

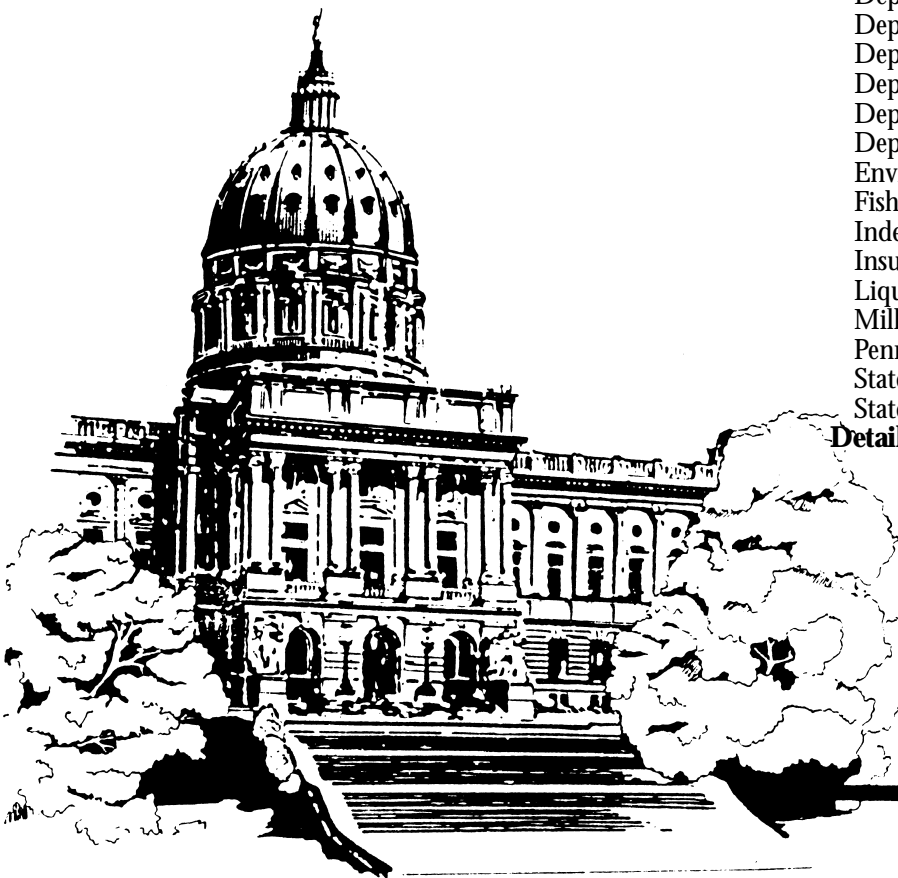
PENNSYLVANIA BULLETIN

Volume 34
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Agencies in this issue:

The Governor
The Courts
Department of Agriculture
Department of Banking
Department of Community and Economic
Development
Department of Education
Department of Environmental Protection
Department of General Services
Department of Health
Department of Public Welfare
Department of Revenue
Department of Transportation
Environmental Quality Board
Fish and Boat Commission
Independent Regulatory Review Commission
Insurance Department
Liquor Control Board
Milk Marketing Board
Pennsylvania Public Utility Commission
State Board of Nursing
State Ethics Commission

Detailed list of contents appears inside.



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No. 357, August 2004

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CONTENTS

THE GOVERNOR

PROCLAMATION

Proclamation of disaster emergency 4410

THE COURTS

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of disbarment 4434

LOCAL COURT RULES

Beaver County

Local rules of criminal procedure; no. 286 misc. of 2004 4425

Local rules of criminal procedure; no. 10130 of 2001 4426

Butler County

Local civil court rules; MSD 04-40246 4426

Cambria County

Rules of civil procedure; 2004-2377 4426

Fayette County

Local rules 305, 305.1 and 575; no. 34 AD 2004, 35 AD 2004, 36 AD 2004 4428

Luzerne County

Order adopting and/or amending rules of civil procedure; no. 4905C/04 4429

Order adopting the revision, reorganization and renumbering rules of civil and criminal procedure and rules concerning Election Code; no. 4904C/04; 395 MISC-04 4432

Mercer County

Local rule L320; 2004-2375 4433

Local rule of civil procedure L320; no. 2004-2375 . . . 4433

RULES OF CRIMINAL PROCEDURE

Coverage: issuing warrants; preliminary arraignment and summary trial; arrests without warrant and release; and setting and accepting bail 4412

EXECUTIVE AGENCIES

DEPARTMENT OF AGRICULTURE

Rules and Regulations

Corrective amendment to 7 Pa. Code § 138e.16(a) . . 4435

Notices

Dog control facility bill reimbursement grant program 4472

DEPARTMENT OF BANKING

Notices

Action on applications 4474

Maximum lawful rate of interest for residential mortgages for the month of August 2004 4475

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

Notices

Consolidated plan public meeting and regional housing advisory committee meetings 4475

DEPARTMENT OF EDUCATION

Notices

Availability of 2004-2005 innovative learning and workforce development agriculture funds 4476

Availability of 2004-2005 Innovative learning and workforce development funding 4476

DEPARTMENT OF ENVIRONMENTAL PROTECTION

See also ENVIRONMENTAL QUALITY BOARD

Notices

Applications, actions and special notices 4477

Public meeting and request for comment for the proposed total maximum daily load (TMDL):
Crosskill Creek in Berks and Lebanon Counties . . 4516
Hartshorn Run Watershed in Clearfield County . . 4515
Sanbourn Run Watershed in Clearfield County . . 4516
Watershed of Unnamed Tributary 44769 to the Conemaugh River in Indiana County 4517

State Board for Certification of Sewage Enforcement Officers; 2004 examination announcement 4517

DEPARTMENT OF GENERAL SERVICES

Notices

State contracts information 4536

DEPARTMENT OF HEALTH

Notices

Applications for exception:
Adler Institute for Advanced Imaging 4517
Blake Gastroenterology Ambulatory Surgery Center 4517
Gettysburg Hospital 4518
Jennersville Regional Hospital 4518
Mount Nittany Medical Center 4518
Nason Hospital 4519
Philipsburg Area Hospital 4519
UPMC Lee Regional Hospital 4519
UPMC Passavant Hospital 4519
The Washington Hospital 4520

Availability of draft preventive health and health services block grant application for Federal fiscal year 2005; public hearing 4520

Availability of Title V funds through mini-grants to support:
Community outreach and peer support activities about breastfeeding 4520
Elimination of barriers to community inclusion for children/youth with special health care needs . . 4522
Presentations about building inclusive communities for children and youth with special health care needs 4523
Organ Donation Advisory Committee meeting 4524

Now Available Online at <http://www.pabulletin.com>

Requests for exception; long-term care nursing facilities..... 4524
 Tobacco Use Prevention and Cessation Advisory Committee public hearing and public meeting 4524

DEPARTMENT OF PUBLIC WELFARE

Proposed Rulemaking

MA day of care definition..... 4462
 Medical Assistance provider appeal procedure 4447
 Metropolitan statistical area..... 4465

DEPARTMENT OF REVENUE

Notices

Pennsylvania Lifetime Riches '04 instant lottery game..... 4525

DEPARTMENT OF TRANSPORTATION

Notices

Finding (2 documents) 4527, 4528

ENVIRONMENTAL QUALITY BOARD

Rules and Regulations

Safe drinking water; microbial and disinfection byproducts 4435

FISH AND BOAT COMMISSION

Rules and Regulations

Boating 4444

Proposed Rulemaking

Boating 4466

INDEPENDENT REGULATORY REVIEW COMMISSION

Notices

Actions taken by the Commission..... 4528
 Notice of filing of final rulemakings..... 4530

INSURANCE DEPARTMENT

Notices

Hamot Medical Center; hearing..... 4530
 Highmark Inc. d/b/a Highmark Blue Shield; new direct pay medically underwritten PPO high deductible health plans (rates are based on age, gender, smoker or nonsmoker); rate filing 4530
 Review procedure hearings; cancellation or refusal of insurance 4531
 Review procedure hearings under the Unfair Insurance Practices Act 4531

LIQUOR CONTROL BOARD

Notices

Expiration of leases..... 4532

MILK MARKETING BOARD

Notices

Hearing and presubmission schedule for:
 Milk marketing area no. 1; cost replacement..... 4532
 Milk marketing area no. 5; cost replacement..... 4533
 Milk marketing area no. 6; cost replacement..... 4534

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Notices

Service of notice of motor carrier applications..... 4534

STATE BOARD OF NURSING

Notices

Bureau of Professional and Occupational Affairs v. Mercedes Bogi, L.P.N., R.N.; doc. no. 0146-51-04 .. 4535

STATE ETHICS COMMISSION

Notices

Public meeting 4535

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 2004.

1 Pa. Code (General Provisions)

Adopted Rules

301 1681
 303 1681
 305 1681
 307 1681
 309 1681
 311 1681

4 Pa. Code (Administration)

Adopted Rules

1 2057, 2685
 5 366, 2287
 6 (with correction) 366, 2162, 2164, 2288, 3236
 7 3238, 4013
 91 1442
 93 1442
 95 1442
 97 1442
 99 1442
 101 1442
 105 1442
 110 1442

Proposed Rulemaking

161 3146

Statements of Policy

9 855, 1234, 1335, 1337, 1966, 2075, 2332, 2830, 3277, 3608, 3723, 4154
 114 63

7 Pa. Code (Agriculture)

Adopted Rules

76 4139
 138 2421
 138e 2421, 4435
 138l 2421

Proposed Rulemaking

76 831
 104 561

12 Pa. Code (Commerce, Trade and Local Government)

Statements of Policy

123 488

22 Pa. Code (Education)

Adopted Rules

14 2324
 403 2975, 3355, 3358

25 Pa. Code (Environmental Protection)

Adopted Rules

86 388
 109 1758, 1762, 3130, 4435
 207 2041
 215 3823
 216 3823
 217 3823
 218 3823
 219 3823
 220 3823
 221 3823

223 3823
 224 3823
 225 3823
 226 3823
 227 3823
 228 3823
 230 3823
 240 3823

Proposed Rulemaking

83 4361
 91 4353
 92 4353
 93 2067
 401 1329

28 Pa. Code (Health and Safety)

Adopted Rules

18 3695
 25 2711, 2808
 1001 677
 1003 677
 1005 677
 1007 677
 1051 677

31 Pa. Code (Insurance)

Adopted Rules

146c 4146

Proposed Rulemaking

147 844
 151 850
 167 3255

34 Pa. Code (Labor and Industry)

Adopted Rules

401 319
 403 319
 405 319

Statements of Policy

123 1684

37 Pa. Code (Law)

Proposed Rulemaking

42 853
 91 3010
 93 3010
 94 3010

Statements of Policy

200 2573

40 Pa. Code (Liquor)

Proposed Rulemaking

1 3411
 3 3411
 5 3411
 7 3411
 9 3411
 11 3411
 13 3411
 15 3411

49 Pa. Code (Professional and Vocational Standards)

Adopted Rules

3 (with correction) 1574, 1683, 3699
 7 2467
 9 235
 11 1768
 13 39
 16 40
 18 43
 19 3410
 23 1453, 4147
 25 47
 31 388
 33 2326
 40 3700

Proposed Rulemaking

9 1948
 13 1961
 16 56, 1963
 21 851
 25 58, 563
 27 3146
 29 565
 31 1331
 33 1949
 35 61
 39 55
 41 60
 45 3143

52 Pa. Code (Public Utility)

Proposed Rulemaking

29 3258
 31 3258
 62 2071
 63 1784, 1795
 101 3138

Statements of Policy

41 3912

55 Pa. Code (Public Welfare)

Adopted Rules

1150 3596
 3040 1575

Proposed Rulemaking

41 4447
 285 1774
 1187 4462, 4465

Statements of Policy

6000 1234

58 Pa. Code (Recreation)

Adopted Rules

63 1231, 1232, 3598
 65 1231, 3599, 3600
 93 1231, 1232
 105 4444
 111 3601
 135 3703
 139 3704
 141 2328, 2825, 3710, 3711, 3712, 3713
 143 2826, 3713, 3715
 147 2329, 2827, 2828, 3716
 147a 2329
 147b 2329

Proposed Rulemaking

61 3603
 63 1457
 65 1458, 1460, 1461, 3603
 69 3603
 91 4151
 103 4466
 105 4466
 107 4466
 111 4152, 4466
 135 1941, 3137
 137 3015
 139 1776
 141 484, 1781, 1941, 3016
 143 484, 1782, 1944
 147 485, 486, 1946, 3017, 3411

61 Pa. Code (Revenue)

Adopted Rules

872 50

64 Pa. Code (Securities)

Adopted Rules

207 1940

67 Pa. Code (Transportation)

Adopted Rules

83 3718
 175 1327

Proposed Rulemaking

103 843
 212 951

Statements of Policy

86 567
 88 567

204 Pa. Code (Judicial System General Provisions)

Adopted Rules

71 2062, 2063, 3102
 81 9, 2537
 83 1547, 2537
 85 948
 87 948
 89 948

Proposed Rulemaking

71 1749
 81 1752
 83 1749, 3243, 3245, 3862

210 Pa. Code (Appellate Procedure)

Adopted Rules

1 1670
 9 1670
 11 1670
 13 1670
 15 1670, 3862
 17 1670, 3870
 19 2064
 21 1320, 2688
 31 2688
 33 3870
 37 2688
 65 379

225 Pa. Code (Rules of Evidence)

Adopted Rules

VII 2065
 IX 1492

Proposed Rulemaking

I..... 2689
 VI 2987
 VIII..... 4020, 4021

231 Pa. Code (Rules of Civil Procedure)

Adopted Rules

200 9, 557, 3103, 3677, 4107
 400 9
 1000 9, 1926
 1300 22
 1500 9
 1600 9
 1900 1754
 1910 1754
 1915 1754
 1920 1754
 1930 1754
 1940 4107
 2000 9
 2020 9
 2050 9
 2100 9
 2120 9
 2150 9
 2170 9
 2200 9
 2220 9
 2250 9
 2300 9
 2320 9
 2350 9
 2950 22
 3000 9, 22
 4000 9, 1926

Proposed Rulemaking

3000 476
 3300 476
 Part II 3104

234 Pa. Code (Rules of Criminal Procedure)

Adopted Rules

1 1547, 1671, 1929, 2541, 2910, 3105

4 1547, 1929
 5 1547, 1932, 2543, 2910, 3105
 6 3105
 7 1547, 3105
 8 3105
 9 1547, 1671, 3105

Proposed Rulemaking

1 1429, 4412
 2 4412
 4 34, 4412
 5 4412
 6 2543

246 Pa. Code (Minor Court Civil Rules)

Adopted Rules

300 2464
 400 2465

Proposed Rulemaking

200 480
 300 480
 400 4022
 500 480
 1000 1933

249 Pa. Code (Philadelphia Rules)

Unclassified 36

252 Pa. Code (Allegheny County Rules)

Unclassified 2912

255 Pa. Code (Local Court Rules)

Unclassified 37, 231, 379, 482, 483, 557, 829,
 830, 949, 1229, 1230, 1320, 1321, 1326, 1433, 1570,
 1571, 1573, 1674, 1936, 1937, 2289, 2312, 2545,
 2551, 2690, 2704, 2705, 2706, 2710, 2798, 2801,
 2912, 2914, 2987, 2991, 2998, 3008, 3009, 3110,
 3125, 3247, 3248, 3249, 3250, 3251, 3252, 3253,
 3254, 3371, 3394, 3401, 3404, 3406, 3585, 3587,
 3593, 3678, 3681, 3683, 3687, 3688, 3691, 3873,
 3875, 3876, 3877, 3880, 3881, 3882, 3883, 3884,
 3910, 3911, 4023, 4026, 4107, 4110, 4112, 4121,
 4122, 4127, 4425, 4426, 4428, 4429, 4432, 4433

THE GOVERNOR GOVERNOR'S OFFICE

Proclamation of Disaster Emergency

August 5, 2004

Whereas, Investigations made at my direction have disclosed a quite active weather pattern that produced multiple storm systems throughout the Commonwealth during July and the beginning of August 2004 with each system arriving on the heels of the previous system that did not allow time for waterways to pass water from the previous storm. Additionally, soil moisture conditions were quite high due to the repetitive nature of the storms and thus subsequent rainfall was not absorbed by the soil, producing more runoff into area streams and creeks; and

Whereas, this repetitive nature, combined with large amounts of moisture in the atmosphere allowed thunderstorms to be efficient in producing large amounts of precipitation and intense precipitation rates. Multiple rainfall events from these efficient rainfall producing storms culminated in serious flooding in many parts of Pennsylvania; and

Whereas, the severe weather patterns during this period revealed that precipitation during July 2004 was extremely high, doubling the normal rainfall amount and nearly setting a record for total rainfall; and

Whereas, these storm events caused widespread damage in Delaware County and the contiguous counties of Montgomery and Philadelphia on August 1, 2004, resulting in extensive damage to roads and streets, private homes, businesses, and caused other adverse impacts upon the general population of the region; and

Whereas, the multiple storms that produced widespread flooding also produced damaging winds and tornadoes resulting in extensive damage to roads and streets, private homes, businesses, and caused other adverse impacts upon the general population in south central and southeastern Pennsylvania; and

Whereas, as the storm waters receded, the extent of damage and loss to roads, bridges, essential community infrastructure, and other community resources was revealed; and

Whereas, the serious impact of this storm on both the immediate and long-term economy of this region and the state represents a major hardship requiring a comprehensive federal, state, and local partnership for effective recovery; and

Whereas, the emergency situation may present an imminent and substantial endangerment to the public health and welfare or the environment and has been of such magnitude and severity as to render essential the Commonwealth's supplementation of county and municipal efforts and resources and the activation of all applicable state, county, and municipal emergency response plans; and

Now Therefore, pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code (35 Pa.C.S. Section 7101 et seq.), I do hereby proclaim the existence of a disaster emergency in the affected areas of Delaware County and the contiguous counties of Montgomery and Philadelphia, and in accordance with the State Emergency Operations Plans, I direct all Commonwealth departments and agencies to utilize all available resources and personnel as is deemed necessary to cope with the magnitude and severity of this emergency situation.

Further, I hereby transfer up to \$2,000,000 in unused appropriated funds to the Pennsylvania Emergency Management Agency. The aforementioned funds shall be used for disaster-related expenses incurred by various state agencies and departments. These funds shall be credited to a special account established by the Office of the Budget. All Commonwealth agencies

purchasing supplies or services in response to this emergency are authorized to utilize the emergency procurement procedures set forth in Section 516 of the Commonwealth Procurement Code, Act of May 15, 1998, P. L. 358, No. 57, § 516. This Proclamation shall serve as the written determination of the basis for the emergency under Section 516; and

Further, I hereby authorize the Secretary of Transportation to use all available equipment, resources, and personnel of the Department, in whatever manner that he deems necessary, to ensure that all state highways in the disaster affected areas are cleared of debris and any other obstructions resulting from this severe storm and to ensure that highways, bridges, roadbeds, and related facilities and structures, including Federal-aid highways, that have sustained damage in the disaster affected area are immediately repaired, maintained, reconstructed, or replaced or that new construction is undertaken where necessary. In addition, I hereby waive any laws or regulations that would restrict the application and use of the Department's equipment, resources, and personnel to assist local jurisdictions in the repairs and clearing and removal of debris and other types of obstructions from non-state-owned highways. This assistance to local jurisdictions may be provided solely at the discretion of the Secretary of Transportation. This assistance, however, does not apply to privately owned highways, roads, streets, or other types of property; and

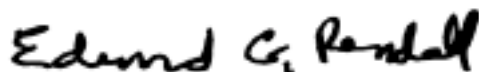
Further, I hereby authorize the Secretary of Environmental Protection to use all available equipment, resources, and personnel of the Department, in whatever manner that she deems necessary to protect public health and safety or the environment by ensuring that any possible petroleum spills, hazardous materials and contaminated debris that may be released into the environment as a result of the flooding be remediated.

Further, I have directed that the emergency response and recovery aspects of all the Commonwealth departments and agencies and all applicable county, municipal, and other disaster emergency response and recovery plans be activated and that all state, county, and municipal actions taken to implement those plans be coordinated through the Pennsylvania Emergency Management Agency; and

Further, I have asked the Federal Emergency Management Agency to join with key state, county and community officials to conduct a more detailed Preliminary Damage Assessment of the storm impact; and

Still Further, I hereby continue to urge the governing bodies and executive officers of all political subdivisions affected by this emergency to act as necessary to meet the current exigencies as legally authorized under this proclamation, namely: by the employment of temporary workers; by the rental of equipment; and by entering into such contracts and agreements as may be required to meet the emergency, all without regard to those time-consuming procedures and formalities normally prescribed by law, mandatory constitutional requirements excepted.

Given under my hand and the Seal of the Governor, at the city of Harrisburg, this fifth day of August in the year of our Lord, two thousand four and of the Commonwealth, the two hundred and twenty-ninth.



Governor

[Pa.B. Doc. No. 04-1475. Filed for public inspection August 13, 2004, 9:00 a.m.]

