceptable as long as the long-term trend is moving towards the benchmark in a reasonable period of time. Alternately, the Commission will not view performance that consistently falls within the bandwidth between the benchmark and the standards, but does trend toward the benchmark, as acceptable.

The Commission has considered but declined to use the standard deviation approach at this time for setting performance standards. A standard deviation measures the degree of variance from an average and can be useful for the establishment of reliability standards. However, because the benchmark data currently available consists of only five sample points for each reliability index (the annual average indices for the years 1994-1998), we are not confident that its use would be appropriate at this time. Nevertheless, since the Commission's revised regulations will result in more frequent reporting (and thus collection of more data points), and better quality data in future years, we will not rule out the use of a standard deviation approach for the establishment of performance standards in the future.

At this time, if the Commission were to tighten performance standards from 2-standard deviations to 1-standard deviation, this would be a tighter standard for

the large EDCs<sup>8</sup> than a standard of 120% of benchmark standard for CAIDI, but it would be a looser standard for the smaller EDCs than 135% of benchmark for CAIDI. Issues of fairness obviously arise with the one standard deviation approach. Regarding SAIFI, a standard of 120% of benchmark for the large EDCs and a 135% standard for the small EDCs is a significant tightening of the standard from approximately 2-standard deviations to 1-standard deviation. Both CAIDI (average duration of a customer's interruption) and SAIFI (systemwide average frequency of interruptions) are important measurements, and the tightening of these standards should result in better assurance that performance has not been deteriorating since 1999.

#### *Reliability Data Quality Issues*

During the Staff Internal Working Group's review of the Commission's electric reliability monitoring efforts, it became clear that there are data quality issues that should be acknowledged and taken into consideration. First, in the case of Allegheny Power, there are several months of data from the 1997 and 1998 years that are lost and not available for analysis. Therefore, the SAIFI metrics for those years are understated, resulting in the appearance of better performance being reported during 1997 and 1998 than actually existed. Because the 1997 and 1998 data was used along with the 1994-1996 years to compute the historical benchmark average, Allegheny Power's SAIFI benchmark is set artificially low. Thus, comparisons of Allegheny Power's SAIFI reliability performance in years subsequent to 1998 with the benchmark are going to be inherently unfavorable. This defect also impacts the SAIDI metric as SAIDI is a function of multiplying SAIFI and CAIDI data. Unfortunately, Allegheny Power cannot recapture the 1997 and 1998 missing data.

A second and more pervasive data quality issue exists that likely affects much of the reliability data reported by the EDCs since 1994. EDCs continue to implement automated reliability management systems that improve the accuracy of reliability monitoring information. Specifically, these systems provide better information about when an outage begins, ends and how many customers the outage has affected. Connectivity, the degree to which each customer is documented on the distribution system, has improved greatly over the last 10 years. This has profound implications for comparing historical reliability performance to current performance. If today's EDC reliability monitoring systems were in place several years ago (including the benchmark period of 1994-1998), we would find that reliability performance was not at the level as reported in the past. Earlier monitoring processes were often manual in nature and did not accurately capture each customer that had lost power, and therefore inaccurately concluded the actual number of customers affected by an interruption. Today, reliability monitoring systems have 96% or better connectivity and are less likely to inaccurately record how customers are affected by outages. This differential ability of the monitoring systems to capture accurate information introduces a degree of uncertainty into our ability to interpret reliability trend data. Trends in reliability metrics can change over time because of true differences in reliability performance as well as because of differential measurement capability. The differential measurement capability can introduce method variance into our trend data. For accurate trend analysis, it is important to separate out

<sup>8</sup>The large EDCs have equal to or greater than 100,000 customers and currently the large EDCs include: Allegheny Power, Duquesne Light, Met-Ed, Penelec, Penn Power, PECO and PPL.



the method variance from the variance in scores that is attributable to true reliability performance. While we conclude that method variance has introduced a degree of change in reliability metrics separate from true changes in reliability performance, we cannot quantify the exact degree of method variance. Therefore, we cannot definitely conclude in every case that the entire differences that we observe in reliability metric trends are due to true changes in reliability performance.

While the data quality issue pertaining to method variance is problematic in the interim, fortunately it is a problem that will resolve itself in the near future. The Commission proposes to move forward with setting new standards at this time and to revisit the potential for setting new benchmarks and standards a few years in the future when we have several years of consistent data collection under the improved reliability monitoring systems being implemented and refined today. Once we reach that point in time the method variance issue will become moot and new benchmarks and standards can be set and used for accurate comparisons of future data.

This process for resolving data quality issues has implications for how the Commission can conduct the task of reliability monitoring during this transition period we are in now. First, a hypothetical application of the proposed standards to recent performance data reveals that a number of the EDCs would not have reliability performance that falls within the proposed standards. Repeated violations of the two-tiered standard shall result in enforcement actions including fines and other available remedies.

#### *Waivers*

In its reliability review, the Staff Internal Working Group recommended at Recommendation No. V-1 that the Commission should require all EDCs to formally file petitions for waivers of the reliability reporting requirements when they are unable to conform to such requirements and, upon granting the waiver, the Commission should issue an order that specifies the terms of the waiver.

Title 52, Chapter 57, Subchapter N (Electric Reliability Standards) directs EDCs to file various information related to electric service reliability with the Commission. At times, for various reasons, EDCs may deem it necessary to file information in a manner different than that directed in the *Pennsylvania Code* or to not file the information at all. We take this time to remind EDCs that 52 Pa. Code § 5.43 addresses petitions for issuance, amendment, waiver or repeal of regulations. Requests shall be made in writing, prior to each filing due date of the required information. Thus, if an EDC receives approval of amendment or waiver of a regulation for one reporting period, a subsequent request is necessary for amendment or waiver of additional reporting periods. We specifically reiterate "The petition shall set forth the purpose of, and the facts claimed to constitute the grounds requiring the regulation, amendment, waiver or repeal." See 52 Pa. Code § 5.43. Each request will be approved or denied, in writing, by the Commission.

We direct that all requests for waiver shall be made formally in writing to the Commission. EDCs are required to timely file a petition for waiver of formal reporting requirements, under 52 Pa. Code § 1.91 (relating to applications for waiver of formal requirements). The EDCs are directed to disclose the reasons they are not in full conformity with the reliability regulations in all reliability documents submitted to the Commission.

#### *Formal Requests for Exclusion of Service Interruptions as Major Events-Major Event Definition*

The Staff Internal Working Group's Recommendation No. IV-1 states that the Commission should implement a process that will enable EDCs to formally request exclusion of service interruptions for reporting purposes by proving an outage qualifies as a major event. To analyze and set measurable goals for service reliability performance, outage data is partitioned into normal and abnormal days so that only normal event days are used for calculating service reliability indices. The term "major event" is used to identify an abnormal event, for which this outage data is to be excluded when calculating service reliability indices. Section 57.192 currently defines a "major event" as follows:

(i) Either of the following:

(A) An interruption of electric service resulting from conditions beyond the control of the electric distribution company which affects at least 10% of the customers in an operating area during the course of the event for a duration of 5 minutes each or greater. The event begins when notification of the first interruption is received and ends when service to all customers affected by the event are restored. When one operating area experiences a major event, the major event shall be deemed to extend to all other affected operating areas of the electric distribution company.