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 2, 4 AND 5]

Coverage: Issuing Warrants; Preliminary Arraignment and Summary Trial; Arrests Without Warrant and Release; and Setting and Accepting Bail

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Pa.R.Crim.P. 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail),¹ make correlative amendments to Pa.Rs.Crim.P. 131, 132, 431, 441, 509, 519, 525, and 535, and approve the correlative revision of the Comment to Pa.R.Crim.P. 203. This supplemental proposal modifies the original proposal published in 33 Pa.B. 5607 (11/15/03) and in the *Atlantic Reporter* advanced sheets at 833 A.2d (11/21/03). This supplemental proposal resulted from the Committee's further review of the proposed rule changes in response to the extensive correspondence received after publication of our original explanatory Report addressing the continuous availability of issuing authorities by, inter alia, requiring the president judge of each judicial district to ensure sufficient availability of issuing authorities to provide the services required by the Criminal Rules. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

The text of the proposed rule changes precedes the Supplemental Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
5035 Ritter Road, Suite 100
Mechanicsburg, PA 17055
fax: (717) 795-2106
e-mail: criminal.rules@pacourts.us

no later than Monday, September 20, 2004.

By the Criminal Procedural Rules Committee

JOHN J. DRISCOLL,
Chair

¹ To accommodate new Rule 117, current Rules 117 and Rule 118 are being renumbered Rule 118 and Rule 119 respectively.

Annex A

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

PART A. Business of the Courts

Rule 117. Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail.

(A) The president judge of each judicial district shall ensure sufficient availability of issuing authorities to provide the services required by the Rules of Criminal Procedure as follows:

(1) continuous coverage for the issuance of search warrants pursuant to Rule 203 and arrest warrants pursuant to Rule 513;

(2) coverage using one or a combination of the systems of coverage set forth in paragraph (B) to: (a) conduct summary trials or set collateral in summary cases following arrests with a warrant issued pursuant to Rule 430(A) as provided in Rule 431(B)(3) and following arrests without a warrant as provided in Rule 441(C);

(b) conduct preliminary arraignments without unnecessary delay whenever a warrant of arrest is executed within the judicial district pursuant to Rule 516;

(c) set bail without unnecessary delay whenever an out-of-county warrant of arrest is executed within the judicial district pursuant to Rule 517(A);

(d) accept complaints and conduct preliminary arraignments without unnecessary delay whenever a case is initiated by an arrest without warrant pursuant to Rule 519(A)(1); and

(3) coverage during normal business hours for all other business.

(B) The president judge, taking into consideration the rights of the defendant and the judicial district's resources and coverage needs, by local rule promulgated pursuant to Rule 105, shall establish one or a combination of the following systems of coverage to provide the services enumerated in paragraph (A)(2):

(1) a traditional on-call system providing continuous coverage;

(2) an "after-hours court" or a "night court" staffed by an on-duty issuing authority and staff;

(3) a regional on-call system; or

(4) a schedule of specified times for after-hours coverage when the "duty" issuing authority will be available to conduct business.

(C) The president judge of each judicial district, by local rule promulgated pursuant to Rule 105, shall ensure that coverage is provided pursuant to Rule 520(B) to admit defendants to bail on any day and at any time in any case pending in any magisterial district within the judicial district.

Comment

By this rule, the Supreme Court is clarifying the responsibility of president judges in supervising their respective judicial districts to ensure compliance with the statewide Rules of Criminal Procedure to prevent the violation of the rights of defendants caused by the lack of

availability of the issuing authority. See also Rule 116 (General Supervisory Powers of President Judge) and Rule 131 (Location of Proceedings Before Issuing Authority).

Paragraph (A), derived from former Rule 132(A) (Continuous Availability), clarifies that it is the president judge's responsibility to make sure that there are issuing authorities available within his or her judicial district (1) on a continuous basis to issue search and arrest warrants, paragraph (A)(1); (2) pursuant to one or a combination of the systems of coverage enumerated in paragraph (B) to conduct summary trials and preliminary arraignments, and perform related duties, paragraph (A)(2); and (3) during normal business hours to conduct all other business of the minor judiciary, paragraph (A)(3). It is expected that the president judge will continue the established procedures in the judicial district or establish new procedures to ensure sufficient availability of issuing authorities consistent with this paragraph.

By providing the alternate systems of coverage in paragraph (B), this rule recognizes the differences in the geography and judicial resources the judicial districts.

An issuing authority is "available" pursuant to paragraph (A) when he or she is able to communicate in person or by using advanced communication technology ("ACT") with the person requesting services pursuant to this rule. See Rule 103 for the definition of ACT. Concerning the use of ACT, see Rule 118 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings). See also Rules 203, 513, 518, and 540 providing for the use of ACT to request and obtain warrants and conduct preliminary arraignments.

Nothing in this rule limits an issuing authority from exercising sound judicial discretion, within the parameters established by the president judge pursuant to paragraph (B), in deciding how to respond to a request for services outside normal business hours. See, e.g., Rule 203(E) that requires, when a search warrant is being requested for a nighttime search, that the affidavits show reasonable cause for such nighttime search; Rule 509(1) and (2) that authorize the use of summonses instead of warrants in certain court cases; and Rule 519(B) that requires the police officer to release a defendant arrested without a warrant in certain specified court cases.

In determining which system of coverage to elect, the president judge must consider the rights of the defendant, see, e.g. *Commonwealth v. Duncan*, 525 A.2d 1177 (Pa. 1987), and the judicial district's resources and coverage needs, as well as the obligations of the police and attorney for the Commonwealth to ensure the defendant is brought before an issuing authority without unnecessary delay as required by law, see, e.g., Rules 431, 441, 516, 517, and 519. See also *Commonwealth v. Perez*, A.2d (Pa. 2004).

The proceedings enumerated in paragraph (A)(2) include (1) setting bail before verdict pursuant to Rule 520(A) and Rule 540, and either admitting the defendant to bail or committing the defendant to jail, and (2) determining probable cause whenever a defendant is arrested without a warrant pursuant to Rule 540(C).

Pursuant to paragraph (C), the president judge also is responsible for making sure there is an issuing authority or other designated official available within the judicial district on a continuous basis to accept bail pursuant to Rule 520(B). The president judge, by local rule, may continue established procedures or establish new procedures for the after-hours acceptance of deposits of bail by

an issuing authority, a representative of the office of the clerk of courts, or such other individual designated by the president judge. See Rule 535(A). Given the complexities of posting real estate to satisfy a monetary condition of release, posting of real estate may not be feasible outside normal business hours.

When the president judge designates another official to accept bail deposits, that official's authority is limited under this rule to accepting the bail deposit, and under Rule 525 to releasing the defendant upon execution of the bail bond. Pursuant to Rule 535(A), the official is authorized only to have the defendant execute the bail bond and to deliver the bail deposit and bail bond to the issuing authority or clerk of courts.

The local rule requirements in paragraphs (B) and (C) (1) ensure there is adequate notice of (a) the system of coverage, thereby providing predictability in the issuing authority's duty schedule, and (b) the official authorized to accept bail, (2) promote the efficient administration of justice, and (3) provide a means for the Supreme Court to monitor the times and manner of coverage in each judicial district.

The local rules promulgated pursuant to this rule should include other relevant information, such as what are the normal business hours of operation or any special locations designated by the president judge to conduct business, that will assist the defendants, defense counsel, attorneys for the Commonwealth, police, and members of the public.

Concerning other requirements for continuous coverage by issuing authorities in Protection from Abuse Act cases, see 23 Pa.C.S. § 6110 and Pa.R.C.P.D.J. 1203.

Official Note: Former Rule 117 adopted September 20, 2002, effective January 1, 2003; renumbered Rule 118 , 2004, effective , 2004. New Rule 117 adopted , 2004, effective , 2004.

Committee Explanatory Reports:

Report explaining new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003). Supplemental Report explaining the post-publication changes published at 34 Pa.B. 4421 (August 14, 2004).

Rule [117] 118. Court Fees Prohibited For Two-Way Simultaneous Audio-Visual Communication.

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Official Note: New Rule 117 adopted September 20, 2002, effective January 1, 2003; **renumbered Rule 118 , 2004, effective , 2004.**

Committee Explanatory Reports:

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Report explaining the renumbering of Rule 117 as Rule 118 published at 33 Pa.B. 5613 (November 12, 2003). Supplemental Report explaining the post-publication changes published at 34 Pa.B. 4421 (August 14, 2004).

Rule [118] 119. Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings.

* * * * *

Comment

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Nothing in this rule is intended to limit any right of a defendant to waive his or her presence at a criminal proceeding in the same manner as the defendant may

waive other rights. See, e.g., Rule 602 Comment. Negotiated guilty pleas when the defendant has agreed to the sentence and probation revocation hearings are examples of hearings in which the defendant's consent to proceed using two-way simultaneous audio-visual communication would be required. Hearings on post-sentence motions, bail hearings, **bench warrant hearings**, extradition hearings, and *Gagnon I* hearings are examples of proceedings that may be conducted using two-way simultaneous audio-visual communication without the defendant's consent. It is expected the court or issuing authority would conduct a colloquy for the defendant's consent when the defendant's constitutional right to be physically present is implicated.

* * * * *

Official Note: New Rule 118 adopted August 7, 2003, effective September 1, 2003; **renumbered Rule 119 and Comment revised** , 2004, effective , 2004.

Committee Explanatory Reports:

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Report explaining the renumbering of Rule 118 as Rule 119 published at 33 Pa.B. 5613 (November 12, 2003). Supplemental Report explaining the revision of the second paragraph of the Comment published at 34 Pa.B. 4421 (August 14, 2004).

PART C. Venue, Location, and Recording of Proceedings Before Issuing Authority

Rule 131. Location of Proceedings Before Issuing Authority.

(A) An issuing authority within the magisterial district for which he or she is elected or appointed shall have jurisdiction and authority [at all times] to receive complaints, issue warrants, hold preliminary arraignments, set and receive bail, issue commitments to jail, and hold hearings and summary trials.

* * * * *

Comment

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Paragraph (B) of this rule is intended to facilitate compliance with the requirement that defendants be represented by counsel at the preliminary hearing. *Coleman v. Alabama*, 399 U.S. 1[, 90 S.Ct. 1999] (1970).

* * * * *

Official Note: Formerly Rule 156, paragraph (a) adopted January 16, 1970, effective immediately; paragraph (a) amended and paragraph (b) adopted November 22, 1971, effective immediately; renumbered Rule 22 September 18, 1973, effective January 1, 1974; renumbered Rule 131 and amended March 1, 2000, effective April 1, 2001; amended March 12, 2002, effective July 1, 2002; amended May 10, 2002, effective September 1, 2002; **amended** , 2004, effective , 2004.

Committee Explanatory Reports:

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Report explaining the proposed deletion in paragraph (A) of "at all times" published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the post-publication changes published at 34 Pa.B. 4421 (August 14, 2004).

Rule 132. [Continuous Availability and] Temporary Assignment of Issuing Authorities.

[(A) Continuous Availability

(1) The president judge of each judicial district shall be responsible for insuring the availability at all times within the judicial district of at least one issuing authority.

(2) The issuing authority assigned to be on duty after business hours shall set bail as provided in Chapter 5 Part C, and shall accept deposits of bail in any case pending in any magisterial district within the judicial district.

(B) Temporary Assignment

(1) (A) The president judge may assign temporarily the issuing authority of any magisterial district to serve another magisterial district whenever such assignment is needed:

[(a)] **(1)** to satisfy the requirements of [paragraph (A)(1)] **Rule 117;**

[(b)] **(2)** * * *

[(c)] **(3)** * * *

[(d)] **(4)** * * *

* * * * *

[(2)] **(B)** * * *

[(3)] **(C)** A motion may be filed requesting a temporary assignment under [paragraph (B)(1)] **this rule** on the ground that the assignment is needed to insure fair and impartial proceedings. Reasonable notice and opportunity to respond shall be provided to the parties.

[(4)] **(D)** A motion shall be filed requesting a temporary assignment under paragraph [(B)(1)(c)] **(A)(3)** whenever the attorney for the Commonwealth elects to proceed under Rule 544(B) following the refiling of a complaint.

Comment

[This rule is intended to impose the responsibility of the president judge to prevent the violation of the rights of defendants caused by the lack of availability of the issuing authority.

Paragraph (A)(2) requires an issuing authority on duty after business hours to set bail, as provided by law, and to accept deposits of bail in any case pending in any magisterial district within the judicial district, so that a "defendant may be admitted to bail on any date and at any time." Rule 520(B).

Nothing in this rule is intended to preclude judicial districts from continuing established procedures or establishing new procedures for the after-hours acceptance of deposits of bail by a representative of the clerk of courts' office.]

The provisions of former paragraph (A) (Continuous Availability) were incorporated into new Rule 117 in 2004.

Paragraphs [(B)(1)(b)] (A)(2) and [(3)] (C) make explicit the authority of president judges to assign issuing authorities when necessary to insure fair and impartial proceedings, and to provide a procedure for a party to request such an assignment. Temporary assignment in this situation is intended to cover what might otherwise be referred to as "change of venue" at the district justice level. See, e.g., *Sufrich v. Commonwealth*, 447 A.2d 1124 (Pa. Cmwlth. 1982).

The motion procedure of paragraph [(B)(3)] (C) is intended to apply when a party requests temporary assignment to insure fair and impartial proceedings. The president judge may, of course, order a response and schedule a hearing with regard to such a motion. However, this paragraph is not intended to require "a formal hearing . . . beyond the narrow context of a motion for temporary assignment of issuing authority to insure fair and impartial proceedings predicated upon allegations which impugn the character or competence of the assigned issuing authority and which seek the recusal of the assigned issuing authority." See *Commonwealth v. Allem*, 532 A.2d 845 (Pa. Super. 1987) (filing and service of the written motion and answer, and allowance of oral argument were more than adequate to meet the rule's requirements).

Paragraphs [(B)(1)(c)] (A)(3) and [(4)] (D) govern those situations in which the attorney for the Commonwealth, after refileing the complaint following the withdrawal or dismissal of any criminal charges at, or prior to, a preliminary hearing, determines that the preliminary hearing should be conducted by a different issuing authority. See also Rule 544 (Reinstituting Charges Following Withdrawal or Dismissal). Under Rule 544, the president judge may designate another judge within the judicial district to handle reassignments.

* * * * *

Official Note: Formerly Rule 152, adopted January 16, 1970, effective immediately; amended and renumbered Rule 23 September 18, 1973, effective January 1, 1974; amended October 21, 1983, effective January 1, 1984; amended February 27, 1995, effective July 1, 1995; amended October 8, 1999, effective January 1, 2000; renumbered Rule 132 and amended March 1, 2000, effective April 1, 2001; amended , 2004, effective , 2004.

Committee Explanatory Reports:

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Report explaining the proposed changes to the rule correlative to the changes in proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the post-publication changes published at 34 Pa.B. 4421 (August 14, 2004).

CHAPTER 2. INVESTIGATIONS

PART A. Search Warrant

Rule 203. Requirements for Issuance.

* * * * *

Comment

* * * * *

Paragraph (B) does not preclude oral testimony before the issuing authority, but it requires that such testimony be reduced to an affidavit prior to issuance of a warrant. All affidavits in support of an application for a search warrant must be sworn to before the issuing authority prior to the issuance of the warrant. "Sworn" includes "affirmed." See Rule 103. The language "sworn to before the issuing authority" contemplates, when advanced communication technology is used, that the affiant would not be in the physical presence of the issuing authority. See paragraph (C).

Paragraph (D) changes the procedure discussed in *Commonwealth v. Crawley*, 223 A.2d 885 (Pa. Super.

1966), aff'd per curiam 247 A.2d 226 (Pa. 1968). See *Commonwealth v. Milliken*, 300 A.2d 78 (Pa. 1973).

Ordinarily, a law enforcement officer requesting a search warrant should make the request during the normal business hours of the issuing authority. When circumstances necessitate obtaining a search warrant outside normal business hours, the law enforcement officer must contact the proper issuing authority to determine when the issuing authority will be available to issue the search warrant. See Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

* * * * *

Official Note: Rule 2003 adopted March 28, 1973, effective for warrants issued 60 days hence; renumbered Rule 203 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; **Comment revised , 2004, effective , 2004.**

Committee Explanatory Reports:

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Report explaining the proposed changes to the rule correlative to the changes in proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the post-publication changes published at 34 Pa.B. 4421 (August 14, 2004).

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART D. Arrest Procedures In Summary Cases

PART D(1). Arrests With a Warrant

Rule 430. Issuance of [Arrest] Warrant.

(A) ARREST WARRANTS INITIATING PROCEEDINGS

A warrant for the arrest of the defendant shall be issued when:

[(1) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested;

(2)] (1) the citation or summons is returned undelivered; or

[(3)] (2) * * *

[(4) the defendant has failed to appear for the execution of sentence as required in Rule 454(E)(3).]

(B) BENCH WARRANTS

(1) A bench warrant shall be issued when the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested; or

[(B)] (2) A bench warrant [for the arrest of the defendant] may be issued when a defendant has entered a not guilty plea and fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 455(A), that the trial should not be conducted in the defendant's absence.

[(C)] (3) A bench warrant [for the arrest of the defendant] may be issued when:

- [(1)] (a) * * *
- [(2)] (b) * * *
- [(3)] (c) * * *

[(D)] (4) No warrant shall issue under paragraph [(C)] (B)(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of **[an arrest] a bench** warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.

Comment

Personal service of a citation under paragraph [(A)] (B)(1) is intended to include the issuing of a citation to a defendant as provided in Rule 400(A) and the rules of Chapter 4, Part B(1).

When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the juvenile fails to respond to the summons, the issuing authority should issue **[an arrest] a warrant** as provided in **either** paragraph (A)(1) **[and (2)] or (B)(1)**.

[An arrest] A bench warrant may not be issued under paragraph [(A)] (B)(1) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 451.

[Rule 454 provides that the issuing authority is to direct any defendant who is sentenced to a term of imprisonment to appear for the execution of sentence on a date certain following the expiration of the 30-day stay required by Rule 461. Paragraph (A)(1)(d) was added in 2003 to make it clear that an issuing authority should issue a warrant for the arrest of any defendant who fails to appear for the execution of sentence.]

Ordinarily, pursuant to Rule 455, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will include imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a **bench** warrant for the arrest of the defendant pursuant to paragraph (B)(2) in order to bring the defendant before the issuing authority for the summary trial.

The **[arrest] bench** warrant issued under paragraph [(C)] (B)(3) should state the amount required to satisfy the sentence.

When a defendant is arrested pursuant to paragraph [(C)] (B)(3), the issuing authority must conduct a hearing to determine whether the defendant is able to pay the amount of restitution, fine, and costs that is due. See Rule 456.

If the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph [(D)] (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the

10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will proceed pursuant to the Juvenile Act instead of these rules.

* * * * *

Official Note: Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; **amended February 28, 2003, effective July 1, 2003;** Comment revised August 7, 2003, effective July 1, 2004; **amended , 2004, effective , 2004.**

Committee Explanatory Reports:

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Report explaining proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the proposed changes distinguishing between warrants that initiate proceedings and bench warrants in summary cases published at 34 Pa.B. 4421 (August 14, 2004).

Rule 431. Procedure When Defendant Arrested With Warrant.

(A) **[A] When a warrant of arrest is issued for a defendant in a summary case, the warrant:**

(1) shall be executed by a police officer as defined in Rule 103[.] ; and

(2) shall be executed only between the hours of 6 a.m. and 10 p.m., unless the time period is extended by the president judge by local rule enacted pursuant to Rule 105, or when the proper issuing authority determines extraordinary circumstances exist that necessitate the execution of the warrant at another time.

(B) Arrest Warrants Initiating Proceedings

(1) When **[a] an arrest** warrant **[of arrest]** is executed, the police officer shall either:

[(1)] (a) * * *

[(2)] (b) * * *

[(3) accept from the defendant the amount of restitution, fine, and costs due as specified in the warrant if the warrant is for collection of restitution, fine, and costs after a guilty plea or conviction;] or

[(4)] (c) if the defendant is unable to pay, cause the defendant to be taken without unnecessary delay before the proper issuing authority.

[(C)] (2) When the police officer accepts restitution, fine, and costs, or collateral under paragraphs (B)(1) **[(2), or (3),] (a) or (b)** the officer shall issue a receipt to the defendant setting forth the amount of restitution, fine, and costs, or collateral received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

[(D)] (3) When the defendant is taken before the issuing authority under paragraph (B)**[(4)] (1)(c)**,

[(1)] (a) * * *

[(2)] (b) * * *

[(a)] (i) * * *

[(b)] (ii) the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged, in which event the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information[; or].

[(c)] the warrant was issued for the collection of restitution, fine, and costs after a guilty plea or conviction, in which event the issuing authority shall proceed as specified in Rule 456.

(3)] (c) * * *

(4) The issuing authority immediately shall vacate the arrest warrant and order that notice of the vacated warrant promptly be given to all computer networks into which the arrest warrant has been entered.

(C) Bench Warrants

(1) When a bench warrant is executed, the police officer shall either:

(a) accept from the defendant a signed guilty plea and the full amount of the fine and costs if stated on the warrant;

(b) accept from the defendant a signed not guilty plea and the full amount of collateral if stated on the warrant;

(c) accept from the defendant the amount of restitution, fine, and costs due as specified in the warrant if the warrant is for collection of restitution, fine, and costs after a guilty plea or conviction; or

(d) if the defendant is unable to pay, promptly take the defendant for a hearing on the bench warrant as provided in paragraph (C)(3).

(2) When the defendant pays the restitution, fines, and costs, or collateral, the police office shall issue a receipt to the defendant setting forth the amount of restitution, fine, and costs received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

(3) When the defendant does not pay the restitution, fines, and costs, or collateral, the defendant promptly shall be taken before the proper issuing authority if available for a bench warrant hearing.

(a) The bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

(b) If the bench warrant hearing cannot be conducted promptly after the arrest:

(i) the defendant shall be lodged in the county jail pending the hearing; and

(ii) the authority in charge of the county jail promptly shall notify the proper issuing authority that the defendant is being held pursuant to the bench warrant.

(c) The bench warrant hearing shall be conducted no later than the end of the next business day.

(i) If the warrant was issued for the collection of restitution, fine, and costs after a guilty plea or conviction, the issuing authority shall proceed as specified in Rule 456.

(ii) At the conclusion of the bench warrant hearing following the disposition of the matter, the judicial officer immediately shall vacate the bench warrant and order that notice of the vacated warrant promptly be given to all computer networks into which the bench warrant has been entered.

(d) If a bench warrant hearing is not held within the time limits in paragraph (C)(3)(c),

(i) the bench warrant shall expire by operation of law;

(ii) the individual promptly shall be given written notice to appear before the proper issuing authority on the next business day and shall be released from custody; and

(iii) notice of the expired warrant promptly shall be given to all computer networks into which the bench warrant has been entered.

Comment

For the procedure in court cases following arrest with a warrant initiating proceedings, see Rules 516 [and], 517, and 518.

* * * * *

When the proper issuing authority makes the determination in paragraph (A)(2) that extraordinary circumstances exist requiring the warrant to be executed at a time outside the 6 am to 10 pm time limitation, the defendant must be taken before that issuing authority and the case proceed pursuant to these rules.

For what constitutes a "proper" issuing authority, see Rule 130.

Delay of trial under paragraph [(D)(2)(b)] (B)(3)(ii) is required by statutes such as 18 Pa.C.S. § 3929 (pre-trial fingerprinting and record-ascertainment requirements).

* * * * *

If the defendant is 18 years of age or older when the default in payment occurs, the issuing authority must proceed under these rules.

For the procedures required before [an arrest] a bench warrant may issue for a defendant's failure to pay restitution, a fine, or costs, see Rule 430[(D)] (B)(4). When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

[For what constitutes a "proper" issuing authority, see Rule 130.]

For the procedures when a bench warrant is issued in court cases, see Rule 117.

Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail). Pursuant to Rule 117(B), when establishing the system of coverage best suited for the judicial district, the president judge may re-

quire defendants arrested on summary case bench warrants after hours to be taken to the established night court where the defendant would be given a notice to appear in the proper issuing authority's office the next business day or be permitted to pay the full amount of fines and costs.

When a defendant appears in the proper issuing authority's office the next business day following a release pursuant to paragraph (C)(3)(d)(ii), if the issuing authority is unavailable or the summary trial cannot be conducted at that time, the defendant should be given a notice of when to appear for the trial or the opportunity to pay the fines and costs.

* * * * *

Official Note: Rule 76 adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; amended August 9, 1994, effective January 1, 1995; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 431 and amended March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004; amended , 2004, effective , 2004.

Committee Explanatory Reports:

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Report explaining proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the proposed changes distinguishing between procedures for warrants that initiate proceedings and bench warrants procedures in summary cases published at 34 Pa.B. 4421 (August 14, 2004).

PART D(2). Arrests Without Warrant

Rule 441. Procedure Following Arrest Without Warrant.

* * * * *

(B) When a defendant has been arrested without a warrant, the arresting officer [**may, when the officer deems it appropriate,**] shall promptly release the defendant from custody when the following conditions have been met:

[(1) the defendant is a resident of the Commonwealth;

(2)] (1) the defendant poses no threat of immediate physical harm to any other person or to himself or herself; **and**

[(3)] (2) the arresting officer has reasonable grounds to believe that the defendant will appear as required [; **and**].

[(4) the defendant does not demand to be taken before an issuing authority.]

A citation shall be issued to the defendant at the time of release and thereafter the case shall proceed in accordance with Rules 405—409 as if the proceedings had been instituted by issuing a citation to the defendant.

(C) When the defendant has not been released from custody under paragraph (B),

(1) if the arrest is made during the normal business hours of the proper issuing authority, the defendant shall be taken without unnecessary delay before the issuing authority where a citation shall be filed against the defendant, and

[(1)] (a) * * *

[(2)] (b) * * *

[(a)] (i) * * *

[(b)] (ii) * * *

(2) If the arrest is made outside the normal business hours of the proper issuing authority, before taking the defendant to the issuing authority, the police officer promptly shall contact the issuing authority to determine when the issuing authority will be available, as provided in Rule 117, to proceed under this rule.

* * * * *

Comment

This rule [**provides**] was amended in 2004 to require the arresting police officer [**with a choice to be made based upon the criteria set forth in paragraph (B). Under the rule, the police will either**] to promptly arrange for the defendant's release [**or, if it is necessary to detain the defendant, provide for immediate trial**] if the two criteria set forth in paragraph (B) are met. Prompt release allows for the completion of any post-arrest procedures authorized by law.

“Reasonable grounds” as used in paragraph (B)(2) would include such things as concerns about the validity of the defendant's address, the defendant's prior contacts with the criminal justice system, and the police officer's personal knowledge of the defendant.

The 2004 amendments added the requirement when a defendant in a summary case cannot be released pursuant to paragraph (B), if the arrest occurs outside the normal business hours of the proper issuing authority, before taking the defendant before the issuing authority, the police officer must contact the issuing authority to determine when the issuing authority will be available to conduct the proceedings. See Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

* * * * *

With regard to the “proper” issuing authority as used in these rules, see [**Rule**] **Rules 103 and 130.**

For the procedure in court cases initiated by arrest without warrant, see Rule 518.

Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

Official Note: Rule 71 adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended August 9, 1994, effective January 1, 1995; amended May 14, 1999, effective July 1, 1999; renumbered Rule 441 and amended

March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004; amended , 2004, effective , 2004.

Committee Explanatory Reports:

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Report explaining proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the proposed changes concerning release of defendant following arrest and procedures when defendant is not released published at 34 Pa.B. 4421 (August 14, 2004).

**CHAPTER 5. PRETRIAL PROCEDURES
IN COURT CASES**

PART B(1). Complaint Procedures

Rule 509. Use of Summons or Warrant of Arrest in Court Cases.

If a complaint charges an offense [**which**] that is a court case, the issuing authority with whom it is filed shall:

(1) issue a summons and not a warrant of arrest in cases in which the **most serious** offense charged is [**punishable by a sentence to imprisonment of not more than one year**] is a misdemeanor of the first degree, except as set forth in paragraph (2);

(2) issue a warrant of arrest when:

(a) [**the offense charged is punishable by a sentence to imprisonment of more than five years**] one or more of the offenses charged is a felony or murder; or

(b) the issuing authority has reasonable grounds for believing that the defendant will not obey a summons; or

(c) the issuing authority has reasonable grounds for believing that the defendant poses a threat of immediate physical harm to any other person or to himself or herself; or

[(c)] (d) * * *

[(d)] (e) * * *

[(e)] (f) the identity of the defendant is unknown [;].

[(3) issue a summons or a warrant of arrest, within the issuing authority's discretion, when the offense charged does not fall within any of the categories specified in paragraphs (1) or (2); or

(4) when a defendant is charged with more than one offense and one of such offenses is punishable by a sentence to imprisonment for more than five years, issue a warrant of arrest.]

Comment

[This rule provides for the mandatory use of a summons instead of a warrant in court cases except in special circumstances as specified therein. This change of procedure is provided for relatively minor cases even though they are indictable.

The procedure in paragraph (3) allows the issuing authority to exercise discretion in whether to issue a summons or an arrest warrant depending on the circumstances of the particular case. Appropriate factors for issuing a summons rather than an arrest warrant will, of course, vary. Among the factors that may be taken into consideration are the sever-

ity of the offense, the continued danger to the victim, the relationship between the defendant and the victim, the known prior criminal history of the defendant, etc. However, in all cases in which the defendant has been released pursuant to Rule 518(B), a summons shall be issued.]

It is expected when a case meets the requirements for the issuance of a summons, the police officer will proceed during the normal business hours of the proper issuing authority except in extraordinary circumstances. See Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

Official Note: Original Rule 108 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 108 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 102 and amended September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; Comment revised April 24, 1981, effective July 1, 1981; amended October 22, 1981, effective January 1, 1982; renumbered Rule 109 and amended August 9, 1994, effective January 1, 1995; renumbered Rule 509 and amended March 1, 2000, effective April 1, 2001; amended , 2004, effective , 2004.

Committee Explanatory Reports:

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Report explaining proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining proposed amendments concerning in which cases a summons or a warrant are issued published at 34 Pa.B. 4421 (August 14, 2004).

PART B(3). Arrest Procedures in Court Cases

(b). Arrests Without Warrant

Rule 519. Procedure in Court Cases Initiated by Arrest Without Warrant.

* * * * *

(B) RELEASE

(1) [**When the arresting officer deems it appropriate, the**] The officer [**may**] shall promptly release from custody a defendant who has been arrested without a warrant, rather than taking the defendant before the issuing authority, when the following conditions have been met:

(a) the most serious offense charged is a misdemeanor of the [**second**] first degree;

[**(b) the defendant is a resident of the Commonwealth;**

(c)] (b) the defendant poses no threat of immediate physical harm to any other person or to himself or herself; and

[(d)] (c) the arresting officer has reasonable grounds to believe that the defendant will appear as required [; and].

[(e) the defendant does not demand to be taken before an issuing authority.]

(2) When a defendant is released pursuant to paragraph (B)(1), a complaint shall be filed against the defendant within 5 days of the defendant's release.

Thereafter, [a summons, not a warrant of arrest, shall be issued and the case] the issuing authority shall proceed as provided in Rule [510] 509.

Comment

* * * * *

Paragraph (B)(1) [provides an exception to the requirement that a defendant be afforded a preliminary arraignment after a warrantless arrest. It permits an] requires the arresting officer, in specified circumstances, to release a defendant rather than take the defendant before an issuing authority for preliminary arraignment. [Prior to 1994, this exception applied to all DUI cases, but in other cases was only available at the election of individual judicial districts. With the 1994 amendments, the exception is now an option available to arresting officers statewide and] Prior to the 2004 amendments, the release provision in paragraph (B) was optional. With the 2004 amendments, release is mandatory if the three criteria are met, and this requirement may not be [prohibited] modified by local rule.

“Reasonable grounds” as used in paragraph (B)(1)(b) would include such things as concerns about the validity of the defendant’s address, the defendant’s prior contacts with the criminal justice system, and the police officer’s personal knowledge of the defendant.

Pursuant to paragraph (B), the police will either promptly arrange for the defendant’s release or, if it is necessary to detain the defendant, contact the proper issuing authority to determine when the issuing authority will be available to conduct the preliminary arraignment. See Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail). Prompt release allows, of course, for the administration of any sobriety tests pursuant to the Vehicle Code, 75 Pa.C.S. § 1547, and for the completion of any post-arrest procedures authorized by law.

* * * * *

[Appropriate circumstances for following the procedure under paragraph (B)(1) may vary. Among the factors that may be taken into account are whether the defendant resides in the Commonwealth, and whether he or she can safely be released without danger to self or others.]

* * * * *

[With reference to the provisions of paragraph (B)(2) relating to the issuance of a summons, see also Part B(2) of this Chapter, Summons Procedures.]

* * * * *

Official Note: Original Rule 118 and 118(a) adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 118 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 130 September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 102 and amended August 9, 1994,

effective January 1, 1995; Comment revised September 26, 1996, effective immediately; renumbered Rule 518 and amended March 1, 2000, effective April 1, 2001; renumbered Rule 519 and amended May 10, 2002, effective September 1, 2002; amended , 2004, effective , 2004.

Committee Explanatory Reports:

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Report explaining proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining proposed amendments concerning in which cases a defendant must be promptly released published at 34 Pa.B. 4421 (August 14, 2004).

PART C(1). Release Procedures

Rule 525. Bail Bond.

(A) A bail bond is a document [executed by a defendant, and, when applicable, one or more sureties,] whereby the defendant agrees that while at liberty after being released on bail, he or she will appear at all subsequent proceedings as required and comply with all the conditions of the bail bond.

(B) At the time the bail is set, the bail authority shall

- (1) prepare the bail bond; and
(2) sign the bail bond verifying the conditions the bail authority imposed.

(C) If the defendant is unable to post bail at the time bail is set, when the bail authority commits the defendant to jail, he or she shall send the prepared and verified bail bond and the other necessary paperwork with the defendant to the place of incarceration.

(D) When the defendant is going to be released, the defendant, and, when applicable, one or more sureties, shall sign the bail bond. The official who releases the defendant also shall sign the bail bond witnessing the defendant’s signature.

[(B)] (E) * * *

[(C)] (F) The defendant shall not be released until he or she [executes] signs the bail bond.

[(D) A] (G) After the defendant signs the bail bond, a copy of the bail bond shall be given to the defendant, and the original shall be included in the record.

* * * * *

Official Note: Former Rule 4004 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4005; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 523. Present Rule 4004 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 525 and amended March 1, 2000, effective April 1, 2001; amended , 2004, effective , 2004.

Committee Explanatory Reports:

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Report explaining proposed addition of new paragraph (C) concerning the bail authority’s responsibility to prepare the bail bond published at 33 Pa.B.

5613 (November 12, 2003.) Supplemental Report explaining the proposed published at 34 Pa.B. 4421 (August 14, 2004).

**PART C(2). General Procedures In All Bail Cases
Rule 535. Receipt for Deposit; Return of Deposit.**

(A) [The issuing authority or the clerk of courts who accepts a deposit of cash in satisfaction of a monetary condition of bail shall give the depositor an itemized receipt, and shall note on the transcript or in the list docket entries and the bail bond the amount deposited and the name of the person who made the deposit.] Any deposit of cash in satisfaction of a monetary condition of bail shall be given to the issuing authority, the clerk of courts, or another official designated by the president judge by local rule pursuant to Rule 117(C). The issuing authority, clerk, or other official who accepts the deposit shall give the depositor an itemized receipt, and shall note on the bail bond the amount deposited and the name of the person who made the deposit. The defendant shall sign the bail bond, and be given a copy of the signed bail bond.

(1) When the issuing authority accepts [such] a deposit of bail, the issuing authority shall note on the docket transcript the amount deposited and the name of the person who made the deposit. The issuing authority shall have the deposit, the docket transcript, and a copy of the bail bond [shall be] delivered to the clerk of courts.

(2) When another official is designated by the president judge to accept a bail deposit, that official shall deliver the deposit and the bail bond to either the issuing authority, who shall proceed as provided in paragraph (A)(1), or the clerk of courts, who shall proceed as provided in paragraph (A)(3).

(3) When the clerk of courts accepts the deposit, the clerk shall note on the docket the amount deposited and the name of the person who made the deposit, and shall place the bond in the criminal case file.

* * * * *
Comment
* * * * *

When the president judge has designated another official to accept the bail deposit as provided in Rule 117, the other official's authority under Rule 117 and this rule is limited to accepting the deposit, having the defendant sign the bail bond, releasing the defendant, and delivering the bail deposit and bail bond to the issuing authority or the clerk of courts.

A deposit of cash to satisfy a defendant's monetary bail condition that is made by a person acting as a surety for the defendant may not be retained to pay for the defendant's court costs and/or fines. See *Commonwealth v. McDonald*, 382 A.2d 124 (Pa. 1978).

Given the complexities of posting real estate to satisfy a monetary condition of release, posting of real estate may not be feasible outside the normal business hours.

* * * * *

Official Note: Former Rule 4015, previously Rule 4009, adopted November 22, 1965, effective June 1, 1966;

renumbered Rule 4015, former paragraph (b) integrated into paragraph (a) and new paragraph (b) adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule [535] 4015. Present Rule 4015 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 535 and amended March 1, 2000, effective April 1, 2001; amended April 20, 2000, effective July 1, 2000; amended March 3, 2004, effective July 1, 2004; amended , 2004, effective , 2004.

Committee Explanatory Reports:

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Report explaining the proposed changes to the rule correlative to the changes in proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the proposed published at 34 Pa.B. 4421 (August 14, 2004).

SUPPLEMENTAL REPORT

Proposed New Pa.R.Crim.P. 117, Correlative Amendments to Pa.Rs.Crim.P. 131, 132, 431, 441, 509, 519, 525, and 535, Correlative Revision of the Comment to Pa.R.Crim.P. 203, Renumbering Rule 117 as Rule 118 and Rule 118 as Rule 119

Coverage: Issuing Warrants; Preliminary Arraignment and Summary Trial; Arrests Without Warrant and Release; and setting And Accepting Bail

I. INTRODUCTION

The Criminal Procedural Rules Committee's original proposal² was for a new Pa.R.Crim.P. 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail); and for correlative amendments to Pa.Rs.Crim.P. 131 (Location of Proceedings Before Issuing Authority), 132 (Continuous Availability and Temporary Assignment of Issuing Authorities), 525 (Bail Bond), and 535 (Receipt for Deposit; Return of Deposit); and the renumbering of current Rule 117 as Rule 118 and current Rule 118 as Rule 119. In this Supplemental Report, the Committee is explaining several changes to proposed new Rule 117, and the addition of a number of proposed correlative amendments to Pa.Rs.Crim.P. 413 (Procedure When Defendant Arrested with Warrant), 441 (Procedure Following Arrest without Warrant), 509 (Use of Summons or Warrant of Arrest in Court Cases), and 519 (Procedure in Court Cases Initiated by Arrest without Warrant), and a correlative revision of the Comment to Rule 203 (Requirements for Issuance).³

The core of the proposal as published remains the same.⁴ The major changes in this supplemental proposal address a number of the issues raised in the publication responses, as well as some fine tuning by the Committee. Briefly, these changes include:⁵

- modifications to Rules 117, 203, 509, and 519 making the rules clearer concerning when the issuing authority

² See 33 Pa.B. 5607 (11/15/03) and the *Atlantic Reporter* advanced sheets, 833 A.2d (11/21/03).

³ In addition, the Comment to Rule 119 would be revised to reference bench warrant hearings.

⁴ See the Introduction, Background, and first part of the discussion sections of the Committee's November 2003 explanatory Report for the explanation of the development and the core aspects of the proposal.

⁵ There are no changes to the published version of Rules 118, 131, or 132.

must conduct after-hours proceedings, giving the issuing authority some discretion with regard to the actual time to conduct after-hours proceedings

- cross-references in the Rule 117 Comment to Rules 203, 509, and 519 providing examples of situations that would not require an issuing authority's immediate availability and when it would be appropriate for the police officer to call and determine when the issuing authority will be available for that case

- amendments to Rule 509 modifying the criteria for when a summons is to be issued and when an arrest warrant is to be issued following the filing of a complaint in a court case

- amendments to Rule 519 modifying the criteria for release of the defendant in court cases following an arrest without a warrant, and making the release provisions mandatory rather than discretionary with the police officer

- changes to Rules 430, 431, and 441 that address the issue of after-hours availability of issuing authorities in summary cases by (1) distinguishing between arrest warrants that institute proceedings and arrest warrants that are bench warrants, (2) establishing specific bench warrant procedures for summary cases, (3) establishing time limits in Rule 431 for the execution of summary case warrants, and (4) amending Rule 441 modifying the criteria for the release of a defendant in a summary case following an arrest without a warrant and making the release provisions mandatory rather than discretionary with the police officer

- changes to Rules 525 and 535 that (1) require the issuing authority to sign the bail bond verifying the conditions of bail before sending the bail bond with the defendant to the prison, (2) require the individual who releases the defendant to sign the bail bond indicating he or she released the defendant, and (3) caution that the posting of real estate may not be feasible outside normal business hours given the complexities of posting realty for bail

In all other respects, the rules as published remain the same.

II. DISCUSSION

1. Rule 117

As explained in the Introduction, the core aspects of the Rule 117 proposal remain the same:

(1) the president judges are responsible for ensuring that the coverage needs of the judicial district are met;

(2) there are three categories of coverage requirements for issuing authorities: continuous coverage by issuing authorities to handle search warrants and arrest warrants; one of the systems of coverage provided in the rule to conduct summary trials and preliminary arraignments following arrests, set collateral or bail, and accept complaints; coverage during normal business hours for all other matters handled by the issuing authorities;

(3) there are four systems of coverage that a president judge may choose from for the conduct of the proceedings: a traditional on-call system providing continuous coverage; an "after-hours court" or "night court" staffed by an on-duty issuing authority and staff; a regional on-call system; and a schedule of specified times for after-hours coverage when the "duty" issuing authority will be available to conduct business; and

(5) the president judges are required to designate the individual or individuals to provide coverage pursuant to Rule 520(B) to admit defendants to bail on any day and any time.