(B) An unscheduled interruption of electric service resulting from an action taken by an electric distribution company to maintain the adequacy and security of the electrical system, including emergency load control, emergency switching and energy conservation procedures, as described in Section 57.52 (relating to emergency load control and energy conservation by electric utilities), which affects at least one customer.

(ii) A major event does not include scheduled outages in the normal course of business or an electric distribution company's actions to interrupt customers served under interruptible rate tariffs.

The Staff Internal Working Group identified the following scenarios wherein certain EDCs had inappropriately claimed service interruptions as a major event:

- Combining two separate storm events, of which only one meets the definition of a major event, into one major event.
- Excluding outage data from all operating areas when a major event has occurred in only one operating area.
- Excluding all outage data that took place on any day in which a major event took place, regardless of the actual timeframes in which the major event took place.

Reliability performance will appear to be better than it really is when an EDC excludes more outage data from its reliability calculations than it should. The performance will appear to be better because the number of customers interrupted and/or the customer minutes of the interruption are excluded from the calculations of the performance metrics, thus resulting in lower (better) scores. To avoid the inappropriate exclusion of outage data from any calculated service reliability indices reported to the Commission, the Staff Internal Working Group recommended that a process be established, whereby the EDC could formally notify the Commission that it has recently experienced what it believes to be a major event and request that specific outage data associated with this event be excluded for calculating reliability

performance. The Commission could review the request, and if deemed appropriate, grant the EDC permission to exclude the related outage data from its reliability calculations. The Staff Internal Working Group also recommended the following outage data be provided in support of the request:

- The starting and ending times of the outage.
- The main operating areas affected by the major event, including the causes and number of customers affected.
- The neighboring operating areas affected, including the causes and number of customers affected.

Upon further review of this issue, the Commission orders the implementation of a formal process to request the exclusion of service interruptions for reporting purposes by proving a service interruption qualifies as a major event as defined by regulations. The outage data to be provided in support of the request will be as follows:

- (1) The approximate number of customers involved in the incident/outage.
- (2) The total number of customers served in the service territory.
- (3) The geographic areas affected, in terms of the county and local political subdivision.
- (4) The reason for the interruption, including weather conditions if applicable.
- (5) The number of utility workers and others assigned specifically to the repair work.
- (6) The date and time of the first information of a service interruption.
- (7) The actual time that service was restored to the last affected customer.

Appendix D is a sample Major Event exclusion request form which the Commission directs the companies to use to request exclusions for major events.

It will not be necessary to provide information about neighboring operating areas affected, since the Staff Internal Working Group is recommending that the definition of a major event be revised to be based on interruption criteria of the entire service territory of an operating company as opposed to individual operating areas defined by each operating company. The Commission will review the formal request and supporting data, and if deemed appropriate, grant the EDC permission to exclude the related outage data from its reliability calculations.

#### *Starting and Ending Times of Major Events*

The LB&FC and Staff Internal Working Group identified scenarios wherein certain EDCs had inappropriately claimed service interruptions as a major event by excluding all outage data that took place on any day in which a major event took place, regardless of the actual timeframes in which the major event took place. The current definition of a "major event" (as defined in 52 Pa. Code § 57.192) indicates that "The event begins when notification of the first interruption is received and ends when service to all customers affected by the event are restored." We agree that the designated starting and ending time of major events should be enforced according to the regulations.

The Staff Internal Working Group advocates the enforcement of current regulations regarding the designated starting and ending times of major events. Although the Staff Internal Working Group is recommending a revision

to the definition of a major event, there are no suggested changes to any provisions regarding the starting and ending times of a major event. The Commission hereby reiterates that there are regulations which define the designated starting and ending times of major events according to 52 Pa. Code § 57.192 and these should be followed by all EDCs. *Therefore,*

#### *It Is Ordered That:*

1. The Commission is issuing, under 52 Pa. Code § 57.194(h), tentative benchmarks and standards for EDCs operating within this Commonwealth as set forth in Appendices A, B and C.

2. The Secretary certify this Order and Appendices A, B, C and D and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin* for a 60 day comment period. When proposing comments, parties should consider this Tentative Order in conjunction with the Proposed Rulemaking Order at L-00030161.

3. A copy of this Order and Appendices A, B, C and D shall be filed at the Proposed Rulemaking Docket L-00030161, *Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa. Code Chapter 57.*

4. An EDC shall request, in writing to the Commission's Secretary's Bureau, any waivers of reliability reporting requirements necessary to fulfill its obligations under 52 Pa. Code Chapter 57, Subchapter N (Electric Reliability Standards).

5. Copies of this Order be served upon all EDCs operating in this Commonwealth, the Attorney General's Office of Consumer Advocate and Office of Small Business Advocate.

6. In the event no comments are filed to this Order, it shall become a Final Order by operation of law within 90 days from its date of publication in the *Pennsylvania Bulletin*.

7. The Commission shall review and consider the EDC's request for waivers and shall issue Secretarial Letters granting or denying said requests.

8. EDCs are directed to use the draft form in Appendix D when requesting the exclusion of service interruptions for reporting purposes by proving a service interruption qualifies as a major event as defined by regulations.

JAMES J. MCNULTY,  
*Secretary*

#### **Statement of Commissioner Glen R. Thomas**

Public meeting:  
June 26, 2003

Rulemaking Re Amending Electric Service  
Reliability Regulations at 52 Pa. Code Chapter 57

JUN-2003-L-0064\*      Docket No. L-00030161

Amended Reliability Benchmarks and  
Standards for the Electric Distribution Companies

JUN-2003-L-0076\*      Docket No. M-00991220

The Commission has a statutory responsibility to ensure the reliability of electric service to the citizens of the Commonwealth. I have often referred to reliability as "job one" for the Commission. Today's two-part action takes us a step closer to fulfilling that responsibility.

The tentative benchmarks order would significantly tighten the standards for reliability performance by electric distribution companies ("EDCs"). It would require EDCs to report on a "systemwide" basis as opposed to an

“operating area” basis. The practical result would be that EDCs would not be able to classify as many outages as “major outages.” The order also sets forth reliability performance standards that are more closely tied to the benchmarks. Through standards that gradually toughen, EDCs would be nudged ever closer to the established benchmarks. The ultimate goal is the achievement of the benchmarks. Enhanced reporting would give the Commission the information necessary to determine whether enforcement action is necessary. The proposed rulemaking is designed to go hand-in-hand with the benchmarks order and to set forth clear rules for performance and reporting. As with any tentative order and proposed

rulemaking, I hope that all interested parties provide the Commission with their input.

I would be remiss if I did not acknowledge the two primary groups of people that have been instrumental on reliability issues. First, I would like to extend appreciation to the Legislative Budget & Finance Committee for bringing many of these reliability issues to the attention of the Commission. Second, the Staff Internal Working Group dedicated many long hours to assembling this superior work product. Their efforts are a testament to the quality of people working here at the Commission.

Glen R. Thomas

### Appendix A

#### Current Benchmarks and Recomputed Benchmarks

<i>Name of EDC</i>	<i>Reliability Indices</i>	<i>Current Benchmark</i>	<i>Recomputed Benchmark</i>
Allegheny Power	SAIFI	0.67	0.67
	CAIDI	178	178
	SAIDI	116	119
Duquesne Light	SAIFI	1.15	1.17
	CAIDI	108	108
	SAIDI	123	126
Met-Ed	SAIFI	0.97	1.06
	CAIDI	117	127
	SAIDI	113	135
Penelec	SAIFI	1.07	1.15
	CAIDI	104	115
	SAIDI	108	132
Penn Power	SAIFI	1.01	1.02
	CAIDI	93	92
	SAIDI	95	94
PECO	SAIFI	1.23	1.23
	CAIDI	112	112
	SAIDI	138	138
PPL	SAIFI	0.88	0.98
	CAIDI	128	145
	SAIDI	113	142
UGI	SAIFI	0.83	0.83
	CAIDI	169	169
	SAIDI	147	140
Citizens	SAIFI	1.29	0.20
	CAIDI	73	105
	SAIDI	73	21
Pike County	SAIFI	0.39	0.39
	CAIDI	178	178
	SAIDI	66	69
Wellsboro	SAIFI	2.74	1.23
	CAIDI	128	124
	SAIDI	309	153

## Appendix B

Rolling 3-Year Average Standard  
(110% of Benchmark)

(A) <i>Name of EDC</i>	(B) <i>Reliability Indices</i>	(C) <i>Current Benchmark</i>	(D) <i>Current Standard</i>	(E) <i>Recomputed Benchmark</i>	(F) <i>2-Std. Dev. Above Recomputed Benchmark</i>	(G) <i>Worst Performance (1994-1998)</i>	(H) <i>Proposed Rolling 3-Yr Avg. Standard</i>	(I) <i>Rolling 3-Yr Avg. (1999-2001)</i>	(J) <i>Performance Meets 3-Yr Standard (Yes/No)</i>	(K) <i>Rolling 3-Yr Avg. (2000-2002)</i>	(L) <i>Performance Meets 3-Yr Standard (Yes/No)</i>
Allegheny Power	SAIFI	0.67	1.08	0.67	1.08	0.95	0.74	0.90	No	1.05	No
	CAIDI	178	223	178	224	205	196	206	No	208	No
	SAIDI	116	159	119	241	NM	144	185	No	220	No
Duquesne Light	SAIFI	1.15	1.46	1.17	1.49	1.30	1.29	1.19	Yes	1.20	Yes
	CAIDI	108	127	108	127	125	119	84	Yes	86	Yes
	SAIDI	123	143	126	189	NM	153	101	Yes	104	Yes
Met-Ed	SAIFI	0.97	1.29	1.06	1.29	1.18	1.17	1.06	Yes	1.18	No
	CAIDI	117	140	127	155	141	140	168	No	164	No
	SAIDI	113	155	135	200	NM	163	175	No	188	No
Penelec	SAIFI	1.07	1.70	1.15	1.42	1.27	1.27	1.36	No	1.58	No
	CAIDI	104	134	115	141	129	127	148	No	159	No
	SAIDI	108	140	132	201	NM	160	209	No	254	No
Penn Power	SAIFI	1.01	1.41	1.02	1.41	1.25	1.12	1.44	No	1.41	No
	CAIDI	93	117	92	119	113.9	101	108	No	122	No
	SAIDI	95	154	94	168	NM	114	155	No	168	No
PECO	SAIFI	1.23	1.70	1.23	1.70	1.51	1.35	1.20	Yes	1.21	Yes
	CAIDI	112	144	112	143	135	123	122	Yes	107	Yes
	SAIDI	138	196	138	244	NM	167	148	Yes	120	Yes
PPL	SAIFI	0.88	1.14	0.98	1.19	1.15	1.08	0.93	Yes	1.04	Yes
	CAIDI	128	155	145	190	174	160	132	Yes	128	Yes
	SAIDI	113	155	142	226	NM	172	123	Yes	135	Yes
UGI	SAIFI	0.83	1.35	0.83	1.35	1.15	0.91	0.77	Yes	0.88	Yes
	CAIDI	169	304	169	305	274	186	110	Yes	149	Yes
	SAIDI	147	331	140	412	NM	170	85	Yes	142	Yes
Citizens	SAIFI	1.29	3.10	0.20	0.38	0.35	0.22	0.19	Yes	0.14	Yes
	CAIDI	73	156	105	230	174	115	95	Yes	78	Yes
	SAIDI	73	123	21	86	NM	25	21	Yes	12	Yes
Pike County	SAIFI	0.39	0.58	0.39	0.58	0.47	0.43	0.46	No	0.47	No
	CAIDI	178	283	178	283	247	196	243	No	269	No
	SAIDI	66	112	69	165	NM	84	113	No	130	No
Wellsboro	SAIFI	2.74	6.16	1.23	1.91	1.61	1.35	2.34	No	2.21	No
	CAIDI	128	195	124	252	217	136	71	Yes	103	Yes
	SAIDI	309	565	153	483	NM	185	163	Yes	224	No

Column C—The current benchmarks established December 16, 1999 at Docket No. M-00991220. It represents the five-year average of the historical performance for years 1994-1998.

Column D—The current standards established December 16, 1999 at Docket No. M-00991220. The standard is plus two standard deviations from the established benchmarks.

Column E—The recomputed benchmarks based on historical performance excluding major event data using the entire service territory criterion.

Column F—Represents what the current standard would be if applying the two-standard deviation methodology to the recomputed benchmarks.

Column G—The worst annual performance experienced during the historical years used to establish pre-restructuring performance.

Column H—The proposed rolling three-year average standard. The threshold is at 110% of the recomputed benchmark.

Columns I—K—Actual rolling average performance for the periods 1999-2001 and 2000-2002, and an indication if the actual performance would have met the proposed standard of a three-year average being no greater than 110% of benchmark.

Note 1—Although SAIDI is the product of SAIFI and CAIDI, the current SAIDI standard in Column D has been based on the statistical calculation of two standard deviations above the current SAIDI benchmark in Column C. All recomputed benchmarks and related values, including the proposed three-year rolling average standard (Columns E, F, and H), for SAIDI represent the product of SAIFI and CAIDI.

Note 2—NM indicates it is not meaningful to compare the proposed SAIDI standards to prior performance since SAIDI is the product of SAIFI and CAIDI, and the proposed SAIFI and CAIDI standards were the basis for the analysis.