The Committee is proposing the following changes to Rule 117 to address some of the issues raised in the publication correspondence:

(1) a clarification in paragraph (A)(2) and (B) that the president judge may choose one or a combination of systems of coverage enumerated in paragraph (B) to provide coverage for the proceedings set forth in paragraph (A)(2);

(2) a change in terminology from "district justice" to "issuing authority" to make it clear the Rule 117 provisions apply not only to district justices but to all members of the minor judiciary and common pleas court judges when sitting as district justices;

(3) additional language explaining in the rule and Comment when an issuing authority will be "available" permitting an issuing authority to communicate in person or by using advanced communication technology in the appropriate circumstances;

(4) an additional provision in the Comment explaining there are situations when a police officer should not demand an issuing authority's immediate availability, and should call to see when the issuing authority will be available; and

(5) a cautionary provision in the Comment noting, given the complexities of posting realty for bail, the posting of real estate may not be feasible outside normal business hours.⁶

2. Search Warrants; Arrest Warrants in Court Cases

The Committee is proposing correlative changes to Rules 203 (Requirements of Issuance), 509 (Use of Summons or Warrant of Arrest in Court Cases), and 519 (Procedure in Court Cases Initiated by Arrest Without Warrant) that address a major area of concern raised in the publication correspondence: what "continuous coverage" means, and whether district justices are required to make themselves available immediately for every call from law enforcement regardless of whether the nature of the matter really necessitates immediate availability. The correspondents suggested the issuing authority should be "on call" to answer the after-hours phone calls, but then should have discretion to determine whether the call necessitates immediate availability, and if not, to set a reasonable time when the issuing authority will be available to conduct the proceeding. The Committee re-examined the rules with this suggestion in mind. We agreed providing the issuing authority with some discretion in establishing their availability within the parameters of Rule 117 is a reasonable idea, and concluded that changes to Rules 203, 509, and 516 to accommodate this concept. The proposed changes discussed below provide guidance in court cases to both law enforcement officers and issuing authorities concerning the types of cases when it is necessary for issuing authorities to be available "at all times" after-hours, and the types of cases the issuing authorities would have discretion to set reasonable times when they will be available.

a. Search Warrant Procedures

Proposed new Rule 117(A)(1) includes a provision requiring "continuous coverage" for the issuance of search

⁶ A similar cautionary provision is being added to the Rule 535 Comment.

and arrest warrants, reflecting one of the generally accepted principles in criminal justice few question even though the search warrant rules do not specifically state this premise. In reconsidering the “continuous availability” provision and search warrants, the Committee noted Rule 203(E) requires additional probable cause before a nighttime search may be authorized and Rule 205 provides the warrant be “served in the daytime unless otherwise authorized on the warrant, provided that, for purposes of the rules of Chapter 200, Part A, the term ‘daytime’ shall be used to mean the hours of 6 a.m. to 10 p.m.” Based on this rule language, the Committee reasoned these current restrictions concerning night-time searches support the conclusion that issuing authorities should be able to exercise discretion in determining when they will be available after-hours to issue search warrants. In these situations, the law enforcement officer should call the issuing authority to determine when the issuing authority will be available. This phone-in process will afford the issuing authority an opportunity to discuss the matter with law enforcement and decide the urgency of the request.

In view of these considerations, the Committee is proposing a revision to the Rule 203 Comment explaining that ordinarily search warrants should be requested during the normal business hours of the issuing authority. In an extraordinary circumstance, the law enforcement officer should call the issuing authority to determine when he or she will be available to issue the search warrant. In addition, we are including in the Rule 117 Comment a cross-reference to Rule 203(E) to emphasize that, in most cases, the police should not request a search warrant outside the normal business hours of the issuing authority unless the matter falls within the nighttime search requirements.

b. Arrest Procedures in Court Cases

The Committee also re-examined the rule procedures related to arrests with and without a warrant, specifically Rule 509 (Use of Summons or Warrant of Arrest in Court Cases), which sets forth the criteria for the issuing authority to use when determining whether to issue a summons or an arrest warrant, and Rule 519 (Procedure in Court Cases Initiated by Arrest without Warrant), which sets forth the criteria the police officer is to use when determining whether to release the defendant or bring the defendant before the issuing authority for a preliminary arraignment. The Committee considered (1) the substantive and procedural requirements for a prompt preliminary arraignment are only triggered when there has been an arrest, and (2) Rules 509 and 519 provide for non-custodial proceedings in certain cases involving misdemeanors.⁷ After reviewing these “exceptions” to the arrest procedures, the current criteria in Rules 509 and 519 when these exceptions may be used, and the offenses that are graded misdemeanors, the Committee concluded Rules 509 and 519 should be the same concerning the grade of misdemeanor that would trigger the mandatory summons provisions in Rule 509 and the mandatory release provisions in Rule 519, and therefore both rules should be amended to expand the application of the “exceptions” to cases in which the “most serious offense is a misdemeanor of the first degree.” See Rule 509(1) and Rule 519(B)(1)(a).

Correlative to these changes to Rules 509 and 519, the Committee is proposing some changes to the respective

⁷ Rule 509 authorizes the issuance of a summons rather than an arrest warrant in certain cases and Rule 519 authorizes the police officer to release a defendant in lieu of taking the defendant for a preliminary arraignment in certain cases.

Comments. We agreed the usual procedure when the case meets the Rule 509 summons requirements would be for the police officer to proceed during the normal business hours of the issuing authority with whom the officer will file the complaint, and this is explained in the Rule 509 Comment.

The Committee also is proposing a correlative changes the Rule 519 Comment explaining in those cases in which it is necessary to detain the defendant, the police officer should contact the issuing authority who will conduct the preliminary arraignment to determine when the issuing authority will be available. This initial contact will afford the issuing authority and police officer an opportunity to review the status of the case.

Rule 509

In addition to the changes the Committee is proposing for Rule 509(1) that would require the issuing authority to issue a summons and not a warrant when the most serious offense charged is a misdemeanor of the first degree, the Committee is proposing the following correlative changes to Rule 509:

(1) paragraph (2)(a) will be amended to require an arrest warrant when “one or more of the offenses charged is a felony or murder;”

(2) a new paragraph (2)(c) would add as a consideration when an arrest warrant should be issued rather than a summons, cases in which the defendant poses a threat of any physical harm to any other person or to himself or herself; and

(3) current paragraphs (3) and (4) and the current Comment provisions will be deleted as no longer necessary in view of the changes to paragraphs (1) and (2).

Rule 519

The Committee also is proposing some additional correlative changes to Rule 519(B). The Committee noted the concept of prompt release following an arrest without a warrant in Rule 519(B) was originally added to the rules in 1979 to apply only to drunk driving cases in the discretion of the police officer. The procedure subsequently was expanded in 1981 to apply other misdemeanor cases by local option, and in 1994 to apply uniformly statewide.⁸ The reasons offered in the 1981 Report in support of the prompt release provision—the substantial burden the requirement of a prompt preliminary arraignment in misdemeanor cases places on the local police, the district justices, and the defendant—remain valid today, suggesting the time is ripe to propose another expansion of the rule to permit the prompt release of defendants in all misdemeanor cases. The Committee reassessed the discretionary aspect of the provision and the criteria that must be met for release, and agreed once the police officer determines the defendant meets the criteria for release, the prompt release should be mandatory. From the members’ experience and from our research, we did not discern any reasons in support of maintaining the discretionary nature of the release provision. We, therefore, are proposing paragraph (B) be amended to require the police officer to release the defendant when the defendant satisfies the criteria set forth in the rule.

In reviewing the five criteria set forth in paragraph (B)(1), the members concluded the residency requirement

⁸ See discussion of the historical development of this procedure in the Committee’s explanatory Reports at 9 Pa.B. 2326 (July 14, 1979), 11 Pa.B. 495 (January 31, 1981), and 24 Pa.B. 4342 (August 27, 1994).

in paragraph (a) and the criteria that the defendant does not demand to be taken before the issuing authority in paragraph (e) are unnecessary because the police officer should be considering these two criteria when making a judgment whether there are reasonable grounds to believe the defendant will appear as required, the criteria in paragraph (d). Accordingly, the Committee is proposing Rule 519(B) be amended to require the police officer to promptly release a defendant following an arrest without a warrant when (1) the most serious offense is a misdemeanor of the first degree, (2) the defendant poses no threat of immediate physical harm to any other person or to himself or herself, and (3) the arresting officer has reasonable grounds to believe the defendant will appear as required. The Comment includes an explanation of what would be considered "reasonable grounds" as a guide to the police officer.

3. Summary Case Arrest Procedures

A major issue raised in the publication responses concerned the continuous availability requirement as applied to summary trials. This has been a difficult issue throughout the development of the Rule 117 proposal with strong views on both sides of the issue—those concerned about defendants in a summary cases being unnecessarily detained pending the summary trial, and those concerned about the unnecessary burden on the magisterial district courts and the police in these cases involving less serious offenses. Sensitive to the concerns expressed about the impact of the current summary case arrest procedures, and cognizant about the impact any changes in the procedures could have, the Committee explored possible changes to lessen the burden on the minor judiciary and police while protecting the rights of the defendant.

The Committee reviewed the summary warrant procedures in Rules 430 and 431, and noted that most of the cases when summary arrest warrants are authorized under Rules 430 and 431 are cases in which the defendant has failed to do something—failed to pay the fines and costs or failed to appear, cases more akin to the bench warrant cases in common pleas court. As with court cases, the Committee thought these summary bench warrant situations should be treated differently procedurally than the warrants issued to initiate summary cases. Although a defendant arrested pursuant to a bench warrant is entitled to a hearing within a reasonable amount of time, these cases do not fall within the constitutional requirement of appearing before the issuing authority without unnecessary delay that applies to arrests that initiate the proceedings.

Another aspect of the issues related to the summary warrant procedures concerns when the warrants are executed. From time to time, the Committee has examined the feasibility of limiting the execution of summary case arrest warrants to specific hours, such as between 6 am and 10 pm, which is found in other jurisdictions' rules.⁹ The Committee considered that the basis for summary case warrants ordinarily does not necessitate the warrant be executed at all hours, and, therefore, it would be reasonable to establish the hours when the warrant may be executed that would fall either during the normal business hours of the issuing authority or at such times that a defendant would not be unnecessarily detained.

⁹ We also discussed a procedure requiring the police officer to release the defendant on ROR when the warrant is executed after these hours. However, in view of the other changes the Committee is proposing, this suggestion was not deemed necessary.

The Committee also reviewed Rule 441, and considered the suggestion, which has been raised with the Committee at various times, that the requirement that the defendant must be a resident of the Commonwealth to be considered for prompt release is unnecessary and could be deleted.¹⁰

Rule 430

Agreeing that the summary case rules should distinguish between warrants to initiate proceedings, "arrest warrants," and "bench warrants," the Committee is proposing that Rule 430 be divided into two sections: warrants to initiate summary proceedings and warrants that would be issued in all the other circumstances enumerated in Rule 430, paragraphs (A)(1), (B), and (C). Paragraph (A) will address only the warrants that initiate proceedings. New paragraph (B) will address bench warrants, incorporating the provisions of current Rule 430(A)(1), (B), (C), and (D).

Rule 431

Rule 431 currently sets forth the procedures to be used when a summary case warrant is executed, and does not distinguish between arrest warrants and bench warrants. To clarify the distinction and establish different procedures for bench warrants, the Committee is proposing several changes to the rule.

Paragraph (A) is being amended to be an introductory paragraph that will be applicable to all summary case warrants issued for the arrest of the defendant. A new paragraph (A)(2) establishes the time limitation for the execution of summary case warrants—between the hours of 6 am and 10 pm.¹¹ There are two exceptions to the times set. First, the president judge is authorized to extend the hours. If the president judge extends the hours, the time extension must be done by local rule in compliance with Rule 105. The other exception is when there are extraordinary circumstances, but only after the police officer has received authorization from the issuing authority to execute the warrant after-hours. The Committee believes establishing the time limitation and requiring that the police officer communicate with the district justice before executing a warrant after-hours will alleviate many of the concerns of the publication correspondents by significantly reducing the number of times a district justice is called out to conduct a summary trial after-hours.

Paragraph (B) sets forth the procedures when the warrant initiates proceedings. The procedures are, for the most part, the procedures in current Rule 431. Noting the rule encourages police officer to accept the defendant's plea and the fines and costs or collateral rather than taking the defendant before the issuing authority, the Committee agreed to limit the cases when the police officer may take the defendant in to those cases in which the defendant is unable to pay, further emphasizing that accepting the pleas and payments is the preferred procedure in summary cases. A final change to paragraph (B) addresses a recurring problem raised with the Committee at different times: ensuring executed warrants are removed from the court and police systems. The Committee is adding, as a new paragraph (4), the requirement that the issuing authority immediately vacate the warrant and order that notice of the vacated warrant be given to all computer networks.

Paragraph (C) sets forth the new bench warrant procedures. New paragraph (C)(1) enumerates the same op-

¹⁰ See discussion of this issue in the Rule 519 (B)(1)(b) section above.

¹¹ The Committee agreed to use the 6-10 time period because it is consistent with the concept of "daytime" defined for the service of search warrants in Rule 205(5).

tions to be considered when executing a summary bench warrant that are in current Rule 431(B), with the three payment options set out first to encourage the police to accept payments rather than taking the defendant into custody. New paragraph (C)(2) is the same as current Rule 431(C).

Paragraph (C)(3) establishes the new procedures when a defendant is taken into custody on a bench warrant in a summary case. Paragraph (3) requires the defendant to be taken for the bench warrant hearing before the proper issuing authority if available. Paragraph (3)(a) permits the use of two-way simultaneous audio-visual communication to conduct the hearing.

Paragraph (3)(b)—(d) set forth the procedures when the bench warrant hearing cannot be conducted immediately. In those cases in which the bench warrant hearing cannot be conducted immediately, the defendant is to be taken to the county jail, and the authority in charge of the county jail must notify the proper issuing authority that the defendant is in custody. In these cases, the bench warrant hearing must be conducted no later than the end of the next business day. If the bench warrant hearing is not conducted within this time frame, the bench warrant expires by operation of law and the defendant must be released after being given a notice to appear before the proper issuing authority on the next business day. In all cases, either at the conclusion of the bench warrant hearing or if the bench warrant expires by operation of law, notice of the vacated or expired warrant must be given to all computer networks into which the bench warrant has been entered.

The Comment elaborates on some of the new bench warrant provisions. The Comment points out that the president judge, in determining the system of coverage for his or her judicial district pursuant to Rule 117, could require the defendant to be taken to night court if there is an established night court in lieu of taking the defendant to the county jail following an after-hours arrest. In these cases, the defendant would be given a notice to appear in the proper issuing authority's office the next business day or the opportunity to pay the full amount of fines and costs. Similarly, if the issuing authority is unavailable when the defendant appears in this scenario, the defendant should receive a notice to appear for the trial or hearing on another day or be given the opportunity to pay.

Rule 441

The Committee is proposing changes to Rule 441 that are the same as or comparable to the changes discussed above for Rule 519. The prompt release provisions are mandatory if the criteria in paragraph (B) are met, and the residency requirement is deleted, and "reasonable grounds" is explained in the Comment.

In addition to the changes correlative to the Rule 519 changes, the Committee is proposing changes to paragraph (C) to distinguish the procedures in those cases in which a defendant is taken into custody during the normal business hours of the issuing authority and outside the normal business hours. The current procedures in paragraph (C) apply when the defendant is taken before the issuing authority during normal business hours. However, if the arrest is made outside normal business hours, new paragraph (C)(2) requires the police officer to promptly contact the issuing authority to determine when he or she will be available to proceed under this rule. See also the Rule 117 discussion above.

4. Bail-related Issues: Rule 525

Several of the individuals who commented on the Committee's published proposal raised concerns about the proposed changes to Rule 525 that provided for the preparation of the bail bond by the issuing authority and sending the bond to the place of incarceration when the defendant is unable to post the bail at the time it is set. They expressed concern about sending an unexecuted bail bond in these cases, interpreting the requirement for the bond to be "executed" to mean signed by the bail authority. The Committee noted current Rule 525 does not require the signature of the bail authority; only the defendant and any sureties are required to execute the bond. See Rule 525(A). In view of the concerns raised in the publication responses, the Committee re-examined Rule 525 and agreed to propose a few changes that will address these concerns as well as provide further clarification of the procedures when the defendant is unable to post the bail at the time it is set. We are proposing a new paragraph (B) that will require the bail authority at the time bail is set to prepare the bond and to sign it verifying the conditions the bail authority has imposed. In addition, as an added precaution against potential abuses, the Committee is proposing the additional requirement that the person who releases the defendant when the bail is posted is to sign the bail bond indicating he or she released the defendant.

[Pa.B. Doc. No. 04-1476. Filed for public inspection August 13, 2004, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BEAVER COUNTY

Local Rules of Criminal Procedure; No. 286 Misc. of 2004

Order

Pennsylvania Rule of Criminal Procedure Number 574 having been rescinded by the Supreme Court of Pennsylvania, Beaver County Local Rule of Criminal Procedure Numbers 106 and 574 are likewise rescinded, effective immediately.

Certified copies of this order shall be distributed by the Court Administrator of Beaver County as follows:

A. Seven (7) copies with the Administrative Office of Pennsylvania Courts;

B. Two (2) copies with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

C. One (1) copy to the Criminal Procedural Rules Committee of the Pennsylvania Supreme Court;

D. One (1) copy to be kept continuously available for public inspection and copying at the Clerk of Courts office in Beaver County.

By the Court

ROBERT E. KUNSELMAN,
President Judge

[Pa.B. Doc. No. 04-1477. Filed for public inspection August 13, 2004, 9:00 a.m.]

BEAVER COUNTY**Local Rules of Criminal Procedure; No. 10130 of 2001****Amended Order**

Local Rules L205.2(a) and (b), L206.1(a), L206.4(c), L208.2(e), L208.3(b), L210, L 1028(c), L1034(a) and L1035.2(a) are adopted pursuant to Pa. R.C.P. Nos. 239.1, 239.2, 239.3, 239.4, 239.5, 239.6 and 239.7, effective July 26, 2004. All local rules inconsistent with the foregoing local rules are suspended as of the effective date of the foregoing rules.

In accordance with Pa. R.C.P. No. 239, the Court Administrator of Beaver County shall transmit certified copies of this order and the foregoing Local Rules as follows:

A. Seven (7) certified copies with the Administrative Office of Pennsylvania Courts;

B. Two (2) certified copies and a diskette containing the rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

C. One (1) certified copy to the Civil Procedural Rules Committee of the Pennsylvania Supreme Court;

D. One (1) copy in the office of the Prothonotary of Beaver County to be kept continuously available for public inspection and copying. In addition, one (1) copy shall be delivered to the Beaver County Law Library.

In addition, the Court Administrator of Beaver County shall cause the foregoing rules to be published on the website of the Administrative Office of Pennsylvania Courts and on the Beaver County website.

By the Court

ROBERT E. KUNSELMAN,
President Judge

[Pa.B. Doc. No. 04-1478. Filed for public inspection August 13, 2004, 9:00 a.m.]

BUTLER COUNTY**Local Civil Court Rules; MSD 04-40246****Amended Administrative Order of Court**

And now, this 26th day of July, 2004, in order to comply with the Pennsylvania Rule of Civil Procedure, 239.8, it is hereby ordered and decreed that the Butler County Local Rules of Procedure are herewith adopted. It is further ordered that all prior Local Rules of Procedure that have been adopted and/or revised by this Court at various times and docketed to several different docket numbers are herewith rescinded.

This Order of Court shall be effective July 26, 2004.

The Butler County District Court Administrator is ordered and directed to:

1. File seven certified copies of this Administrative Order, including the newly adopted rules, with the Administrative Office of the Pennsylvania Courts.

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

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

4. Electronically submit to the Administrative Office of the Pennsylvania Courts a copy of the local rules for publication on the AOPC website.

5. Forward one copy for publication in the *Butler County Legal Journal*.

6. Forward one copy to the Butler County Law Library.

7. Keep continuously available for public inspection copies of the Order of Court and Local Rules in the office of the Prothonotary of Butler County.

By the Court

THOMAS J. DOERR,
President Judge

[Pa.B. Doc. No. 04-1479. Filed for public inspection August 13, 2004, 9:00 a.m.]

CAMBRIA COUNTY**Rules of Civil Procedure; 2004-2377**

And Now, this 26th day of July, 2004, it is hereby *Ordered* as follows:

1. Former Rule 100(c) CC is hereby renumbered as Rule 205.2(a) CC, shown following this Order.

2. Former Rule 1018.2(1) CC is hereby renumbered as Rule 205.2(b) CC and is amended to read as shown following this Order.

3. Former Rule 400 CC is hereby renumbered as Rule 206.4(c) CC and is amended to read as shown following this Order.

4. Rule 200 CC and 200.1 CC are hereby combined, amended and renumbered as Rule 208.3(a) CC to read as shown following this Order

5. Rule 1028(c) CC, Rule 1034(a) CC and Rule 1035.2(a) CC, following this Order, are hereby adopted as new Local Rules of Civil Procedure.

The Rule changes implemented by Paragraphs 1 through 5 of this Order shall become effective on July 26, 2004.

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

1. Keep continually available for public inspection and copying, copies of this Order and of the Cambria County Rules of Civil Procedure including the amendments as herein approved, adopted and promulgated.

2. File with the Administrative Office of the Pennsylvania Courts seven (7) certified copies of this Order and the following amendments to the Cambria County Rules of Civil Procedure.

3. Distribute two (2) certified copies of this Order and the following amendments to the Cambria County Rules of Civil Procedure to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. File one (1) certified copy of this Order and the following amendments to the Cambria County Rules of Civil Procedure with the Civil Procedural Rules Committee.

5. Upon request and the payment of reasonable costs of reproduction and mailing, furnish a copy of this Order

and the following amendments to the Cambria County Rules of Civil Procedure to any person.

6. The Prothonotary of Cambria County shall cause a copy of this Order and the following amendments to the Cambria County Rules of Civil Procedure as herein approved, adopted and promulgated, to be published one (1) time in the *Cambria County Legal Journal*.

By the Court

GERARD LONG,
President Judge

Rule 205.2 CC. Pleadings and Legal Papers.

(a) All papers filed shall conform to the Rules of Appellate Procedure, except that they shall be bound at the top.

(b) All complaints in civil actions and proceedings filed and docketed in the Prothonotary's Office shall have a cover sheet substantially in the following form:

JOHN DOE and MARY	:	IN THE COURT OF
DOE, Husband and	:	COMMON PLEAS OF
Wife,	:	CAMBRIA COUNTY,
	:	PENNSYLVANIA
	:	
Plaintiffs	:	CIVIL ACTION—LAW (or)
vs.	:	CIVIL ACTION—EQUITY
	:	
FRANK SMITH,	:	ACTION IN _____
	:	
Defendant	:	FOR TRIAL (or) FOR
	:	ARBITRATION
	:	(or) FOR OTHER
	:	DISTRIBUTION
	:	_____
	:	
	:	TYPE OF DOCUMENT:
	:	_____
	:	
	:	COUNSEL OF RECORD
	:	FOR PARTY:
	:	
	:	Name
	:	Address
	:	Telephone
	:	Supreme Court I.D. No.