## Appendix C

## Rolling 12-Month Standard for Major EDCs

## (120% of Benchmark)

(A) <i>Name of EDC</i>	(B) <i>Reliability Indices</i>	(C) <i>Current Benchmark</i>	(D) <i>Current Standard</i>	(E) <i>Recomputed Benchmark</i>	(F) <i>2-Std. Dev. Above Recomputed Benchmark</i>	(G) <i>Proposed Rolling 12-Month Standard</i>
Allegheny Power	SAIFI	0.67	1.08	0.67	1.08	0.80
	CAIDI	178	223	178	224	214
	SAIDI	116	159	119	241	172
Duquesne Light	SAIFI	1.15	1.46	1.17	1.49	1.40
	CAIDI	108	127	108	127	130
	SAIDI	123	143	126	189	182
Met-Ed	SAIFI	0.97	1.29	1.06	1.29	1.27
	CAIDI	117	140	127	155	152
	SAIDI	113	155	135	200	194
Penelec	SAIFI	1.07	1.70	1.15	1.42	1.38
	CAIDI	104	134	115	141	138
	SAIDI	108	140	132	201	190
Penn Power	SAIFI	1.01	1.41	1.02	1.41	1.22
	CAIDI	93	117	92	119	110
	SAIDI	95	154	94	168	135
PECO	SAIFI	1.23	1.70	1.23	1.70	1.48
	CAIDI	112	144	112	143	134
	SAIDI	138	196	138	244	198
PPL	SAIFI	0.88	1.14	0.98	1.19	1.18
	CAIDI	128	155	145	190	174
	SAIDI	113	155	142	226	205

## Rolling 12-Month Standard for Small EDCs

## (135% of Benchmark)

(A) <i>Name of EDC</i>	(B) <i>Reliability Indices</i>	(C) <i>Current Benchmark</i>	(D) <i>Current Standard</i>	(E) <i>Recomputed Benchmark</i>	(F) <i>2-Std. Dev. Above Recomputed Benchmark</i>	(G) <i>Proposed Rolling 12-Month Standard</i>
UGI	SAIFI	0.83	1.35	0.83	1.35	1.12
	CAIDI	169	304	169	305	228
	SAIDI	147	331	140	412	256
Citizens	SAIFI	1.29	3.10	0.20	0.38	0.27
	CAIDI	73	156	105	230	141
	SAIDI	73	123	21	86	38
Pike County	SAIFI	0.39	0.58	0.39	0.58	0.53
	CAIDI	178	283	178	283	240
	SAIDI	66	112	69	165	127
Wellsboro	SAIFI	2.74	6.16	1.23	1.91	1.66
	CAIDI	128	195	124	252	167
	SAIDI	309	565	153	483	278

Column C—The current benchmarks established December 16, 1999 at Docket No. M-00991220. It represents the five-year average of the historical performance for years 1994-1998.

Column D—The current standards established December 16, 1999 at Docket No. M-00991220. The standard is plus two standard deviations from the established benchmarks.

Column E—The recomputed benchmarks based on historical performance excluding major event data using the entire service territory criterion.

Column F—Represents what the current standard would be if applying the two-standard deviation methodology to the recomputed benchmarks.

Column G—The proposed rolling 12-month standard. The threshold is at 120% of the recomputed benchmark for the major EDCs and 135% of the recomputed benchmarks for the small EDCs.

NOTICES

Appendix D

REQUEST FOR EXCLUSION OF MAJOR OUTAGE FOR RELIABILITY REPORTING PURPOSES TO PENNSYLVANIA PUBLIC UTILITY COMMISSION P. O. BOX 3265 HARRISBURG, PA 17105-3265

Reports require an original and one copy to be filed with the Secretary's Bureau.

Information Required:

1. Requesting Utility: \_\_\_\_\_

Address: \_\_\_\_\_

2. Name and title of person making request:

\_\_\_\_\_ (Name) \_\_\_\_\_ (Title)

3. Telephone number: \_\_\_\_\_ (Telephone Number)

4. Interruption or Outage:

(a) Number of customers affected: Total number of customers in service territory: \_\_\_\_\_

(b) Number of troubled locations in each geographic area affected listed by county and local political subdivision: \_\_\_\_\_

(c) Reason for interruption or outage, including weather data where applicable: \_\_\_\_\_

(d) The number of utility workers and others assigned specifically to the repair work: \_\_\_\_\_

(e) The date and time of the first notification of a service interruption: \_\_\_\_\_

(f) The actual time that service was restored to the last affected customer: \_\_\_\_\_

Remarks: \_\_\_\_\_

**Default Order**

Public Meeting held  
June 26, 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. Allegheny Coin Company, Inc.; Doc. No. C-20039886; A-310296*

**Default Order**

*By the Commission:*

On April 3, 2003, Law Bureau Prosecutory Staff instituted a complaint against Allegheny Coin Company, Inc. (Respondent or Company), an interexchange reseller certificated at A-310296. In the complaint, Prosecutory Staff alleged that the Commission sent by certified mail a notice to the Respondent that its monthly Universal Service Fund 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 Universal Service Fund assessments. The complaint was mailed by the Secretary's Bureau on April 22, 2003, and, according to the postal return receipt, service was perfected on April 24, 2003. To date, more than 20 days later, no answer has been filed to the complaint and the assessments in the amount of \$4,125.24 have still not been paid. In addition, although we are aware that Respondent has current customers in this Commonwealth, the Respondent was never assigned any NXX Codes.

Prosecutory Staff has repeatedly been forced to take action against Respondent to bring the Company into compliance with the Public Utility Code and our regulations. On April 7, 1999, Prosecutory Staff filed a complaint at C-00992315 for the Respondent's failure to pay its General Assessment for Fiscal Year 1997-1996 in the amount of \$4,624 and its General Assessment for Fiscal Year 1998-1999 in the amount of \$1,987, both of which the Respondent subsequently paid by check on June 24, 1999. On January 16, 2001, Prosecutory Staff filed a complaint at C-0014690 for the Respondent's failure to pay its General Assessments for Fiscal Year 2000-2001 in the amount of \$4,277, which the Respondent subsequently paid by several checks received by the Commission from November 28, 2000, through May 5, 2001. On May 23, 2002, Prosecutory Staff filed a complaint at C-20027846 for Respondent's failure to file its 2000 Annual Report, which the Company subsequently filed on June 26, 2002. On January 17, 2003, Prosecutory Staff filed a complaint at C-20039304 for Respondent's failure to file its 2001 Annual Report, which the Respondent subsequently filed on February 3, 2003, accompanied by the \$250 civil penalty for late filing.

Based on the Respondent's history of noncompliance with regulatory requirements and the failure to file an answer to the April 3, 2003, complaint or pay its assessments, we conclude that revocation of Allegheny Coin Company, 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, the Department of General Services, the Department of Corrections 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. Allegheny Coin Company, 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 Allegheny Coin Company, Inc. at A-310296 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. 03-1379. Filed for public inspection July 11, 2003, 9:00 a.m.]

**Default Order**

Public Meeting held  
June 26, 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. Association Administrators, Inc.; Doc. No. C-20039877; A-310527*

**Default Order**

*By the Commission:*

On April 1, 2003, Law Bureau Prosecutory Staff instituted a complaint against Association Administrators, Inc. (Respondent), an interexchange reseller certificated at A-310527. In the complaint, Prosecutory Staff alleged that the Commission sent by certified mail a notice to the Respondent that its 5th 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 April 22, 2003, and, according to the postal return receipt, service was perfected on April 24, 2003. To date, more than 20 days later, no answer has been filed to the complaint, and the contribution has still not been paid. In addition, 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 Association Administrator, 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. Association Administrators, 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 pursuant to 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 Association Administrators, Inc. at A-310527 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. 03-1380. Filed for public inspection July 11, 2003, 9:00 a.m.]

## Default Order

Public Meeting held  
June 26, 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. Comtel Network, LLC;  
Doc. No. C-20039878; A-310982*

## Default Order

*By the Commission:*

On April 1, 2003, Law Bureau Prosecutory Staff instituted a complaint against Comtel Network, LLC (Respondent), an interexchange reseller certificated at A-310982. In the complaint, Prosecutory Staff alleged that the Commission sent by certified mail a notice to the Respondent that its 5th 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 April 22, 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. In addition, 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 Comtel Network, 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. Comtel Network, 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 pursuant to 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 Comtel Network, LLC at A-310982 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. 03-1381. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Default Order

Public Meeting held  
June 26, 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. Long Distance Billing Services, Inc.; Doc. No. C-20039880; A-311062*

### Default Order

*By the Commission:*

On April 1, 2003, Law Bureau Prosecutory Staff instituted a complaint against Long Distance Billing Services, Inc. (Respondent), an interexchange reseller certificated at A-311062. In the complaint, Prosecutory Staff alleged that the Commission sent by certified mail a notice to the Respondent that its 5th 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 April 22, 2003, and, according to the postal return receipt, service was perfected on April 24, 2003. To date, more than 20 days later, no answer has been filed to the complaint, and the contribution has still not been paid. In addition, 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 Long Distance Billing Services, 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 imposi-

tion 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. Long Distance Billing Services, 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 pursuant to 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 Long Distance Billing Services, Inc. at A-311062 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. 03-1382. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Default Order

Public Meeting held  
June 26, 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. Norcom, Inc.; Doc. No. C-20039881; A-311011*

### Default Order

*By the Commission:*

On April 1, 2003, Law Bureau Prosecutory Staff instituted a complaint against Norcom, Inc. (Respondent), an interexchange reseller certificated at A-311011. In the complaint, Prosecutory Staff alleged that the Commission sent by certified mail a notice to the Respondent that its 5th 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 April 22, 2003, and, according to the postal return receipt, service was perfected on April 25, 2003. To date, more than 20 days later, no answer has been filed to the complaint, and the contribution has still not been paid. In addition, 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 Norcom, 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. Norcom, 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 pursuant to 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 Norcom, Inc. at A-311011 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. 03-1383. Filed for public inspection July 11, 2003, 9:00 a.m.]

## Default Order

Public Meeting held  
June 26, 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 (2002.0294) v. Promisevision Technology, Inc.; Doc. No. C-20039883; A-310875*

## Default Order

*By the Commission:*

On April 1, 2003, Law Bureau Prosecutory Staff instituted a complaint against Promisevision Technology, Inc. (Respondent), an interexchange reseller certificated at A-310875. In the complaint, Prosecutory Staff alleged that the Commission sent by certified mail a notice to the Respondent that its 5th 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 on April 22, 2003, and, according to the postal return receipt, service was perfected on April 25, 2003. To date, more than 20 days later, no answer has been filed to the complaint, and the contribution has still not been paid. In addition, 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 Promisevision Technology, 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. Promisevision Technology, 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 pursuant to 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 Promisevision Technology, Inc. at A-310875 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. 03-1384. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Investigation Order

Public Meeting held  
April 17, 2003

*Commissioners Present:* Glen R. Thomas, Chairperson;  
Robert K. Bloom, Vice Chairperson; Aaron Wilson, Jr.;  
Terrance J. Fitzpatrick; Kim Pizzingrilli

*Generic Investigation in re: Impact on Local Carrier Compensation if a Competitive Local Exchange Carrier Defines Local Calling Areas Differently than the Incumbent Local Exchange Carrier's Local Calling Areas but Consistent with Established Commission Precedent; I-00030096*

### Investigation Order

*By the Commission:*

In a recently decided arbitration proceeding, this Commission was presented with the question of whether a Competitive Local Exchange Carrier (CLEC) should be able to broadly define its local calling areas for the purpose of marketing its competitive telecommunications services to end users. See *Petition of Global NAPs South, Inc. for Arbitration pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with Verizon Pennsylvania Inc.*; Docket No. A-310771F7000 (Order entered April 17, 2003) (*Verizon/GNAPs Arbitration*).

This question also raised the related issue of what should be the appropriate intercarrier compensation for calls in each direction between a CLEC customer and all associated customers of the Incumbent Local Exchange Carrier (ILEC) when a CLEC defines its local calling area for a particular exchange differently than the ILEC serving that same exchange.<sup>1</sup>

Verizon Pennsylvania Inc. (Verizon) and the Pennsylvania Telephone Association (PTA) filed Exceptions in the *Verizon/GNAPs Arbitration* proceeding raising several policy concerns relative to the question of what is the impact on local carrier compensation when a CLEC's local calling area is different than the ILEC's. From the ILEC's perspective, the issue does not concern a restriction on the size of the calling areas that a CLEC may define for its subscribers. Rather, the crux of the issue is the compensation that CLECs and ILECs should pay each

other for the completion of calls in both directions when the CLEC-defined local calling area is different than the traditionally defined ILEC local calling areas that were instituted by Commission policies, standards and regulations.<sup>2</sup>

Invariably, the ILECs view the issue as pertaining to wholesale telecommunications services as compared to retail. Based on this view, the ILECs do not favor an "originating carrier" approach to defining the appropriate intercarrier compensation in these instances. ILECs fear that permitting CLECs to define larger local calling areas without the imposition of access charges would circumvent the existing access charge regime and deprive them of terminating access charges to which they are entitled. Therefore, ILECs object to defining CLEC local calling areas more expansively than the ILECs' without the imposition of access charges.

From the CLEC perspective, there is no technical or economic reason for a new competitor to maintain the ILEC's existing local calling area. Therefore, CLECs are of the opinion that "LATA wide" or even Statewide local calling promotes competition and could benefit the consumer in that it may allow CLECs to compete with local exchange providers as well as interexchange carriers. Furthermore, CLECs are of the opinion that reciprocal compensation is the appropriate intercarrier compensation that should apply between CLECs and ILECs when the CLEC's local calling area is larger than the ILEC's.

The majority of jurisdictions which have considered this issue appear to favor retaining the ILEC's local calling area as the basis for intercarrier compensation. However, recent decisions in New York and Florida indicate that an originating party's local calling area is used to define intercarrier compensation. See *In re: Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, FL PSC Docket No. 000075-TP (Phases II and IIA), Order No. PSC-0201248-FOF-TP (September 10, 2002); *Petition of Global Naps, Inc. Pursuant to Section 252(B) of the Telecommunications Act of 1996, For Arbitration to Establish an Intercarrier Agreement with Verizon New York, Inc.*, N.Y. PSC Docket Case 02-C-0006 (May 22, 2002).<sup>3</sup>

Also, it appears that some jurisdictions have considered the impact of competition and intercarrier compensation in generic proceedings.<sup>4</sup>

When the CLEC defines its calling areas more expansively than the ILEC, numerous issues are raised. As part of this Commission's ongoing initiatives to implement competition in the telecommunications area, consistent with State and Federal law, we believe that it is appropriate to open a generic, on-the-record investigation into the impact on intercarrier compensation where the calling areas of local exchange companies, whether CLEC, ILEC, or other, differ. We shall direct the Office of Administrative Law Judge (OALJ) to conduct this investigation culminating in the issuance of a recommended decision to

<sup>2</sup>The Commission-defined local calling areas contained in each ILEC local exchange tariff is the required minimum local calling area covered by the tariffed local exchange base rate and which were developed over the years based on "community of interest" policy standards as well as the standards set forth in our Extended Area Service regulations in 52 Pa. Code § 63.77.