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by your attorney, an filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the court, without further notice, for any money claimed in the Complaint, or of any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

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

LAUREL LEGAL SERVICES, INC.
225-227 Franklin Street
Suite 400 Franklin Center
Johnstown, Pennsylvania 15901-2524
Telephone Number: (814) 536-8917

(Name)

(Address)

(Telephone Number)

Rule 206.4(c) CC. Rule to Show Cause.

(1) A Petition containing a Rule to Show Cause shall be made returnable, not less than 10 days after issuance, unless a statute or the Rules of Civil Procedure require another return day.

(2) A Rule to Show Cause shall not operate as a stay of proceedings unless the Court shall so order.

(3) The party obtaining said Rule shall, within 5 days, serve the Rule and Petition in compliance with Rule of Civil Procedure 440 and 441.

(4) All subsequent proceedings shall be in accordance with Rule of Civil Procedure 206.7.

(5) If no Answer is filed by the return date, the Court, upon request, shall make the Rule absolute.

(6) All Petitions for Rule to Show Cause prior to the case being assigned to a Judge pursuant to Rule 1018.2 CC shall be filed with the Prothonotary and scheduled in accordance with Motions Court procedure under Rule 208.3(a) CC.

(7) All Petitions for Rule to Show Cause after the case has been assigned to a Judge pursuant to Rule 1018.2 CC shall be filed with the Prothonotary and scheduled at the direction of the assigned Judge.

Rule 208.3(a) CC. Motions.

1. Motions shall be in writing and shall comply with the requirements of Rule of Civil Procedure 208.2.

2. In all cases where there are opposing counsel of record and unrepresented parties, no Motion will be entertained and no Order of Court made unless notice has been given to opposing counsel or the unrepresented party, personally, in advance thereof and a written certification of notice accompanies the Motion and the Court has been satisfied with the sufficiency of the notice.

3. All Motions shall include a proposed Order of Court.

4. All Motions that do not require an evidentiary hearing and all Motions prior to the case being assigned to a judge, pursuant to Rule 1018.2 CC, shall be heard in Motions Court.

5. Motions Court shall be held on every Monday (unless a holiday) at 9:15 a.m., at the Court House, in Ebensburg, before the judge assigned to Motions Court for that month.

6. All Motions filed before Noon on Thursday will be scheduled for the following Monday's session of Motions Court.

7. Counsel shall file these Motions with the Prothonotary and serve a copy thereof on the Court Administrator and on opposing parties, or their counsel, with an affidavit of service attached to the original Motion, certifying how service was effected.

Rule 1028(c) CC. Preliminary Objections.

Preliminary Objections filed with the Prothonotary shall be scheduled by the Prothonotary for Argument Court in accordance with the procedure set forth in Rule 227.2 CC. The Prothonotary shall mail to all counsel of record, at least two weeks before Argument Court, a printed list of all cases listed for argument, with the names of counsel for the respective parties, and a Briefing Schedule. If a party is not represented by counsel, the Prothonotary shall mail the list to him at his address appearing in the proceedings.

Rule 1034(a) CC. Motions for Judgment on the Pleadings.

Motions for Judgment on the Pleadings filed with the Prothonotary shall be scheduled by the Prothonotary for Argument Court in accordance with the procedure set forth in Rule 227.2 CC. The Prothonotary shall mail to all counsel of record, at least two weeks before Argument Court, a printed list of all cases listed for argument, with the names of counsel for the respective parties, and a Briefing Schedule. If a party is not represented by counsel, the Prothonotary shall mail the list to him at his address appearing in the proceedings.

Rule 1035.2(a) CC. Motions for Summary Judgment.

Motions for Summary Judgment filed with the Prothonotary shall be scheduled by the Prothonotary for Argument Court in accordance with the procedure set forth in Rule 227.2 CC. The Prothonotary shall mail to all counsel of record, at least two weeks before Argument Court, a printed list of all cases listed for argument, with the names of counsel for the respective parties, and a Briefing Schedule. If a party is not represented by counsel, the Prothonotary shall mail the list to him at his address appearing in the proceedings.

[Pa.B. Doc. No. 04-1480. Filed for public inspection August 13, 2004, 9:00 a.m.]

FAYETTE COUNTY

Local Rules 305, 305.1 and 575; No. 34 AD 2004, 35 AD 2004, 36 AD 2004

Order

And Now, this 29th day of July, 2004, pursuant to Rule 105 the Pennsylvania Rules of Criminal Procedure, it is hereby ordered that Local Rules 305 and 305.1 are hereby rescinded and the new Local Rule 575 is hereby promulgated to read as follows.

The Clerk of Courts is directed as follows:

- (1) Seven certified copies of the Local Rules shall be filed with the Administrative Office of Pennsylvania Courts.
- (2) Two certified copies and diskette of the Local Rules shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
- (3) One certified copy of the Local Rules shall be sent to the State Criminal Procedural Rules Committee.
- (4) One certified copy shall be sent to the Fayette County Law Library and to the Editor of the *Fayette Legal Journal*.

F.C.R. Crim. P. 575 shall be effective 30 days after the date of publication in the *Pennsylvania Bulletin*.

By the Court

CONRAD B. CAPUZZI,
President Judge

Rule 575 Motions Court Procedure

(a) In order to provide a uniform means of presenting to the Court all matters which require action by the Court, Motions Court will be held daily at 9:00 o'clock A.M. in the courtroom of the Motions Judge. The name of the assigned Motions Judge for each day shall be published periodically in the *Fayette County Legal Journal*.

(b) All applications for Court action, including motions, petitions, and any other applications shall be presented to the Court by following this Motions Court procedure.

(c) As used herein, the term "motion" shall include every type of motion, petition, or other application for action by the Court, and shall be designated as either "Priority" or "Routine," presentation of the latter not requiring the presence of the parties or counsel for either side. By definition, a "priority" motion is one which may be subject to contest or is so unusual as to require discussion or explanation, while "routine" motions include all other applications, such as uncontested matters to which the parties have consented in writing, requests for hearing, or requests for later argument.

(d) All motions and other applications for Court action presented as uncontested require certification as such, if no joinder has been attached.

(e) Any motion relating to discovery must contain a certification that counsel has conferred or attempted to confer with the District Attorney in order to resolve the matter without court action.

(f) All motions filed and served pursuant to this rule shall include a Certificate of Service, signed by the party's attorney, or the party if unrepresented, setting forth the date and manner of service (personal delivery, mail, facsimile), and the names, addresses and phone numbers of the persons served. The Certificate of Service shall be substantially in the following form:

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the within document upon the persons and in the manner indicated below.

1. Service by certified mail, return receipt requested: (Name of person served) _____, _____ Phone Number _____ Address _____

2. Service by facsimile at FAX number _____: (Name of person served) _____, _____ Phone number _____ Address _____

3. Service in person: (Name of person served) _____, _____ Phone number _____ Address _____

Date: _____ Signature _____

(g) All motions shall be accompanied by a Certificate of Presentation as set forth in F.C.R. CRIM.P 547(n).

(h) All motions and other applications for Court action must set forth a specific citation to relevant constitutional provisions, case law, statutory provisions or rules that

provide the Court's authority to grant the relief requested. Said citation shall be placed on a Certificate of Presentation.

(i) The moving party shall file the original motion, Certificate of Presentation, and any attachments in the appropriate office before presentment in Motions Court. An original proposed order (if any), a copy of the Certificate of Presentation, motion and Certificate of Service, assembled in that order, shall be delivered to the Court Administrator and every other party of record. Pursuant to Pa.R.Crim.P. 576(B)(1), all motions and other documents for which filing is required shall be served on each party so as to be received at least two (2) business days before presentation in Motions Court, unless there are emergency circumstances specified in the motion requiring presentation within a shorter time.

(j) All priority motions pertaining to matters already ruled on by a Judge shall be presented to that Judge in Motions Court, except in emergencies as set forth in paragraph (i) of this Rule immediately above.

(k) The Court Administrator shall maintain a Motions Docket and shall make daily entries of all motions filed and the disposition thereof.

(l) The Court Administrator shall assign any motion not otherwise assigned to a Judge for disposition.

(m) Failure to accurately provide the information required by paragraph (n) below may result in the matter not being listed for Motions Court.

(n) The Certificate of Presentation shall be substantially in the following form:

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

:
:
:
:
:
: NO. _____ OF _____

CERTIFICATE OF PRESENTATION

1. The undersigned, _____, represents _____, the moving party herein.

2. The attached motion will be presented in Motions Court on _____, _____, 20 _____ at 9:00 o'clock A.M.

3. The attached motion shall be classified as a Routine/Priority motion. (If the motion is Routine, parties or counsel are not required to be present in Motions Court.)

4. Judge _____ has been assigned or has previously ruled on a matter relevant to this motion. (See attached relevant ruling.)

5. The SPECIFIC citation for the Court's authority to grant the relief requested is _____.

6. Estimated time for hearing or argument to resolve the motion on its merits: _____.

Respectfully submitted,

Date: _____

[Pa.B. Doc. No. 04-1481. Filed for public inspection August 13, 2004, 9:00 a.m.]

LUZERNE COUNTY

Order Adopting and/or Amending Rules of Civil Procedure; No. 4905C/04

Order

Now, this 19th day of July, 2004, the Court hereby adopts the following Rules 206.4(c), 208.3(a), 216, 1028(c), 1034(a), 1035.2(a) of the Luzerne County Rules of Civil Procedure and amends Rule 210 of the Luzerne County Rules of Civil Procedure.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2) copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, one (1) certified copy to the Criminal Procedural Rules Committee, once (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee, and one (1) copy to the *Luzerne Legal Register* for publication in the next issue. This Revision shall also be published on the website of the Administrative Office of Pennsylvania Courts (www.aopc.org).

It is further ordered that the effective date of this order shall be effective July 26, 2004.

It is further ordered that these local rules shall be kept continuously available for public inspection and copying in the Prothonotary's Office and the Clerk of Court's Office.

By the Court

MICHAEL T. CONAHAN,
President Judge

L.R.CIV.P. 206.4(c) Procedure for Issuance of Rule to Show Cause

(1) A party seeking a rule to show cause shall present the same along with the underlying motion/petition, a comprehensive brief in support and proposed order, to Motions Court for consideration.

(i) Motions Court is held Monday through Friday from 8:30 a.m. to 9:15 a.m., with the exception of legal holidays.

(ii) The assignment of a Judge of the Court of Common Pleas to Motions Court is made on a rotating basis and available at the Office of the Court Administrator.

(2) If the Motions Court Judge issues the rule to show cause, the moving party shall:

(i) serve a copy of the executed rule to show cause, the underlying motion/petition, the comprehensive brief and proposed order upon the Court Administrator, who will assign a return date for the rule to show cause in accordance with internal operating procedures of the Court of Common Pleas; and

(ii) file with the Court Administrator a Civil Argument Sheet, which is available at the Court Administrator's Office.

(3) Once the Court Administrator assigns the return date, the executed rule to show cause indicating the assigned return date, the moving party shall file the underlying motion/petition, the comprehensive brief and proposed order with the Prothonotary and shall immediately serve a copy of the aforementioned upon all opposing parties.

(4) Within twenty (20) days of service of the motion/petition, supporting brief and proposed order, any party wishing to contest the same shall file a comprehensive brief in opposition with the Prothonotary and serve the same upon all parties and the Court Administrator who shall then assign it to a Judge and shall so notify all parties.

(5) The matter shall be ruled upon without oral argument unless requested by any party. Said request must be filed with the Court Administrator contemporaneously with the filing of the party's brief or by the Judge to whom the matter has been assigned.

(6) If the party filing the matter fails to file a comprehensive brief as required by this Rule, the Court Administrator shall present an Order to Motions Court who shall dismiss the matter. If any opposing party fails to file its brief in opposition within the time provided in this Rule, that party shall be deemed not to oppose the matter and the Judge to whom the assignment has been made shall dispose of it in accordance with the law as a matter of course.

(7) Service shall be made within three (3) days of filing by delivering a copy or by mailing a copy of the party's counsel of record, or where the party is unrepresented, to that party either personally or at the party's last known address.

(8) Proof of service shall be filed and shall be by written acknowledgment of service, by affidavit of the person making service or by certification of counsel.

(9) This rule shall apply to all pending actions. Failure of the proponent of the matter to file a brief within thirty (30) days of the effective date of this Rule shall result in its dismissal as of course by Motions Court upon motion of any other party.

L.R.CIV.P. 208.3(a) Motions Procedure

(1) With respect to a "motion" as defined by Pa.R.Civ.P. 208.1, which is uncontested by all parties of record, a party shall present the same along with a proposed order to Motions Court for consideration.

(i) Motions Court is held Monday through Friday from 8:30 a.m. to 9:15 a.m., with the exception of legal holidays.

(ii) The assignment of a Judge of the Court of Common Pleas to Motions Court is made on a rotating basis and available at the Office of the Court Administrator.

(2) The Motions Court Judge may consider the uncontested "motion" and issue an appropriate order concerning the same. In such case, the moving party shall file the executed order and the underlying motion with the Prothonotary and serve a copy of the same upon the Court Administrator and all parties of record.

(3) All other "motions" as defined by Pa.R.Civ.P. 208.1 are governed by, and disposed of in accordance with, the procedures set forth in L.R.Civ.P. 206.4 (c).

L.R.CIV.P. 210 Form of Brief

(a) At the time of filing of any motion, petition, or rule to show cause, the Proponent of the same shall file with the Prothonotary and serve upon the Court Administrator and all parties a comprehensive brief in support thereof. The brief should contain a factual and procedural history of the case, the issues involved, argument with adequate citation in support thereof and conclusion. A brief in support thereof is not be required in the following instances: child or spousal abuse, change of name, routine actions for quiet title, civil in forma pauperis applications,

appeals to withdraw as counsel, and motions to compel answers to interrogatories to which no objection have been filed.

(b) Any party who wishes to contest the motion or petition shall file a comprehensive brief in opposition with the Prothonotary and shall serve the same upon the Court Administrator and all parties in accordance with the time limits imposed by the Pennsylvania Rules of Civil Procedure and these local rules, unless so ordered by the Court. The brief in opposition should contain a factual and procedural history of the case, the issues involved, argument with adequate citation in support thereof and conclusion.

L.R.CIV.P. 216 Motions for Continuance and/or Extension of Time

(a) Where a party is granted a continuance pursuant to Pennsylvania Rule of Civil Procedure 216, the party shall file said order and/or agreement with the Prothonotary and serve a copy of the same upon the Court Administrator and all parties of record.

(b) Where a party is granted an extension of time within which the party is required to act pursuant to the Pennsylvania Rules of Civil Procedure and/or these local rules, the party shall file a document evidencing the extension of time with the Prothonotary and serve a copy of the same upon the Court Administrator and all parties of record.

L.R.CIV.P. 1028(c) Procedure for Filing of Preliminary Objections

(1) A party filing preliminary objections shall file the same, along with a comprehensive brief in support and proposed order, with the Prothonotary. A rule to show cause shall not be presented or filed with preliminary objections.

(2) After filing as provided in subsection (a), the moving party shall immediately:

(i) serve a copy of the preliminary objections, the comprehensive brief and proposed order upon the Court Administrator;

(ii) file with the Court Administrator a Civil Argument Sheet, which is available at the Court Administrator's Office; and

(iii) serve a copy of the aforementioned upon all opposing parties.

(3) Within twenty (20) days of service of the matter, supporting brief and proposed order, any party wishing to contest the same shall file a comprehensive brief in opposition with the Prothonotary and serve the same upon all parties and the Court Administrator who shall then assign it to a Judge and shall so notify all parties.

(4) The matter shall be ruled upon without oral argument unless requested by any party. Said request must be filed with the Court Administrator contemporaneously with the filing of the party's brief or by the Judge to whom the matter has been assigned.

(5) If the party filing the matter fails to file a comprehensive brief as required by this Rule, the Court Administrator shall present an Order to Motions Court who shall dismiss the matter. If any opposing party fails to file its brief in opposition within the time provided in this Rule, that party shall be deemed not to oppose the matter and the Judge to whom the assignment has been made shall dispose of it in accordance with the law as a matter of course.

(6) Service shall be made within three (3) days of filing by delivering a copy or by mailing a copy of the party's counsel of record, or where the party is unrepresented, to that party either personally or at the party's last known address.

(7) Proof of service shall be filed and shall be by written acknowledgment of service, by affidavit of the person making service or by certification of counsel.

(8) This rule shall apply to all pending actions. Failure of the proponent of the matter to file a brief within thirty (30) days of the effective date of this Rule shall result in its dismissal as of course by Motions Court upon motion of any other party.

L.R.CIV.P. 1034(a) Procedure for Filing of Motions for Judgment on the Pleadings

(1) A party filing a motion for judgment on the pleadings shall file the same, along with a comprehensive brief in support and proposed order, with the Prothonotary. A rule to show cause shall not be presented or filed with a motion for judgment on the pleadings.

(2) After filing as provided in subsection (a), the moving party shall immediately:

(i) serve a copy of the motion for judgment on the pleadings, the comprehensive brief and proposed order upon the Court Administrator;

(ii) file with the Court Administrator a Civil Argument Sheet, which is available at the Court Administrator's Office; and

(iii) serve a copy of the aforementioned upon all opposing parties.

(3) Within thirty (30) days of service of the motion, supporting brief and proposed order, any party wishing to contest the same shall file a comprehensive brief in opposition with the Prothonotary and serve the same upon all parties and the Court Administrator who shall then assign it to a Judge and shall so notify all parties.

(4) The matter shall be ruled upon without oral argument unless requested by any party. Said request must be filed with the Court Administrator contemporaneously with the filing of the party's brief or by the Judge to whom the matter has been assigned.

(5) If the party filing the matter fails to file a comprehensive brief as required by this Rule, the Court Administrator shall present an Order to Motions Court who shall dismiss the matter. If any opposing party fails to file its brief in opposition within the time provided in this Rule, that party shall be deemed not to oppose the matter and the Judge to whom the assignment has been made shall dispose of it in accordance with the law as a matter of course.

(6) Service shall be made within three (3) days of filing by delivering a copy or by mailing a copy of the party's counsel of record, or where the party is unrepresented, to that party either personally or at the party's last known address.

(7) Proof of service shall be filed and shall be by written acknowledgment of service, by affidavit of the person making service or by certification of counsel.

(8) This rule shall apply to all pending actions. Failure of the proponent of the matter to file a brief within thirty (30) days of the effective date of this Rule shall result in its dismissal as of course by Motions Court upon motion of any other party.

L.R.CIV.P. 1035.2(a) Procedure for Filing of Motion for Summary Judgment

(1) A party filing a motion for summary judgment shall file the same, along with a comprehensive brief in support, supporting documents, and proposed order, with the Prothonotary. A rule to show cause shall not be presented or filed with a motion for summary judgment.

(2) After filing as provided in subsection (a), the moving party shall immediately:

(i) serve a copy of the motion for summary judgment, the comprehensive brief, supporting documents and proposed order upon the Court Administrator;

(ii) file with the Court Administrator a Civil Argument Sheet, which is available at the Court Administrator's Office; and

(iii) serve a copy of the aforementioned upon all opposing parties.

(3) Within thirty (30) days of service of the motion, supporting brief and proposed order, any party wishing to contest the same shall file a comprehensive brief in opposition with the Prothonotary and serve the same upon all parties and the Court Administrator who shall then assign it to a Judge and shall so notify all parties.

(4) The matter shall be ruled upon without oral argument unless requested by any party. Said request must be filed with the Court Administrator contemporaneously with the filing of the party's brief or by the Judge to whom the matter has been assigned.

(5) If the party filing the matter fails to file a comprehensive brief as required by this Rule, the Court Administrator shall present an Order to Motions Court who shall dismiss the matter. If any opposing party fails to file its brief in opposition within the time provided in this Rule, that party shall be deemed not to oppose the matter and the Judge to whom the assignment has been made shall dispose of it in accordance with the law as a matter of course.

(6) Service shall be made within three (3) days of filing by delivering a copy or by mailing a copy of the party's counsel of record, or where the party is unrepresented, to that party either personally or at the party's last known address.

(7) Proof of service shall be filed and shall be by written acknowledgment of service, by affidavit of the person making service or by certification of counsel.

(8) This rule shall apply to all pending actions. Failure of the proponent of the matter to file a brief within thirty (30) days of the effective date of this Rule shall result in its dismissal as of course by Motions Court upon motion of any other party.

[Pa.B. Doc. No. 04-1482. Filed for public inspection August 13, 2004, 9:00 a.m.]

LUZERNE COUNTY

Order Adopting the Revision, Reorganization and Renumbering Rules of Civil and Criminal Procedure and Rules Concerning Election Code; No. 4904C/04; 395 MISC-04

Order

Now, this 19th day of July, 2004, Luzerne County Rules of Civil Procedure are hereby revised, reorganized and/or renumbered as follows:

1. The following Luzerne County Rules of Civil Procedure are hereby rescinded: 400.1(b)(1), 1910.14, 1910.27(a), 1910.27(b), 1910.27(c), and 2353(c).

2. The following Luzerne County Rules of Civil Procedure are hereby reorganized and renumbered as follows:

NOTE: The text of the rules are unchanged unless as provided herein.