<sup>3</sup>In the arbitration proceeding, Verizon pointed out that the staff of the Florida Public Service Commission, requested reconsideration of its support for using an "originating" carrier approach for intercarrier compensation.

<sup>4</sup>See *Investigation as to Whether Certain Calls are Local; Independent Telephone Companies and Competitive Local Exchange Carriers—Local Calling Areas Final Order*; N.H. Docket No. DT-00-223; DT-00-054, (October 28, 2002) 2002 N.H. PUC LEXIS 165.

<sup>1</sup>For purposes of this Order and Investigation, Local Calling Area is defined in accordance with 52 Pa. Code § 63.71 as follows: "Local calling area—The area, consisting of one or multiple telephone exchanges, between which calls may be completed without having interexchange toll rates applied."

the Commission. We shall further direct that all interested participants and the OALJ consider the following questions:

(1) What other alternative intercarrier compensation arrangements, other than access charges and those arrangements contained in the questions below, could be considered in addressing the different local calling areas between ILECs and CLECs? What are the pros and cons of each arrangement and how should each intercarrier compensation arrangement be applied between the carriers?

(2) What are the current intercarrier compensation arrangement(s) that are in use between ILECs today in cases where the Commission has directed implementation of one-way EAS? Are any of these types of intercarrier compensation arrangements viable options between ILECs and CLECs for the traffic at issue in this investigation (i.e., calls made by a CLEC customer to an ILEC customer where the CLEC's local calling area is larger than the ILEC's local calling area and vice versa)?

(3) What are the current intercarrier compensation arrangement(s) that are in use between ILECs today in cases where the Commission has directed implementation of two-way EAS calls between ILECs? Are any of these types of intercarrier compensation arrangements acceptable to both ILECs and CLECs as a fair form of compensation for the traffic at issue in this investigation? (i.e., calls made by a CLEC customer to an ILEC customer where the CLEC's local calling area is larger than the ILEC's local calling area and vice versa)?

(4) What are the pros and cons of non-reciprocal, asymmetrical intercarrier compensation arrangements between CLECs and ILECs when the local calling area of the CLEC and the ILEC are different (i.e., the CLEC's local calling area is larger or smaller than the ILEC's local calling area)?

(5) What is the financial impact on ILECs, CLECs and interexchange carriers, of permitting other viable intercarrier compensation regimes as compared to the current access charge regime?

(6) Is it in the public interest for this Commission to proceed to implement expanded or different local calling areas for CLECs without the necessity of completing access charge reform?

(7) The Commission's Global Order, entered September 30, 1999, at Docket Nos. P-00991648 and P-00991649, contains a consumer protection requirement that all CLECs must offer their customers a local service offering that maintains all pre-existing ILEC EAS routes. Additionally, the Global Order does not prevent CLECs from offering innovative calling plans which include local calling areas that differ from existing ILEC local calling areas. Based on the outcome of this investigation, will it be necessary to revise this policy in any way?

(8) Should the intercarrier compensation agreements be standardized in Pennsylvania for the traffic at issue in this investigation or should carriers be permitted to negotiate individual intercarrier compensation arrangements?

(9) What is the best way to inform other ILEC entities that are not parties to a particular Interconnection Agreement that a CLEC's local calling area is larger than the traditional Commission-established local calling areas?

(10) Should a CLEC be required to file interconnection agreements with all ILECs that will be impacted by the CLEC's decision to expand its local calling areas beyond the traditional Commission-established local calling areas?

(11) Are there any other issues that should be addressed that are deemed necessary and relevant to this investigation?

We request that comments requested under the conduct of the investigation by the OALJ be written in plain English. Furthermore, we request that commenters reference their responses so as to correspond with the specific questions posed in this Investigation Order; *Therefore,*

*It Is Ordered That:*

1. The Commission hereby commences a generic investigation regarding the impact on intercarrier compensation if a CLEC defines local calling areas differently than the ILEC's local calling area consistent with established Commission precedent.

2. The OALJ shall conduct the generic investigation consistent with this Opinion and Order.

3. A copy of this Order, which gives notice of this generic investigation, shall be published in the *Pennsylvania Bulletin* and interested parties shall file comments within 30 days of publication of this notice. Interested parties shall file substantive comments to the previously listed issues in the Commission's Order instituting this investigation, as well as any other additional issues the Commission or the parties consider relevant to this investigation.

4. The Parties shall file their substantive comments at the previously cited docket number and their comments should be addressed to James J. McNulty, Secretary, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120.

5. After the submission of the substantive comments, the OALJ shall institute hearings as may be necessary to further develop the record to ensure that the investigation fully addresses all relevant and material issues regarding the impact on intercarrier compensation of defining local calling areas differently than ILECs.

6. The presiding Administrative Law Judge assigned to this investigation may subsequently limit, or otherwise restrict or eliminate, any additional issues submitted by interested parties if those issues are deemed not to be relevant to this investigation.

7. Upon conclusion of hearings, the presiding Administrative Law Judge shall cause to be issued a Recommended Decision which shall be served on all parties and submitted to the Commission for its consideration at public meeting.

8. A copy of this Order shall be served on all jurisdictional telecommunications carriers and the PTA, Office of Consumer Advocate, the Office of Small Business Advocate and the Commission's Office of Trial Staff.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 03-1385. Filed for public inspection July 11, 2003, 9:00 a.m.]

## Natural Gas Service

**A-121850F2032. National Fuel Gas Distribution Corporation.** Application of National Fuel Gas Distribution Corporation for approval of the abandonment of natural gas service to two natural gas service customers located in Sugar Creek Township, Armstrong County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). 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 28, 2003. The documents filed in support of the application 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 applicant's business address.

*Applicant:* National Fuel Gas Distribution Corporation

*Through and By Counsel:* Christopher M. Trejchel, Esquire, 1100 State Street, P. O. Box 2081, Erie, PA 16512.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 03-1386. Filed for public inspection July 11, 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 August 4, 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-00119922. All in the Family Auto Sales/Rental Cars, Inc.** (2005 Clayton Avenue, Harrisburg, Dauphin County, PA 17109), a corporation of the Commonwealth—persons upon call or demand, in the City of Harrisburg, the Boroughs of Penbrook, Paxtang, Steelton, Hummelstown, Middletown and Highspire, and the Townships of Susquehanna, Swatara, Lower Paxton and Lower Swatara, all located in Dauphin County.

**A-00119919. Autocab, Inc.** (625 East Orange Street, Lancaster, Lancaster County, PA 17602), a corporation of the Commonwealth—persons upon call or demand, in the City of Lancaster and within an airline distance of 6 statute miles of the limits of said city. *Attorney:* Thomas T. Niesen, 212 Locust Street, Suite 500, P. O. Box 9500, Harrisburg, PA 17101.

**A-00119918. Jose' A. Ramirez t/d/b/a Concord Car Service** (325 South 8th Street, Reading, Berks County, PA 19602)—persons upon call or demand, in the City of Reading, Berks County.