Rule [206]	<u>206.4(c)</u>	RULES TO SHOW CAUSE
Rule [212(a)]	<u>212.1</u>	PRE-TRIAL CONFERENCE—COMPLETION OF DISCOVERY AND PRAECIPE FOR TRIAL
Rule [212(b)]	<u>213.3(a)</u>	PRE-TRIAL CONFERENCE—LAWYER'S PRE-TRIAL CONFERENCE
Rule [212(c)]	<u>213.2</u>	PRE-TRIAL CONFERENCE—PRE-TRIAL MEMORANDUM
Rule [212(d)]	<u>213.3(b)</u>	PRE-TRIAL CONFERENCE—JUDGE'S PRETRIAL CONFERENCE
Rule [233(a)]	<u>440</u>	SERVICE
Rule [233(b)]	<u>430(a)</u>	OFFICIAL PERIODICAL
Rule [233(c)]	<u>430(b)</u>	PUBLICATION
Rule [253]	<u>206.6</u>	STAY OF PROCEEDINGS
Rule [270]	<u>208.3</u>	ARGUMENT COURT AND ARGUMENT LISTS
Rule [1053]	<u>430(c)</u>	SERVICE BY PUBLICATION
Rule [1064]	<u>410</u>	SERVICE BY PUBLICATION
Rule [1504(3)]	<u>430(d)</u>	SERVICE BY PUBLICATION
Rule [1910.1]	<u>1910.1</u>	SCOPE
Rule [1910.2(a)]	<u>1910.1(c)</u>	ESTABLISHMENT
Rule [1910.2(b)]	<u>1910.1(d)</u>	CLERK
Rule [1910.3]	<u>1910.2</u>	VENUE AND TRANSFER OF ACTION
Rule [1910.4]	<u>1910.6.1</u>	INDEXING AND DOCKETING
Rule [1910.5]	<u>1910.1(e)</u>	POWERS
Rule [1910.6]	<u>1910.6.2</u>	COMMENCEMENT OF ACTION (FEE)
Rule [1910.7]	<u>1910.6.3</u>	NOTIFICATION
Rule [1910.8]	<u>1910.7</u>	NO DEFENSE PLEADING REQUIRED
Rule [1910.9]	<u>1910.3</u>	REPRESENTATION
Rule [1910.10]	<u>1910.12(a)</u>	CONFERENCE PROCEDURES
Rule [1910.11]	<u>1910.12(b)</u>	MASTER'S HEARING REPORT
Rule [1910.12]	<u>1910.12(c)</u>	COMPLEX CASES
Rule [1910.13]	<u>1910.9</u>	DISCOVERY
Rule [1910.17]	<u>1910.19</u>	MODIFICATION. TERMINATION
Rule [1910.18]	<u>1910.20</u>	ENFORCEMENT
Rule [1910.19]	<u>1910.21</u>	ATTACHMENT OF INCOME
Rule [1910.20]	<u>1910.25</u>	CONTEMPT
Rule [1910.21]	<u>1910.12.1</u>	CONTINUANCES
Rule [1910.22]	<u>1910.20.1</u>	COUNSEL FEES
Rule [1910.23(a)]	<u>1910.27(a)</u>	FORM OF COMPLAINT, ORDER
Rule [1910.23(b)]	<u>1910.27(b)</u>	FORM OF COMPLAINT; ORDER, INCOME AND EXPENSE STATEMENT
Rule [1910.23(c)]	<u>1910.27(c)</u>	INCOME AND EXPENSE STATEMENT
Rule [1910.24]	<u>1910.12.2</u>	FORM—EXCEPTIONS TO SUPPORT OFFICER'S RECOMMENDATIONS
Rule [1910.25]	<u>1910.12.3</u>	FORM—EXCEPTIONS TO MASTER'S REPORT AND RECOMMENDATIONS
Rule [1910.28]	<u>1910.27</u>	FORM OF PETITION FOR MODIFICATION
Rule [1910.29]	<u>1910.25.1</u>	FORM—PETITION FOR CONTEMPT
Rule [1910.31]	<u>1910.21.1</u>	FORM—NOTICE OF ATTACHMENT
Rule [1910.32(a)]	<u>1910.21.2</u>	FORM—NOTICE OF DECISION UPON OBJECTIONS TO ISSUANCE OF ORDER OF ATTACHMENT
Rule [1910.32(b)]	<u>1910.21.3</u>	FORM—ORDER OF ATTACHMENT OF INCOME
Rule [1920.3(a)]	<u>1920.3</u>	FILINGS OF PLEADINGS
Rule [1920.4(f)]	<u>1920.4</u>	ACCEPTANCE OF SERVICE
Rule [1920.12(d)]	<u>1920.12</u>	NOTICE TO DEFEND AND CLAIM OF RIGHTS

Rule [1920.14(c)]	<u>1920.14</u>	COUNTER AFFIDAVIT
Rule [1920.22(c)]	<u>1920.22</u>	COMPLETION OF DISCOVERY
Rule [1920.31(b)(2)(i)]	<u>1920.31</u>	SUPPORT AND ALIMONY
Rule [1920.34(a)]	<u>1920.43</u>	STAY OF PROCEEDINGS
Rule [1920.45(d)(1)]	<u>1920.45(a)</u>	COUNSELING
Rule [1920.45(e)]	<u>1920.45(b)</u>	APPOINTMENT OF COUNSELOR
Rule [1920.51(f)]	<u>1920.51(a)</u>	MOTION FOR APPOINTMENT OF MASTER
Rule [1920.51(g)]	<u>1920.51(b)</u>	CLASSIFICATION OF MASTER AND DUTIES
Rule [1920.51(h)]	<u>1920.51(c)</u>	PAYMENT TO PROTHONOTARY
Rule [1920.51(i)]	<u>1920.51(d)</u>	APPOINTMENT AND COMPENSATION OF COMMISSIONER
Rule [1920.51(k)]	<u>1920.51(e)</u>	MASTER'S RULING ON EVIDENCE
Rule [1920.51(l)]	<u>1920.51(f)</u>	FINAL NOTICE
Rule [1920.51(m)]	<u>1920.51(g)</u>	RULE TO FILE MASTER'S REPORT
Rule [1920.51(n)]	<u>1920.51(h)</u>	FINAL DECREE
Rule [1920.52(e)]	<u>1920.51(i)</u>	SEVERANCE OF CLAIMS
Rule [1920.53(d)]	<u>1920.53(a)</u>	RECORD IN CONTESTED MATTERS
Rule [1920.53(e)]	<u>1920.53(b)</u>	MINUTES ON MASTERS
Rule [1920.62(d)]	<u>1920.62</u>	PROCEEDINGS BY INDIGENT PARTIES

3. Luzerne County Rule of Civil Procedure 295 is hereby reorganized and renumbered as Luzerne County Rule of Criminal Procedure 536.

4. Luzerne County Rule of Civil Procedure 501, 504, 505, and 510 are hereby reorganized and renumbered as the Luzerne County Rule Concerning Election Code 501, 504, 505, and 510 and shall be placed separate and apart from the Luzerne County Rules of Civil Procedure in a new section entitled "Luzerne County Rules Concerning Election Code."

5. It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2) copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, one (1) certified copy to the Criminal Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee, and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

6. It is further ordered that the effective date of this order shall be thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

7. It is further ordered that these local rules shall be kept continuously available for public inspection and copying in the Prothonotary's Office and the Clerk of Court's Office.

By the Court

MICHAEL T. CONAHAN,
President Judge

[Pa.B. Doc. No. 04-1483. Filed for public inspection August 13, 2004, 9:00 a.m.]

MERCER COUNTY
Local Rule L320; 2004-2375

Order

And Now, July 27, 2004, Local Rule L320 is rescinded in that termination of inactive civil cases is now comprehensively covered by R.C.P. 230.2.

By the Court

FRANCIS J. FORNELLI,
President Judge

[Pa.B. Doc. No. 04-1484. Filed for public inspection August 13, 2004, 9:00 a.m.]

MERCER COUNTY
Local Rule of Civil Procedure L320; No. 2004-2375

Order

And Now, this 30th day of July, 2004, the court hereby *Approves, Adopts and Promulgates* the following order rescinding Local Rule of Civil Procedure L320. This order shall be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It is *Ordered and Directed* the Court Administrator of Mercer County, in accordance with Pa. Rule of Civil Procedure 239, shall file seven (7) certified copies of these Rules with the Administrative Office of Pennsylvania Courts, furnish two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, file one certified copy with the Civil Procedural Rules Committee.

It is further *Ordered and Directed* that Local Rules shall be kept continuously available for public inspection and copying in the Office of the Prothonotary of Mercer County. Upon request and payment of reasonable costs of reproduction and mailing, the Prothonotary shall furnish

to any person a copy of the Local Rules. This order shall be published in the *Mercer County Law Journal*.

By the Court

FRANCIS J. FORNELLI,
President Judge

[Pa.B. Doc. No. 04-1485. Filed for public inspection August 13, 2004, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that John P. Gross having been disbarred from the practice of law in the State of New

Jersey by Order dated January 21, 2004, the Supreme Court of Pennsylvania issued an Order on July 29, 2004, disbarring John P. Gross from the Bar of this Commonwealth, effective August 28, 2004. 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. 04-1486. Filed for public inspection August 13, 2004, 9:00 a.m.]

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 138e]

Corrective Amendment to 7 Pa. Code § 138e.16(a)

The Department of Agriculture has discovered a discrepancy between the agency text of 7 Pa. Code § 138e.16(a) (relating to minimum criteria for applications) as deposited with the Legislative Reference Bureau and the official text as published at 34 Pa.B. 2421, 2435 (May 1, 2004), and published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 356) (July, 2004) and as currently appearing in the *Pennsylvania Code*. When the amendments were published at 34 Pa.B. 2421, 2435, the text of paragraphs (3) and (4) in subsection (a) was inadvertently omitted.

Therefore, under 45 Pa.C.S. § 901: The Department of Agriculture has deposited with the Legislative Reference Bureau a corrective amendment to 7 Pa. Code § 138e.16(a). The corrective amendment to 7 Pa. Code § 138e.16(a) is effective as of May 1, 2004, the date the defective official text was printed in the *Pennsylvania Bulletin*.

The correct version of 7 Pa. Code § 138e.16 appears in Annex A.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 138e. AGRICULTURAL CONSERVATION EASEMENT PURCHASE PROGRAM

REQUIREMENTS FOR CERTIFICATION OF COUNTY PROGRAM

§ 138e.16. Minimum criteria for applications.

(a) The county program shall consider the quality of the farmland tract, including the USDA soil classification and productivity. The farmland tract shall:

- (1) Be one or more of the following:
 - (i) Located in an agricultural security area consisting of 500 acres or more.
 - (ii) Bisected by the dividing line between two local government units, having the majority of its viable agricultural land within an agricultural security area of 500 acres or more and the remainder in another local government unit outside of an agricultural security area.
 - (iii) Bisected by the dividing line between the purchasing county and an adjoining county, having the land located in the purchasing county within an agricultural security area of 500 acres or more and the remainder in another county outside of an agricultural security area, and with respect to which one of the following applies:
 - (A) A mansion house is on the tract and located within the purchasing county.
 - (B) When the mansion house on the tract is bisected by the dividing line between the two counties, the landowner has chosen the purchasing county as the situs of assessment for tax purposes.
 - (C) When there is no mansion house on the farmland tract, the majority of the tract's viable agricultural land is located within the purchasing county.

(2) Be one or more of the following:

- (i) Contiguous acreage of at least 50 acres in size.
- (ii) Contiguous acreage of at least 10 acres in size and utilized for a crop unique to the area.
- (iii) Contiguous acreage of at least 10 acres in size and contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

(3) Contain at least 50% of soils which are both available for agricultural production and of land capability classes I—IV, as defined by the USDA-NRCS.

(4) Contain the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

(b) The county program may contain additional criteria to evaluate farmland tracts if the criteria are fair, objective, equitable, nondiscriminatory and emphasize the preservation of viable agricultural land which will make a significant contribution to the agricultural economy, and are approved by the State Board. For example, a county program might require crop yields from a farmland tract to meet or exceed county crop yield averages, or might require the farmland tract to generate annual gross receipts of a particular sum, or might require that structures and their curtilages not occupy more than a certain percentage of the total acreage of the farmland tract.

[Pa.B. Doc. No. 04-1487. Filed for public inspection August 13, 2004, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 109]

Safe Drinking Water; Microbial and Disinfection Byproducts

The Environmental Quality Board (Board) amends Chapter 109 (relating to safe drinking water). The final-form rulemaking updates and clarifies several requirements concerning disinfectants, disinfection byproducts (DBP) and surface water treatment. The final-form rulemaking also adds three requirements concerning DBP monitoring, increased monitoring criteria and surface water turbidity reporting, which are necessary for the Commonwealth to obtain primary enforcement responsibility for the Safe Drinking Water Program. Lastly, the final-form rulemaking corrects minor typographical errors throughout Chapter 109.

This order was adopted by the Board at its meeting on April 20, 2004.

A. Effective Date

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Jeffrey A. Gordon, Chief, Division of Drinking Water Management, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-4018; or Marylou Barton, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department of Environmental Protection's (Department) website: www.dep.state.pa.us.

C. Statutory Authority

The final-form rulemaking is being made under the authority of section 4 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.4), which grants the Board the authority to adopt rules and regulations governing the provision of drinking water to the public, and sections 1917-A and 1920-A of The Administrative Code of 1929 (71 P. S. §§ 510-7 and 510-20).

D. Background of the Final-Form Rulemaking

The public health benefits of disinfection are significant and well recognized. However, these very disinfection practices pose health risks of their own. Although disinfectants such as chlorine, hypochlorites and chlorine dioxide are effective in controlling many harmful microorganisms, they react with organic and inorganic matter in the water to form DBPs, which pose health risks at certain levels.

The first DBPs discovered in public drinking water were halogenated methanes in 1974. In 1979, the United States Environmental Protection Agency (EPA) promulgated a Maximum Contaminant Level (MCL) to regulate these compounds. Since then, other DBPs have been identified and studied for their health effects. Many of these studies have shown DBPs to be carcinogenic or to cause adverse reproductive or developmental effects in laboratory animals, or both. Studies have also shown that high levels of the disinfectants themselves may cause health problems over long periods of time, including damage to both the blood and the kidneys.

In 1992, the EPA initiated a rulemaking process to address public health concerns associated with disinfectants and DBPs. During this rulemaking, EPA was concerned that new regulations that would control disinfection practices and limit DBP formation would also compromise, and perhaps even jeopardize, safeguards already in place for limiting risks from microbial pathogens. Accordingly, one of the major goals in this rulemaking process was to develop an approach that would reduce exposure to disinfectants and DBPs without undermining the control of microbial pathogens. The intent was to ensure that drinking water remained microbiologically safe at the limits set for disinfectants and DBPs. Thus, the EPA proposed a companion microbial rule to accompany the disinfectants and DBP rule.

On December 16, 1998, the EPA promulgated both the Federal Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Federal Disinfectants and Disinfection Byproducts Rule (D/DBPR). These companion rules were intended to simultaneously address microbial pathogens, such as *Cryptosporidium parvum*, and harmful DBPs. In response to these Federal rulemakings, the Department's Safe Drinking Water Program promulgated amendments to Chapter 109 on July 21, 2001, that reflected the provisions of the IESWTR and the D/DBPR.

After the original publishing of the IESWTR and the D/DBPR in December 1998, several issues arose at the Federal level regarding compliance dates, monitoring requirements, compliance determinations, reporting requirements, consecutive systems and typographical errors. In response to these issues, the EPA promulgated corrective amendments to the IESWTR and the D/DBPR on January 16, 2001. However, since the Department was already in the final rulemaking phase for the IESWTR and the D/DBPR at that time, several provisions of the January 16, 2001, Federal corrective amendments were not included in the final-form rulemaking. As a result, several provisions in Chapter 109 are unnecessarily more stringent than current Federal requirements.

This final-form rulemaking addresses these more stringent provisions. Some notable examples include more stringent monitoring requirements for small systems and inclusion of both consecutive and purchasing water systems for most of the D/DBPR requirements. There are also provisions in Chapter 109 that the Department has determined are in need of clarification. Lastly, there are three Federal provisions that the EPA wants added to Chapter 109 for the Department to obtain primary enforcement responsibility (primacy) of the IESWTR and the D/DBPR. These three provisions concern turbidity reporting requirements for alternative filtration technologies, increased monitoring criteria for small groundwater systems and miscellaneous considerations for determining DBP sampling locations. The EPA considers these provisions to be minor, albeit necessary for primacy.

There is one provision in the final-form rulemaking that is more stringent than the Federal requirements. Section 109.701(a)(9)(ii) (relating to reporting and recordkeeping) will require that chlorite monitoring results be reported monthly to the Department, as opposed to quarterly in the Federal rule. The Department feels that monthly reporting is appropriate since entry point chlorite samples are to be taken daily and that compliance with the chlorite MCL is based upon monthly distribution sampling. Monthly reporting would also be more appropriate than quarterly reporting due to the acute health concerns associated with the parent chlorine dioxide disinfectant. The remainder of the final-form rulemaking will be no more stringent than the Federal rules.

The Board proposes to incorporate the provisions of the Microbial and Disinfection Byproducts Corrective Amendments into Chapter 109. Over 10.5 million residents in this Commonwealth will benefit from improved drinking water standards as a result of the final-form rulemaking.

The Board approved the proposed rulemaking on May 21, 2003. The proposed rulemaking was published at 33 Pa.B. 3730 (August 2, 2003). The 30-day public comment period concluded on September 2, 2003. No comments were received. No public meetings or hearings were held on the proposed rulemaking.

The Technical Assistance Center Advisory Board (TAC) and the Water Resources Advisory Committee (WRAC) were each briefed on the final-form rulemaking. The TAC reviewed the final-form rulemaking in December 2003 by way of a special mailing to individual TAC members. The TAC had no comments and approved the final-form rulemaking for recommendation to the Board. The WRAC reviewed and discussed the final rulemaking on January 14, 2004. The WRAC commented that the TTHM and HAA5 monitoring requirements for groundwater systems in § 109.301(12)(i) (relating to general monitoring requirements) were somewhat confusing. Specifically, the

WRAC was concerned that a system using groundwater that is under the direct influence of surface water (GUDI) would incorrectly follow the requirements for groundwater systems in § 109.301(12)(i)(A)(II) and (B)(II), and not the applicable requirements for GUDI systems in § 109.301(12)(i)(A)(I) and (B)(I). In response, § 109.301(12)(i)(A)(II) and (B)(II) was revised to make obvious the exclusion of GUDI systems for the two subclauses. With these changes, the WRAC approved the final-form rulemaking for recommendation to the Board.

E. Comments and Responses on the Proposed Rulemaking and Changes to the Proposed Rulemaking

No comments were received on the proposed rulemaking. The Department, however, made minor clarifying changes to six areas of the proposed rulemaking.

The Department amended § 109.301(12) to account for the subparagraph on DBP precursor monitoring in § 109.301(12)(iv) and to clarify that only community and nontransient noncommunity water systems are potentially subject to DBP precursor monitoring.

The Department amended § 109.301(12)(i)(A)(II) to clarify that only systems that use groundwater exclusively are subject to the provisions of this subclause. This amendment reflects the Federal requirements in 40 CFR 141.132(b)(1)(i) (relating to monitoring requirements).

The Department amended § 109.301(12)(i)(B)(II) to clarify that only systems that use groundwater exclusively are subject to the provisions of this subclause. This amendment reflects the Federal requirements in 40 CFR 141.132(b)(1)(ii).

The Department amended § 109.301(12)(iv) to clarify that only community and nontransient noncommunity water systems are potentially subject to DBP precursor monitoring.

The Department amended § 109.304(c) (relating to analytical requirements) to more accurately reflect both current and future rules regarding operator certification. The deleted language will be added in the future when Chapter 303 (relating to certification of operators) is updated to include the language.

The Department amended § 109.1003(a)(1)(ii) (relating to monitoring requirements) to clarify that groundwater sources that are affected by surface water influence are subject to this subparagraph.

F. Benefits, Costs and Compliance

Benefits

The final-form rulemaking will affect approximately 2,565 public water systems in this Commonwealth and will be consistent with Federal requirements. Approximately 2,141 of these systems are groundwater systems serving less than 10,000 people that will potentially benefit from less stringent monitoring criteria. Eighty five surface water systems serving less than 500 people also have the potential to benefit from less stringent monitoring criteria. Twenty one systems using chlorine dioxide will benefit from clearer, more understandable chlorite reporting. Eight transient noncommunity water systems will benefit from the elimination of the enhanced coagulation treatment technique requirement. Several purchasing and consecutive water systems may benefit from the elimination of the monitoring requirements for chlorite, bromate and chlorine dioxide. Systems that are affected by either the D/DBPR or the IESWTR will benefit from the numerous clarifications of the final-form rulemaking. If the Department maintains primacy for both the

D/DBPR and the IESWTR, then all systems that are affected by these rules will benefit from the local Department field presence, as well as from the many Department compliance, technical and financial assistance programs that are already in place. Every system in this Commonwealth, regardless of D/DBPR or IESWTR applicability, will benefit from the correction of the typographical errors and incorrect cross-references that exist throughout Chapter 109. Lastly, over 10.5 million residents of this Commonwealth who are served by public water systems will benefit from the mitigation of adverse microbial and DBP health effects.

Compliance Costs

The final-form rulemaking will not result in additional compliance costs beyond what is already being borne by the regulated community for the D/DBPR and the IESWTR.

Compliance Assistance Plan

The Safe Drinking Water Program utilizes the Pennsylvania Infrastructure Investment Authority to offer financial assistance to eligible public water systems. This assistance is in the form of a low-interest loan, with some augmenting grant funds for hardship cases. Eligibility is based upon factors such as public health impact, compliance necessity and project/operational affordability.

The Safe Drinking Water Program has established a network of regional and central office training staff that is responsive to identifiable training needs. The target audience in need of training may be either program staff or the regulated community, or both.

In addition to this network of training staff, the Bureau of Water Supply Management has a division dedicated to providing both training and outreach support services to public water system operators. The Department's website (www.dep.state.pa.us/dep/deputate/waterops/) also contains the Drinking Water & Wastewater Operator Information Center, which provides a bulletin board of timely, useful information for treatment plant operators.

Paperwork Requirements

The final-form rulemaking will create no additional paperwork (for example, reporting forms, recordkeeping, application forms, letters, public notices, and the like) for public water systems in this Commonwealth.

The chlorite reporting requirements, which will increase chlorite reporting from quarterly to monthly, will nevertheless cause no additional paperwork since the actual number of required reporting forms will not change over a given period of time. The monthly reporting will simply increase the frequency of submitting these forms. That is, affected water systems will be submitting three forms per month rather than nine forms per quarter.

The Department has been actively endorsing electronic data reporting instead of conventional paper form reporting to water systems throughout this Commonwealth. If employed, electronic data reporting would greatly reduce a water system's current paperwork requirements.

G. Sunset Review

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 22, 2003, the Department submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 3730, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 9, 2004, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 10, 2004, and approved the final-form rulemaking.

I. *Findings*

The Board finds that:

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

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

(3) The final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 33 Pa.B. 3730.

(4) The final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble.

J. *Order*

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

(a) The regulations of the Department, 25 Pa. Code Chapter 109, are amended by amending §§ 109.202, 109.301, 109.303, 109.304, 109.503, 109.506, 109.701, 109.710, 109.810, 109.1003 and 109.1103 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the House and Senate Environmental Resources and Energy Committees as required by the Regulatory Review Act.

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

(e) This order shall take effect immediately.

KATHLEEN A. MCGINTY,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 3336 (June 26, 2004).)

Fiscal Note: Fiscal Note 7-383 remains valid for the final adoption of the subject regulations.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 109. SAFE DRINKING WATER

Subchapter B. MCLs, MRDLs OR TREATMENT TECHNIQUE REQUIREMENTS

§ 109.202. State MCLs, MRDLs and treatment technique requirements.

* * * * *

(g) *Treatment technique requirements for disinfection byproduct precursors.* Community water systems and nontransient noncommunity water systems that use either surface water or GUDI sources and that use conventional filtration treatment shall provide adequate treatment to reliably control disinfection byproduct precursors in the source water. Enhanced coagulation and enhanced softening are deemed by the Department to be treatment techniques for the control of disinfection byproduct precursors in drinking water treatment and distribution systems. This subchapter incorporates by reference the treatment technique in 40 CFR 141.135 (relating to treatment technique for control of disinfection byproduct (DBP) precursors). Coagulants approved by the Department are deemed to be acceptable for the purpose of this treatment technique. This treatment technique is effective on the date established by the Federal regulations.

* * * * *

Subchapter C. MONITORING REQUIREMENTS

§ 109.301. General monitoring requirements.

The monitoring requirements established by the EPA under the National Primary Drinking Water Regulations, 40 CFR Part 141 (relating to national primary drinking water regulations), as of December 8, 1984, are incorporated by reference. Public water suppliers shall monitor for compliance with MCLs and MRDLs in accordance with the requirements established in the National Primary Drinking Water Regulations, except as otherwise established by this chapter unless increased monitoring is required by the Department under § 109.302 (relating to special monitoring requirements). Alternative monitoring requirements may be established by the Department and may be implemented in lieu of monitoring requirements for a particular National Primary Drinking Water Regulation if the alternative monitoring requirements are in conformance with the Federal act and regulations. The monitoring requirements shall be applied as follows:

* * * * *

(3) *Monitoring requirements for coliforms.* Public water systems shall determine the presence or absence of total coliforms for each routine or check sample; and, the presence or absence of fecal coliforms or E. coli for a total coliform positive sample in accordance with analytical techniques approved by the Department under § 109.304 (relating to analytical requirements). A system may forego fecal coliform or E. coli testing on a total coliform-positive sample if the system assumes that any total coliform-positive sample is also fecal coliform-positive. A system

which chooses to forego fecal coliform or E. coli testing shall, under § 109.701(a)(3), notify the Department within 1 hour after the water system learns of the violation or the situation, and shall provide public notice in accordance with § 109.408 (relating to Tier 1 public notice—form, manner and frequency of notice).

(i) *Frequency.* Public water systems shall collect samples at regular time intervals throughout the monitoring period as specified in the system distribution sample siting plan under § 109.303(a)(2) (relating to sampling requirements). Systems which use groundwater and serve 4,900 persons or fewer, may collect all required samples on a single day if they are from different sampling sites in the distribution system.

* * * * *

(C) A public water system that uses either a surface water or a GUDI source and does not practice filtration in compliance with Subchapter B (relating to MCLs, MRDLs or treatment technique requirements) shall collect at least one total coliform sample at the entry point, or an equivalent location as determined by the Department, to the distribution system within 24 hours of each day that the turbidity level in the source water, measured as specified in paragraph (2)(i)(B), exceeds 1.0 NTU. The Department may extend this 24-hour collection limit to a maximum of 72 hours if the system adequately demonstrates a logistical problem outside the system's control in having the sample analyzed within 30 hours of collection. A logistical problem outside the system's control may include a source water turbidity result exceeding 1.0 NTU over a holiday or weekend in which the services of a Department certified laboratory are not available within the prescribed sample holding time. These sample results shall be included in determining compliance with the MCL for total coliforms established under § 109.202(a)(2).

* * * * *

(8) *Monitoring requirements for public water systems that obtain finished water from another public water system.*

* * * * *

(v) A public water supplier that obtains finished water from another permitted public water system using either surface water or GUDI sources shall, beginning May 16, 1992, measure the residual disinfectant concentration at representative points in the distribution system at least as frequently as the frequency required for total coliform sampling for compliance with the MCL for microbiological contaminants.

(vi) Community water systems and nontransient noncommunity water systems that obtain finished water from another permitted public water system shall comply with the monitoring requirements for disinfection byproducts and disinfectant residuals in paragraphs (12)(i) and (13).

* * * * *

(12) *Monitoring requirements for disinfection byproducts and disinfection byproduct precursors.* Community water systems and nontransient noncommunity water systems that use a chemical disinfectant or oxidant shall monitor for disinfection byproducts and disinfection byproduct precursors in accordance with this paragraph. Community water systems and nontransient noncommunity water systems that obtain finished water from another public water system that uses a chemical disinfectant or oxidant to treat the finished water shall monitor for TTHMs and HAA5 in accordance with this

paragraph. Systems that use either surface water or GUDI sources and that serve at least 10,000 persons shall begin monitoring by January 1, 2002. Systems that use either surface water or GUDI sources and that serve fewer than 10,000 persons, or systems that use groundwater sources, shall begin monitoring by January 1, 2004. Systems monitoring for disinfection byproducts and disinfection byproduct precursors shall take all samples during normal operating conditions. Systems monitoring for disinfection byproducts and disinfection byproduct precursors shall use only data collected under this chapter to qualify for reduced monitoring. Compliance with the MCLs and monitoring requirements for TTHMs, HAA5, chlorite (where applicable) and bromate (where applicable) shall be determined in accordance with 40 CFR 141.132 and 141.133 (relating to monitoring requirements; and compliance requirements) which are incorporated herein by reference.

(i) *TTHMs and HAA5.*

(A) *Routine monitoring.*

(I) Systems that use either surface water or GUDI sources shall monitor as follows:

(-a-) Systems serving at least 10,000 persons shall take at least four samples per quarter per treatment plant. At least 25% of all samples collected each quarter shall be collected at locations representing maximum residence time. The remaining samples shall be taken at locations that are representative of at least average residence time and that are representative of the entire distribution system, taking into account the number of persons served, the different sources of water, and the different treatment methods.

(-b-) Systems serving from 500 to 9,999 persons shall take at least one sample per quarter per treatment plant. The sample shall be taken at a location that represents a maximum residence time.

(-c-) Systems serving fewer than 500 persons shall take at least one sample per year per treatment plant during the month of warmest water temperature. The sample shall be taken at a location that represents a maximum residence time. If the sample, or average of all samples, exceeds either a TTHM or HAA5 MCL, then the system shall take at least one sample per quarter per treatment plant beginning in the quarter immediately following the quarter in which the system exceeds either the TTHM or HAA5 MCL. The sample shall be taken at a location that represents a maximum residence time. If, after at least 1 year of monitoring, the TTHM running annual average is no greater than 0.060 mg/L and the HAA5 running annual average is no greater than 0.045 mg/L, the required monitoring is reduced back to one sample per year per treatment plant.

(-d-) If a system samples more frequently than the minimum required in items (-a)—(-c-), at least 25% of all samples collected each quarter shall be collected at locations representing maximum residence time, with the remainder of the samples representing locations of at least average residence time.

(II) Systems that use only groundwater sources not included under subclause (I) shall monitor as follows:

(-a-) Systems serving at least 10,000 persons shall take at least one sample per quarter per treatment plant. Multiple wells drawing water from a single aquifer may be considered as a single treatment plant. The sample shall be taken at a location that represents a maximum residence time.

(-b-) Systems serving fewer than 10,000 persons shall take at least one sample per year per treatment plant during the month of warmest water temperature. Multiple wells drawing water from a single aquifer may be considered as a single treatment plant. The sample shall be taken at a location that represents a maximum residence time. If the sample, or average of all samples, exceeds either a TTHM or HAA5 MCL, then the system shall take at least one sample per quarter per treatment plant beginning in the quarter immediately following the quarter in which the system exceeds either the TTHM or HAA5 MCL. The sample shall be taken at a location that represents a maximum residence time. If, after at least 1 year of monitoring, the TTHM running annual average is no greater than 0.060 mg/L and the HAA5 running annual average is no greater than 0.045 mg/L, the required monitoring is reduced back to one sample per year per treatment plant.

(-c-) If a system samples more frequently than the minimum required, at least 25% of all samples collected each quarter shall be collected at locations representing maximum residence time, with the remainder of the samples representing locations of at least average residence time.

(B) *Reduced monitoring.* Systems shall monitor for TTHMs and HAA5 for at least 1 year prior to qualifying for reduced monitoring. Systems serving at least 500 persons and that use either surface water or GUDI sources shall monitor source water TOC monthly for at least 1 year prior to qualifying for reduced monitoring. The Department retains the right to require a system that meets the requirements of this clause to resume routine monitoring.

(I) For systems serving at least 500 persons that use either surface water or GUDI sources and that have a source water TOC running annual average that is no greater than 4.0 mg/L, a TTHM running annual average that is no greater than 0.040 mg/L and an HAA5 running annual average that is no greater than 0.030 mg/L, the required monitoring is reduced according to items (-a-) and (-b-). Systems serving at least 10,000 persons shall resume routine monitoring as prescribed in clause (A) if the TTHM running annual average exceeds 0.060 mg/L or the HAA5 running annual average exceeds 0.045 mg/L. Systems serving from 500 to 9,999 persons shall resume routine monitoring as prescribed in clause (A) if the annual TTHM average exceeds 0.060 mg/L or the annual HAA5 average exceeds 0.045 mg/L. Systems serving at least 500 persons that must resume routine monitoring shall resume routine monitoring in the quarter immediately following the quarter in which the system exceeded the specified TTHM or HAA5 criteria.

(-a-) For systems serving at least 10,000 persons, the required monitoring is reduced to one sample per quarter per treatment plant. The sample shall be taken at a location that represents a maximum residence time.

(-b-) For systems serving from 500 to 9,999 persons, the required monitoring is reduced to one sample per year per treatment plant. The sample shall be taken during the month of warmest water temperature and at a location that represents a maximum residence time.

(II) For systems that use only groundwater sources not included under subclause (I), the required monitoring is reduced according to the following:

(-a-) For systems serving at least 10,000 persons that have a TTHM running annual average that is no greater than 0.040 mg/L and an HAA5 running annual average

that is no greater than 0.030 mg/L, the required monitoring is reduced to one sample per year per treatment plant. The sample shall be taken during the month of warmest water temperature and at a location that represents a maximum residence time. If the annual TTHM average exceeds 0.060 mg/L or the annual HAA5 average exceeds 0.045 mg/L, the system shall resume routine monitoring as prescribed in clause (A) in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L for TTHMs or 0.045 mg/L for HAA5.

(-b-) For systems serving fewer than 10,000 persons that have an annual TTHM average that is no greater than 0.040 mg/L and an annual HAA5 average that is no greater than 0.030 mg/L for 2 consecutive years or an annual TTHM average that is no greater than 0.020 mg/L and an annual HAA5 average that is no greater than 0.015 mg/L for 1 year, the required monitoring is reduced to one sample per 3-year cycle per treatment plant. The sample shall be taken at a location that represents a maximum residence time during the month of warmest water temperature. The 3-year cycle shall begin on January 1 following the quarter in which the system qualifies for reduced monitoring. If the TTHM average exceeds 0.060 mg/L or the HAA5 average exceeds 0.045 mg/L, the system shall resume routine monitoring as prescribed in clause (A), except that systems that exceed either a TTHM or HAA5 MCL shall increase monitoring to at least one sample per quarter per treatment plant beginning in the quarter immediately following the quarter in which the system exceeds the TTHM or HAA5 MCL.

(ii) *Chlorite.* Community water systems and nontransient noncommunity water systems that use chlorine dioxide for disinfection or oxidation shall monitor for chlorite.

* * * * *

(B) *Reduced monitoring.* Chlorite monitoring in the distribution system required by clause (A)(II) is reduced to one three-sample set per quarter after 1 year of monitoring where no individual chlorite sample taken in the distribution system under clause (A)(II) has exceeded the chlorite MCL and the system has not been required to conduct additional monitoring under clause (A)(III). If any of the three individual chlorite samples taken quarterly in the distribution system exceeds the chlorite MCL or the system is required to conduct additional monitoring under clause (A)(III), the system shall revert to routine monitoring as prescribed by clause (A).

(iii) *Bromate.* Community water systems and nontransient noncommunity water systems that use ozone for disinfection or oxidation shall monitor for bromate.

(A) *Routine monitoring.* Systems shall take one sample per month for each treatment plant that uses ozone. Systems shall take the monthly sample at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(B) *Reduced monitoring.* For systems that have an average source water bromide concentration that is less than 0.05 mg/L based upon representative monthly bromide measurements for 1 year, the required monitoring is reduced from monthly to quarterly. Systems on reduced monitoring shall continue to take monthly samples for source water bromide. If the running annual average source water bromide concentration, computed quarterly, equals or exceeds 0.05 mg/L based upon representative monthly measurements, the system shall revert to routine monitoring as prescribed by clause (A).

(iv) *Disinfection byproduct precursors.* Community water systems and nontransient noncommunity water systems that use either surface water or GUDI sources and that use conventional filtration shall monitor for disinfection byproduct precursors.

(A) *Routine monitoring.* Systems shall take monthly samples of the source water alkalinity, the source water TOC and postsedimentation TOC for each treatment plant that uses conventional filtration. Postsedimentation TOC can be taken at any point between sedimentation effluent and the entry point to the distribution system. The three samples shall be taken concurrently and at a time that is representative of both normal operating conditions and influent water quality.

(B) *Reduced monitoring.* For systems with an average postsedimentation TOC of less than 2.0 mg/L for 2-consecutive years, or less than 1.0 mg/L for 1 year, the required monitoring for source water alkalinity, source water TOC and postsedimentation TOC is reduced from monthly to quarterly for each applicable treatment plant. The system shall revert to routine monitoring as prescribed by clause (A) in the month following the quarter when the annual average postsedimentation TOC is not less than 2.0 mg/L.

(C) *Early monitoring.* Systems may begin monitoring to determine whether the TOC removal requirements of 40 CFR 141.135(b)(1) (relating to enhanced coagulation and enhanced softening performance requirements) can be met 12 months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any system that does not monitor during this period, and then determines in the first 12 months after the compliance date that it is not able to meet the requirements of 40 CFR 141.135(b)(1) and shall therefore apply for alternate minimum TOC removal requirements under 40 CFR 141.135(b)(4) is not eligible for retroactive approval of the alternate minimum TOC removal requirements and is in violation. Systems may apply for alternate minimum TOC removal requirements any time after the compliance date.

(13) *Monitoring requirements for disinfectant residuals.* Community water systems and nontransient noncommunity water systems that use either chlorine, chloramines or chlorine dioxide shall monitor for disinfectant residuals in accordance with this paragraph. Community water systems and nontransient noncommunity water systems that obtain finished water from another public water system that uses either chlorine or chlorine dioxide to treat the finished water shall monitor for chlorine residual in accordance with this paragraph. Community water systems and nontransient noncommunity water systems that obtain finished water from another public water system that uses chloramines to treat the finished water shall monitor for chloramine residual in accordance with this paragraph. Transient noncommunity water systems that use chlorine dioxide as either a disinfectant or oxidant shall monitor for chlorine dioxide residual in accordance with this paragraph. Systems that use either surface water or GUDI sources and that serve at least 10,000 persons shall begin monitoring by January 1, 2002. Systems that use either surface water or GUDI sources and that serve fewer than 10,000 persons, or systems that use groundwater sources, shall begin monitoring by January 1, 2004. Systems monitoring for disinfectant residuals shall take all samples during normal operating conditions. Compliance with the MRDLs and monitoring requirements for chlorine, chloramines and chlorine dioxide (where applicable) shall be deter-

mined in accordance with 40 CFR 141.132 and 141.133 (relating to monitoring requirements; and compliance requirements) which are incorporated herein by reference.

(i) *Chlorine and chloramines.* Systems shall measure the residual disinfectant level at the same points in the distribution system and at the same time that total coliforms are sampled, as specified in paragraph (3). Systems that used either surface water or GUDI sources may use the results of residual disinfectant concentration sampling conducted under paragraph (1) or (2) in lieu of taking separate samples.

(ii) *Chlorine dioxide.*

(A) *Routine monitoring.* Systems shall take one sample per day at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system shall conduct additional monitoring as specified in clause (B) in addition to the sample required at the entrance to the distribution system.

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§ 109.303. Sampling requirements.

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(c) Public water suppliers shall assure that samples for laboratory analysis are properly collected and preserved, are collected in proper containers, do not exceed maximum holding times between collection and analysis and are handled in accordance with guidelines governing quality control which may be established by the Department. A public water supplier who utilizes a certified laboratory for sample collection as well as analysis satisfies the requirements of this subsection.

(d) Compliance monitoring samples for the VOCs listed under 40 CFR 141.61(a) shall be collected by a person properly trained by a laboratory certified by the Department to conduct VOC or vinyl chloride analysis.

(e) Compliance monitoring samples for the contaminants listed under 40 CFR 141.40(n), 141.61(a) and (c), 141.62 and 141.88 may be composited in accordance with 40 CFR 141.23(a)(4), 141.24(f)(14), (g)(7) and (h)(10) and 141.88(a)(1)(iv) (relating to inorganic chemical sampling and analytical requirements; organic chemicals other than total trihalomethanes, sampling and analytical requirements; and monitoring requirements for lead and copper in source water) except:

(1) Samples from groundwater entry points may not be composited with samples from surface water entry points.

(2) Samples used in compositing shall be collected in duplicate.

(3) If a contaminant listed under 40 CFR 141.61(a) or (c) is detected at an entry point, samples from that entry point may not be composited for subsequent or repeat monitoring requirements.

(4) Samples obtained from an entry point which contains water treated by a community water supplier or a nontransient noncommunity water supplier to specifically meet an MCL for an organic contaminant listed under 40 CFR 141.61(a) or (c) or an MCL for an inorganic contaminant listed under 40 CFR 141.62 may not be composited with other entry point samples.

(f) A compliance sample required under § 109.301(9) shall be taken at a free flowing tap in the house, building or facility where the POE device is located or at a monitoring point approved by the Department on the effluent side of the POE device.

(g) Samples taken to determine compliance with combined radium-226 and radium-228, gross alpha particle activity, or uranium under 40 CFR 141.66(b), (c) and (e) (relating to maximum containment levels for radionuclides) may be composited from a single entry point if the analysis is done within a year of the date of the collection of the first sample. The Department will treat analytical results from the composited sample as the average analytical result to determine compliance with the MCLs and the future monitoring frequency.

(1) If the analytical result from the composited sample is greater than one-half the MCL, the Department may direct the system to take additional quarterly samples before allowing the system to sample under a reduced monitoring schedule.

(2) Samples obtained from an entry point that contains water treated to specifically meet an MCL for a radionuclide contaminant listed under 40 CFR 141.66(b), (c) or (e) may not be composited.

(h) Samples taken to determine compliance with beta particle and photon radioactivity under 40 CFR 141.66(d) may be composited as follows:

(1) Monitoring for gross beta-particle activity may be based on the analysis of a composite of 3 monthly samples.

(2) Monitoring for strontium-90 and tritium may be based on the analysis of a composite of 4 consecutive quarterly samples.

§ 109.304. Analytical requirements.

* * * * *

(c) For the purpose of determining compliance with the monitoring and analytical requirements established under this subchapter and Subchapter K (relating to lead and copper), the Department will consider only samples analyzed by a laboratory certified by the Department, except that measurements for turbidity, fluoridation operation, residual disinfectant concentration, temperature, pH, alkalinity, orthophosphates, silica, calcium, conductivity, daily chlorite, and magnesium hardness may be performed by a person meeting the requirements of § 109.704 (relating to operator certification).