**A-00119915. Veronica Gamboa** (P. O. Box 5561, Harrisburg, Dauphin County, PA 17110)—persons upon call or demand in the Counties of Dauphin, Perry, Cumberland, Lebanon and Lancaster.

**A-00119913. Yvonne Victoria Kulp t/d/b/a YV Kulp Transportation** (12721 Deer Path Drive, East Stroudsburg, Monroe County, PA 18301)—persons in paratransit service, between points in the County of Monroe, and from points in said county, to points in Pennsylvania, and return.

**A-00119867 (corrected). John C. and Ida Taylor t/d/b/a Top Notch Van Service** (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.

**A-00119897. E Entertainment Inc.** (P. O. Box 63212, Philadelphia, PA 19114)—persons in limousine service, between points in the Counties of Bucks, Chester, Delaware, Montgomery and the City and County of Philadelphia, and from points in said territory, to points in Pennsylvania, and return.

**Application of the following for *amendment to the certificate of public convenience approving the operation of motor vehicles as common carriers for transportation of persons as described under the application.***

**A-00088477, Folder 4 Am-C. Lehigh Valley Taxicab Co.** (130 West Goepf Street, Bethlehem, Northampton County, PA 18018), a corporation of the Commonwealth, inter alia—persons, in airport transport service, between the Allentown-Bethlehem-Easton Airport, in the Township of Hanover, Lehigh County, and points within an airline distance of 50 statute miles of the limits of said airport; subject to the following conditions: (1) that all transportation must either originate or terminate at the previously named airport; and (2) the service herein authorized is limited to transportation in vehicles having a seating capacity of not more than 15 persons including the driver, without the use of dome lights or taximeters: *So As To Permit* the transportation of persons, in airport transfer service, from the Lehigh Valley International Airport, located in the Township of Hanover, Lehigh County, to any other airport located in Pennsylvania, limited to transportation where the persons were diverted or stranded passengers.

**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-00109547, Folder 3. Reading Yellow Cab, Inc.** (615 Elm Street, Reading, Berks County, PA 19601), a corporation of the Commonwealth—persons in paratransit service, between points in the County of Berks, and from points in said county, to points in Pennsylvania, and return. *Attorney:* Frederick O. Brubaker, 543 Elm Street, Reading, PA 19601.

**A-00118692, Folder 2. Todd W. Callahan t/d/b/a Interstate Airport Shuttle** (405 North Wade Avenue, Washington, Washington County, PA 15301)—persons in paratransit service, between points in the Counties of Butler, Cambria, Fayette, Greene, Indiana, Somerset,

Washington and Westmoreland, and from points in said counties and the County of Allegheny, to points in Pennsylvania, and return.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 03-1387. Filed for public inspection July 11, 2003, 9:00 a.m.]

*Applicant:* Little Washington Wastewater Company

*Through and By Counsel:* Mark J. Kropilak, Esquire,  
762 West Lancaster Avenue, Bryn Mawr, PA 19010-3489.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 03-1389. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Telecommunications

**A-311087F7000. Verizon Pennsylvania Inc. and PaCLEC Corporation.** Joint petition of Verizon Pennsylvania Inc. and PaCLEC Corporation for approval of amendment no. 1 and amendment no. 2 to an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. and PaCLEC Corporation, by its counsel, filed on June 20, 2003, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of amendment no. 1 and amendment no. 2 to an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. and PaCLEC Corporation joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 03-1388. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Water Service

**A-210104F0032. Pennsylvania Suburban Water Company.** Application of Pennsylvania Suburban Water Company for approval of: (1) the acquisition by Pennsylvania Suburban Water Company of the water system assets of the Thornhurst Country Club Estates Property Owners Association; and (2) the right of Pennsylvania Suburban Water Company to begin to offer, render, furnish and supply water service to the public in a portion of Lehigh Township, Lackawanna County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). 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 28, 2003. The documents filed in support of the application 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 applicant's business address.

*Applicant:* Pennsylvania Suburban Water Company

*Through and By Counsel:* Mark J. Kropilak, Esquire,  
762 West Lancaster Avenue, Bryn Mawr, PA 19010-3489.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 03-1390. Filed for public inspection July 11, 2003, 9:00 a.m.]

### Wastewater Service

**A-230240F0019. Little Washington Wastewater Company.** Application of Little Washington Wastewater Company for the approval of: (1) the acquisition by Little Washington Wastewater Company of the wastewater system assets of the Thornhurst Country Club Estates Property Association; and (2) the right of Little Washington Wastewater Company to begin to offer, render, furnish or supply wastewater service to the public in a portion of Lehigh Township, Lackawanna County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). 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 28, 2003. The documents filed in support of the application 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 applicant's business address.

### Water Service

**A-210104F0033. Pennsylvania Suburban Water Company.** Application of Pennsylvania Suburban Water Company for approval of: (1) the acquisition by Pennsylvania Suburban Water Company of the water system assets of Cedar Lane Water Association, Inc.; and (2) the right of Pennsylvania Suburban Water Company to begin to offer, render, furnish and supply water service to the public in a portion of Kingston Township, Luzerne County.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). 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 28, 2003. The documents filed in support of the application 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 applicant's business address.

*Applicant:* Pennsylvania Suburban Water Company

*Through and by Counsel:* Mark J. Kropilak, Esquire,  
762 West Lancaster Avenue, Bryn Mawr, PA 19010-3489.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 03-1391. Filed for public inspection July 11, 2003, 9:00 a.m.]

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## STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

**Bureau of Professional and Occupational Affairs v.  
Anthony Louis Mione; Doc. No. 0143-60-2002**

On May 22, 2003, the State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) issued an adjudication and order in which it levied a civil penalty of \$500 and suspended Anthony Louis Mione's vehicle salesperson license number MV-071407-L for a minimum of 3 years.

Individuals may obtain a copy of the adjudication by writing to Thomas A. Blackburn, Board Counsel, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649.

This adjudication and order represents the final Board decision in this matter. It may be appealed to the Commonwealth Court by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court must serve the Board with a copy of the petition for review. The Board contact for receiving service of appeals is the previously named Board counsel.

EDWARD J. CERNIC, Jr.,  
*Chairperson*

[Pa.B. Doc. No. 03-1392. Filed for public inspection July 11, 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.

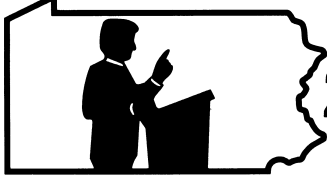
Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) 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



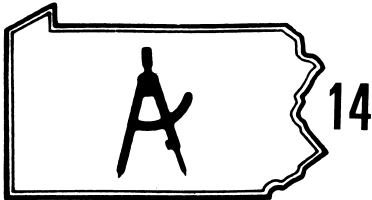
## GET A STEP AHEAD IN COMPETING FOR A STATE CONTRACT!

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*

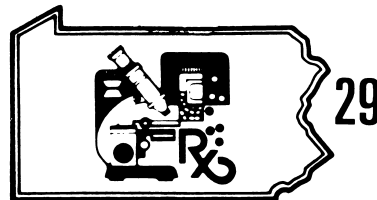
## SERVICES



### 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).

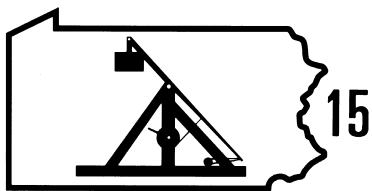
**Department:** Transportation  
**Location:** Various  
**Contact:** [www.dot2.state.pa.us](http://www.dot2.state.pa.us)



### Medical Services

**06087** Provide physical, occupational and speech therapy.

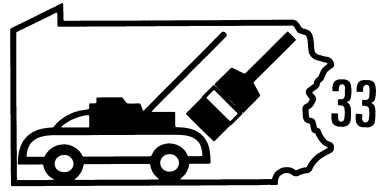
**Department:** Military Affairs  
**Location:** PA Soldiers & Sailors Home, 560 East 3rd Street, Erie, PA 16507  
**Duration:** Notice to Proceed through 6/30/04  
**Contact:** Jenny Nowacinski, (814) 878-4930



### Environmental Maintenance Service

**BOGM 02-15R** Cleaning Out and Plugging Four (4) Abandoned Gas Wells (Ms. Louise J. Winslow, Mr. Kenneth T. Morrill, Mr. and Mrs. Paul Buckholt, Mr. and Mrs. Philip D. Morrill, Mr. Donald Enterline, Jr., and Mr. and Mrs. Clyde F. Hill Properties). The principal items of work include cleaning out and plugging four (4) abandoned gas wells to Department specifications, preparing and restoring well sites and mobilizing and demobilizing plugging equipment. The wells are estimated to be between 6,000-6,216 feet in depth, using an estimated 2,000 pounds of plugging material and taking an estimated plugging time of 400 hours. This project issues on July 11, 2003 and bids will be opened August 12, 2003 at 2:00 p.m. A pre-bid conference is scheduled for this project; however, a date has not been set. Please use the contact information contained in this advertisement to find out more about the pre-bid conference. Payment in the amount of \$10.00 must be received before bid documents will be sent.

**Department:** Environmental Protection  
**Location:** Benetzette Township, Elk County, PA  
**Duration:** 60 calendar days after notice to proceed.  
**Contact:** Construction Contracts Section, (717) 783-7994



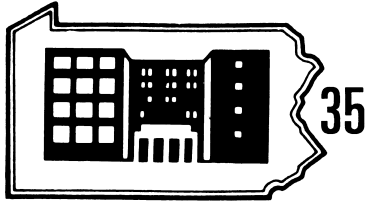
### Property Maintenance

**SU-02-43** Shippensburg University is seeking vendors to provide supervision, labor, tools, equipment and listed materials to replace the rear baffle plates in CP Boiler; performing all work in one continuous operation during regular straight time workdays. ALL vendors MUST perform a MANDATORY site inspection prior to bidding. To request a bid package, please contact Karen Smith via fax (717) 477-1350 or email ([kmsmit@wharf.ship.edu](mailto:kmsmit@wharf.ship.edu)). Bids will be due no later than 4:00 PM on July 17, 2003 and opened at 2:00 PM on July 18, 2003.

**Department:** State System of Higher Education  
**Location:** Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257  
**Duration:** Work must be completed by mid-September 2003.  
**Contact:** Karen M. Smith, (717) 477-1386

**11030b** Replace gutter and downspout in Cottages 24 and 26 (one building). Perimeter is approximately 275 linear feet.

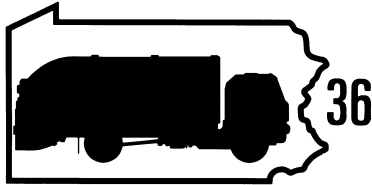
**Department:** Milk Marketing Board  
**Location:** Scotland School for Veterans' Children, 3583 Scotland Rd., Scotland, PA 17254-0900  
**Duration:** August 11, 2003 through September 19, 2003  
**Contact:** Marion E. Jones, (717) 264-7187 X661



### Real Estate Services

**93603** LEASE OFFICE SPACE TO THE COMMONWEALTH OF PA. Proposals are invited to provide the Department of Agriculture with 6,000 useable square feet of office space in Allegheny/Butler County, PA with a minimum parking for 42 vehicles, within the following boundaries: North: From Route 228 at I-76, Exit #3, East to Route 8, North on Route 8 to Route 228, Route 228 to Route 356; West and South: I-76, Exit #5 West to I-76, Exit #3; East: Route 28. Downtown locations will be considered. For more information on SFP #93603 which is due on August 11, 2003 visit [www.dgs.state.pa.us](http://www.dgs.state.pa.us) under "Real Estate" to download an SFP package or call (717) 787-4396.

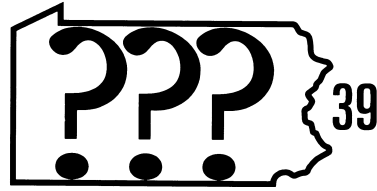
**Department:** Agriculture  
**Location:** 505 North Office Building, Harrisburg, PA 17125  
**Contact:** John Hocker, (717) 787-4396



### Sanitation

**Refuse Disposal** Contractor will provide removal and proper disposal of refuse. All pick-ups must be made between 6:00 am and 3:00 pm and the contractor must meet residential recycling requirements as governed by Greene Township.

**Department:** Military Affairs  
**Location:** Scotland School for Veterans' Children, 3583 Scotland Rd., Scotland, PA 17254-0900  
**Duration:** October 1, 2003 through June 30, 2008  
**Contact:** Marion E. Jones, (717) 264-7187 X661



### Miscellaneous

**SU-02-44** Shippensburg University is seeking a vendor to provide all necessary material, labor and equipment to tear out the rear Detrick arch and the Detrick nose on the ignition arch. Vendor will also replace the super duty brick wall above the ignition arch to a height of 5'0", and replace the brick wall above the rear nose and cap with super duty plastic. A section of red brick approximately 12'0" wide x 3'0" high located on the outside of the boiler will also be replaced. Vendor must perform a MANDATORY site inspection. Vendors interested in receiving a bid package MUST fax a request to Mona Holtry, Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257; Fax (717) 477-1350; email: [mmholt@wharf.ship.edu](mailto:mmholt@wharf.ship.edu). All responsible bidders are invited to participate including MBE/WBE firms.

**Department:** State System of Higher Education  
**Location:** Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257  
**Duration:** All work must be completed before mid September 2003.  
**Contact:** Mona M. Holtry, (717) 477-1386

**430780** Provide Crystal Care Enterprise technical support and maintenance for Crystal Reports: Developer, Professional, and Enterprise version 9 and future versions.

**Department:** Transportation  
**Location:** PA Dept. of Transportation, Bureau of Design, 400 North St., 7th Floor, Harrisburg, PA 17120  
**Duration:** This will be a one-year contract with four one-year renewal options.  
**Contact:** Nancy Baker, (717) 787-3311

**430779** Provide a full range of Adobe software solutions for the desktop, server, and enterprise. Quantities will be specified in bid package.

**Department:** Transportation  
**Location:** PA Dept. of Transportation, Bureau of Design, 400 North St., 7th Floor, Harrisburg, PA 17120  
**Duration:** Six month period beginning from the date of award  
**Contact:** Nancy Baker, (717) 787-3311

[Pa.B. Doc. No. 03-1393. Filed for public inspection July 11, 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*