Subchapter E. PERMIT REQUIREMENTS

§ 109.503. Public water system construction permits.

(a) *Permit application requirements.* An application for a public water system construction permit shall be submitted in writing on forms provided by the Department and shall be accompanied by plans, specifications, engineer's report, water quality analyses and other data, information or documentation reasonably necessary to enable the Department to determine compliance with the act and this chapter. The Department will make available to the applicant the Public Water Supply Manual, available from the Bureau of Water Supply and Community Health, Post Office Box 8467, Harrisburg, Pennsylvania 17105 which contains acceptable design standards and technical guidance. Water quality analyses shall be conducted by a laboratory certified under this chapter.

(1) *General requirements.* An application shall include:

* * * * *

(iii) *Information describing new sources.* The Department may accept approval of an out-of-State source by the agency having jurisdiction over drinking water in that state if the supplier submits adequate proof of the

approval and the agency's standards are at least as stringent as this chapter. Information describing sources shall include:

* * * * *

(B) An evaluation of the quality of the raw water from each new source. This clause does not apply when the new source is finished water obtained from an existing permitted community water system unless the Department provides written notice that an evaluation is required. The evaluation shall include analysis of the following:

(I) For groundwater sources, VOCs for which MCLs have been established by the EPA under the National Primary Drinking Water Regulations in 40 CFR 141.61(a) (relating to maximum contaminant levels for organic contaminants). Vinyl chloride monitoring is required only if one or more of the two-carbon organic compounds specified under § 109.301(5) (i) (relating to general monitoring requirements) are detected. Samples for VOCs shall be collected in accordance with § 109.303(d) (relating to sampling requirements).

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§ 109.506. Emergency permits.

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(c) Water suppliers having to comply with § 109.603(d) (relating to source quality and quantity) because of chronic water quantity problems shall apply for an amendment to their construction permit in accordance with § 109.503(b) (relating to public water system construction permits) to incorporate additional sources.

Subchapter G. SYSTEM MANAGEMENT RESPONSIBILITIES

§ 109.701. Reporting and recordkeeping.

(a) *Reporting requirements for public water systems.* Public water systems shall comply with the following requirements:

(1) *General reporting requirements.* Unless a different reporting period is specified in this chapter, the water supplier shall assure that the results of test measurements or analyses required by this chapter are reported to the Department within either the first 10 days following the month in which the result is received or the first 10 days following the end of the required monitoring period as stipulated by the Department, whichever is shorter. The test results shall include the following at a minimum:

* * * * *

(2) *Monthly reporting requirements for performance monitoring.*

(i) The test results of performance monitoring required under § 109.301(1) (relating to general monitoring requirements) for public water suppliers providing filtration and disinfection of surface water or GUDI sources shall include the following at a minimum:

(A) For turbidity performance monitoring:

* * * * *

(V) Instead of subclauses (III) and (IV), beginning January 1, 2002, for public water systems that serve 10,000 or more people and use conventional or direct filtration:

(-a-) The number of filtered water turbidity measurements that are less than or equal to 0.3 NTU.

(-b-) The date, time and values of any filtered water turbidity measurements exceeding 1 NTU.

(VI) Instead of clause (A)(III) and (IV), beginning January 1, 2005, for public water systems that serve fewer than 10,000 persons and use conventional or direct filtration:

(-a-) The number of filtered water turbidity measurements that are less than or equal to 0.3 NTU.

(-b-) The date, time and values of any filtered water turbidity measurements exceeding 1 NTU.

(VII) Instead of subclauses (III) and (IV), beginning January 1, 2002, for public water systems that serve 10,000 or more people and use other filtration technologies:

(-a-) The number of filtered water turbidity measurements that are less than or equal to 0.3 NTU or a more stringent turbidity performance level requirement that is based upon onsite studies and is specified by the Department.

(-b-) The date, time and values of any filtered water turbidity measurements exceeding 1 NTU or a more stringent turbidity performance level requirement that is based upon onsite studies and is specified by the Department.

(B) For performance monitoring of the residual disinfectant concentration of the water being supplied to the distribution system:

(I) The date, time and lowest value each day.

(II) The date, duration and number of periods each day when the concentration is less than .2 mg/L for more than 4 hours.

(C) For performance monitoring of the residual disinfectant concentration at representative points in the distribution system report the following:

* * * * *

(iii) The test results from performance monitoring required under § 109.301(8)(v) of the residual disinfectant concentration of the water in the distribution system shall include the date, time and value of each sample.

* * * * *

(9) Reporting requirements for disinfection byproducts.

* * * * *

(ii) Systems monitoring for chlorite under § 109.301(12) shall report the following:

(A) The number of samples taken during the last month.

(B) The date, location and result of each entry point and distribution sample taken during the last month.

(C) The arithmetic average of each three-sample set of distribution samples taken during the last month.

(D) Whether the monthly arithmetic average exceeds the MCL.

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§ 109.710. Disinfectant residual in the distribution system.

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(b) A public water system that uses surface water or GUDI sources or obtains finished water from another

permitted public water system using surface water or GUDI sources shall comply with the following requirements:

(1) As a minimum, a detectable residual disinfectant concentration of 0.02 mg/L measured as total chlorine, combined chlorine or chlorine dioxide shall be maintained throughout the distribution system as demonstrated by monitoring conducted under § 109.301(1) and (2) or (8) (v) (relating to general monitoring requirements).

* * * * *

Subchapter H. LABORATORY CERTIFICATION

§ 109.810. Reporting and notification requirements.

(a) A laboratory certified under this subchapter shall submit to the Department, on forms provided by the Department, the results of test measurements or analyses performed by the laboratory under this chapter. Unless a different reporting period is specified in this chapter, these results shall be reported within either the first 10 days following the month in which the result is determined or the first 10 days following the end of the required monitoring period as stipulated by the Department, whichever is shorter.

* * * * *

Subchapter J. BOTTLED WATER AND VENDED WATER SYSTEMS, RETAIL WATER FACILITIES AND BULK WATER HAULING SYSTEMS

§ 109.1003. Monitoring requirements.

(a) General monitoring requirements. Bottled water and vended water systems, retail water facilities and bulk water hauling systems shall monitor for compliance with the MCLs and MRDLs in accordance with § 109.301 (relating to general monitoring requirements) and shall comply with § 109.302 (relating to special monitoring requirements). The monitoring requirements shall be applied as follows, except that systems which have installed treatment to comply with a primary MCL shall conduct quarterly operational monitoring for the contaminant which the facility is designed to remove:

(1) Bottled water systems, retail water facilities and bulk water hauling systems, for each entry point shall:

(i) Monitor for microbiological contaminants weekly.

(ii) Monitor for turbidity every 4 hours or continuously each day a surface water or GUDI source is in use.

* * * * *

(viii) Beginning January 1, 2004, monitor annually for TTHMs and HAA5 if the system uses a chemical disinfectant or oxidant, or obtains finished water from another public water system that uses a chemical disinfectant or oxidant to treat the finished water. Bottled water systems are not required to monitor for TTHMs and HAA5 if the system does not use a chlorine-based disinfectant or oxidant and does not obtain finished water from another public water system that uses a chlorine-based disinfectant or oxidant to treat the finished water.

(A) Routine monitoring. Systems shall take at least one sample per year per entry point during the month of warmest water temperature. If the sample, or average of all samples, exceeds either a TTHM or HAA5 MCL, the system shall take at least one sample per quarter per entry point. The system shall return to the sampling frequency of one sample per year per entry point if, after at least 1 year of monitoring, the TTHM running annual average is no greater than 0.060 mg/L and the HAA5 running annual average is no greater than 0.045 mg/L.

(B) *Reduced monitoring.* Systems that use groundwater sources shall monitor for TTHMs and HAA5 for at least 1 year prior to qualifying for reduced monitoring. The Department retains the right to require a system that meets the requirements of this clause to resume routine monitoring.

(I) Systems that use groundwater sources shall reduce monitoring to 1 sample per 3-year cycle per entry point if the annual TTHM average is no greater 0.040 mg/L and the annual HAA5 average is no greater than 0.030 mg/L for 2 consecutive years or the annual TTHM average is no greater than 0.020 mg/L and the annual HAA5 average is no greater than 0.015 mg/L for 1 year. The sample shall be taken during the month of warmest water temperature. The 3-year cycle shall begin on January 1 following the quarter in which the system qualifies for reduced monitoring.

(II) Systems that use groundwater sources that qualify for reduced monitoring shall remain on reduced monitoring if the TTHM average is no greater than 0.060 mg/L and the HAA5 average is no greater than 0.045 mg/L. Systems that exceed these levels shall resume routine monitoring as prescribed in clause (A), except that systems that exceed either a TTHM or HAA5 MCL shall increase monitoring to at least 1 sample per quarter per entry point beginning in the quarter immediately following the quarter in which the system exceeds the TTHM or HAA5 MCL.

(ix) Beginning January 1, 2004, monitor daily for chlorite if the system uses chlorine dioxide for disinfection or oxidation. Systems shall take at least one daily sample at the entry point. If a daily sample exceeds the chlorite MCL, the system shall take three additional samples within 24 hours from the same lot, batch, machine, carrier vehicle or point of delivery. The chlorite MCL is based on the average of the required daily sample plus any additional samples.

(x) Beginning January 1, 2004, monitor monthly for bromate if the system uses ozone for disinfection or oxidation.

(A) *Routine monitoring.* Systems shall take one sample per month for each entry point that uses ozone while the ozonation system is operating under normal conditions.

(B) *Reduced monitoring.* Systems shall reduce monitoring for bromate from monthly to quarterly if the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for 1 year. Systems on reduced monitoring shall continue monthly source water bromide monitoring. If the running annual average source water bromide concentration, computed quarterly, is equal to or exceeds 0.05 mg/L, the system shall revert to routine monitoring as prescribed by clause (A).

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Subchapter K. LEAD AND COPPER

§ 109.1103. Monitoring requirements.

* * * * *

(h) *Sample collection methods.*

* * * * *

(4) *Source water samples.* Lead and copper source water samples shall be collected in accordance with the requirements regarding sample location, number of samples and collection methods specified in 40 CFR

141.88(a)(1) (relating to monitoring requirements for lead and copper in source water).

* * * * *

[Pa.B. Doc. No. 04-1488. Filed for public inspection August 13, 2004, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 105]

Boating

The Fish and Boat Commission (Commission) amends § 105.3 (relating to unacceptable boating practices). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The final-form rulemaking makes it unlawful to engage in a practice known as “teak surfing” or “drag surfing” and to operate a motorboat at any speed when towing a person on water skis or other devices using a tow rope of 20 feet or less.

A. Effective Date

The final-form rulemaking will go into effect upon publication of this order in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This final-form rulemaking is available on the Commission’s website: www.fish.state.pa.us.

C. Statutory Authority

The amendment to § 105.3 is published under the statutory authority of section 5123 of the code (relating to general boating regulations). A person violating § 105.3(10) or (11) commits a summary offense of the third degree for which a \$50 fine is imposed.

D. Purpose and Background

The final-form rulemaking is designed to address the Commission’s concerns regarding carbon monoxide (CO) poisoning. The specific purpose of the final-form rulemaking is described in more detail under the summary of changes.

Following the publication of a notice of proposed rulemaking, the Commission’s Boating Advisory Board (BAB) recommended that the Commission table this item until additional information could be obtained from the National Association of State Boating Law Administrators (NASBLA) to incorporate into the proposed rulemaking. The Commission, at a subsequent meeting, deferred action on the agenda item so that Commission staff could seek input from the NASBLA and other states. At its September 2003 meeting, the NASBLA adopted a model act for “Safe Towing Practices.” The model act provides that no person shall operate a motorboat with a person sitting, riding or hanging onto a swim platform or swim ladder attached to the motorboat. It further provides that no person shall operate a motorboat, using a tow rope of 20 feet or less, when towing a person on water skis or other devices. Thereafter, the BAB recommended to the Commission that the proposed rulemaking be revised to clarify that occupying the swim platform during certain maneuvering activities is permitted and to make it

unlawful to operate a motorboat that is towing a water-skier on a rope that is 20 feet or less in length.

E. Summary of Changes

CO is a colorless, odorless, tasteless and highly toxic gas. It is produced when a carbon-based fuel, such as gasoline, propane, charcoal or oil, burns. CO is often emitted through a boat's engine or generator exhaust outlets. As a result, CO can accumulate almost anywhere in or around a boat. It can collect under swim platforms, around the stern and inside canvas enclosures. The results can be dangerous, even fatal.

A fad called "teak surfing" or "drag surfing" is one of the riskiest activities for CO poisoning. Teak surfing involves an individual holding onto the swim platform of a boat as it accelerates and then letting go to "surf" the wake. Teak surfers cannot avoid the risk of inhaling dangerous levels of CO because the propulsion engines produce a very high volume of exhaust gases, usually directed straight into the area behind the boat where the teak surfers are located. There is also an inherent danger of the individual losing his grasp of the swim platform and being hit by a moving propeller. Accordingly, the Commission proposed to amend § 105.3 to make this practice unlawful.

On final-form rulemaking, the Commission adopted the proposed amendment with the clarification recommended by the BAB that occupying the swim platform during certain maneuvering activities is permitted. The Commission further made it unlawful to operate a motorboat that is towing a water skier on water skis or other devices using a tow rope of 20 feet or less in length. The Commission adopted the amendments to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. Public Involvement

A notice of proposed rulemaking was published at 33 Pa.B. 4077 (August 16, 2003). The Commission did not receive any comments concerning the proposed rulemaking during the formal public comment period. After the public comment period, the Commission received one public comment opposing the creation of a minimum length for the tow rope. Copies of all public comments were provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the final-form rulemaking 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 the comments that were received were considered.

(3) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 105, are amended by amending § 105.3 to read as set forth in Annex A.

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

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

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

DOUGLAS J. AUSTEN, Ph.D.
Executive Director

Fiscal Note: Fiscal Note 48A-147 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 105. OPERATIONAL CONDITIONS

§ 105.3. Unacceptable boating practices.

It is unlawful to:

(1) Operate a motorboat not equipped with railings or other safeguards at greater than a slow, minimum height swell speed while a person is riding on bow decking, gunwales, transom or motor cover. It is not a violation of this paragraph to ride on the motor cover of an inboard motorboat while underway at that speed if the motor cover is designed by the manufacturer for the operator or a passenger to ride on it.

(2) Operate a motorboat—less than 20 feet in length—at greater than slow, minimum height swell speed while a person is standing on or in the boat. It is not a violation of this paragraph if the boat is designed for the operator or a passenger, or both, to stand while underway at that speed.

(3) Operate or stop a boat in a marked marine event area in violation of the conditions of the event.

(4) Operate or stop a boat in a manner that interferes with the conduct of a permitted marine event.

(5) Cause a boat to become airborne or completely leave the water while crossing the wake of another boat when within 100 feet of the boat creating the wake.

(6) Weave through congested traffic.

(7) Follow too close to another boat, including personal watercraft. For the purposes of this paragraph, following too close shall be construed as operating in excess of slow, minimum height swell speed within 100 feet to the rear or 50 feet to the side of another boat that is underway, unless the boats are operating in a narrow channel, in which case the boats may operate at the speed and flow of other boat traffic.

(8) Operate within 100 feet of a water-skier being towed by another boat.

(9) Operate a pontoon boat while a person is riding outside the passenger carrying area. The passenger carrying area is defined by continuous railings or enclosed

spaces intended for persons to use while the pontoon boat is underway. This prohibition does not apply when the operator of the boat is docking, mooring, anchoring or rafting the pontoon boat or when the pontoon boat is underway at slow minimum height swell speed or less.

(10) Operate a motorboat at any speed with a person or persons sitting, riding or hanging on a swim platform or swim ladder attached to the motorboat, except when

launching, retrieving, docking or anchoring the motorboat.

(11) Operate a motorboat at any speed when towing a person on waterskis or other devices using a tow rope of 20 feet or less.

[Pa.B. Doc. No. 04-1489. Filed for public inspection August 13, 2004, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 41]

Medical Assistance Provider Appeal Procedure

The Department of Public Welfare (Department), under the authority of 67 Pa.C.S. § 1106 (relating to regulations), proposes to add Chapter 41 (relating to Medical Assistance provider appeal procedure) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

The purpose of the proposed rulemaking is to ensure the just and prompt determination of Medical Assistance (MA) provider appeals.

Background

The act of December 3, 2002 (P. L. 1147, No. 142) (Act 142) created 67 Pa.C.S. Chapter 11 (relating to Medical Assistance hearings and appeals). Chapter 11 of 67 Pa.C.S. establishes a statutory framework for a provider appeal process and authorizes the Department to adopt regulations establishing rules of procedure by July 1, 2004, as may be necessary to implement Act 142. The Bureau of Hearings and Appeals (Bureau) published a Standing Practice Order (Order) at 33 Pa.B. 3053 (June 28, 2003), that imposes interim rules governing provider appeals pending the adoption of final regulations.

Under 67 Pa.C.S. § 1106(b), the Bureau established an advisory committee to provide assistance and guidance in the development and modification of regulations. The advisory committee included 15 attorneys experienced in proceedings before the Bureau and other administrative agencies. The advisory committee members represented private law firms, MA provider organizations and government attorneys. The advisory committee recommended that the regulations be promulgated using the Bureau's Order as the basis for a proposed rulemaking.

Need for the Proposed Rulemaking

The proposed rulemaking will assist MA providers, attorneys and other parties in proceedings before the Bureau.

Requirements

The proposed rulemaking meets the important goals in 67 Pa.C.S. Chapter 11 by providing, among other things, for the mandatory disclosure of information by both parties, a 120-day discovery period and the filing of detailed position papers by each party. The proposed rulemaking includes many of the procedural rules in 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) (GRAPP). However, significant modifications have been made to accommodate the specific requirements of 67 Pa.C.S. Chapter 11 within the framework of a prompt adjudication. In addition, the Bureau has drawn upon the procedural rules used by the Federal Provider Reimbursement Review Board and the discovery rules in 231 Pa. Code (relating to rules of civil procedure). The proposed rulemaking also contains a procedure for the expedited disposition of certain appeals that traditionally have been handled in a less formal manner.

Based upon discussions and recommendations of the advisory committee, changes from the Order include:

- Automatically including position papers as part of the record.
- Mandating that 20 days prior to the hearing the parties submit a joint statement of undisputed facts.
- Requiring supplementation of discovery responses for appeals filed between December 3, 2002, and June 28, 2003.
- Ensuring that the parties have at least 3 weeks notice of the date of the hearing.

Finally, the Bureau is also proposing to establish reasonable copying rates based upon the Right-to-Know Law (65 P. S. §§ 66.1—66.4).

The proposed rulemaking has been renumbered and reformatted from the order published at 33 Pa.B. 3053 to conform to the *Pennsylvania Code* requirements for regulatory style and format. The proposed rulemaking is organized to allow a reader to follow the basic order in the GRAPP. Similarly, the cross-references to the GRAPP are included in the proper location within the specific sections of the proposed rulemaking, which are superceded by this rulemaking.

Affected Organizations and Individuals

The proposed rulemaking will affect the Department, the Bureau, MA providers, private law firms and government attorneys who practice before the Bureau.

Accomplishments/Benefits

Parties who appear before the Bureau will be better informed of their rights, responsibilities and expectations in MA provider appeals and proceedings that are litigated before the Bureau.

Fiscal Impact

Public Sector

The proposed rulemaking will not impose additional costs on State and local governments.

Private Sector

The proposed rulemaking will not impose additional costs on the public sector.

General Public

The proposed rulemaking will not impose additional costs on the general public.

Paperwork Requirements

The proposed rulemaking will not require the completion of additional forms, reports and other paperwork.

Cross References

The GRAPP and other applicable Departmental regulations apply to the practice and procedures in MA provider appeals, except as specifically superceded in relevant subsections of the proposed rulemaking.

Effective Date

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

Sunset Date

The Department is not establishing a sunset date for the proposed rulemaking. The Department will continually monitor the regulations for effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department of Public Welfare, Randy J. Riley, Administrative Law Judge, 2330 Vartan Way, Second Floor, Harrisburg, PA 17110 within 30 calendar days after the date of publication in the *Pennsylvania Bulletin*. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 4, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-488. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 55. PUBLIC WELFARE****PART I. DEPARTMENT OF PUBLIC WELFARE****Subpart D. HEARINGS AND APPEALS****CHAPTER 41. MEDICAL ASSISTANCE PROVIDER APPEAL PROCEDURES****GENERAL PROVISIONS**

Sec.	
41.1.	Scope.
41.2.	Construction and application.
41.3.	Definitions.
41.4.	Amendments to regulation.
41.5.	Jurisdiction of the Bureau.
41.6.	Timely filing required.
41.7.	Extensions of time.

DOCUMENTARY FILINGS

41.11.	Title of document.
41.12.	Form.
41.13.	Incorporation by reference.
41.14.	Verification.
41.15.	Copies of documents.

SERVICE AND AMENDMENT OF DOCUMENTS

41.21.	Notice of agency actions.
41.22.	Service of pleadings and legal documents.
41.23.	Proof of service.
41.24.	Certificate of service.
41.25.	Amendment or withdrawal of legal documents.

REQUESTS FOR HEARING, PETITIONS FOR RELIEF AND OTHER PRELIMINARY MATTERS

41.31.	Request for hearing.
41.32.	Timeliness and perfection of requests for hearing.
41.33.	Appeals nunc pro tunc.

PETITIONS

41.41.	Waiver request.
41.42.	Request for declaratory relief.
41.43.	Request for issuance, amendment or deletion of regulations.
41.44.	Transfer of petition for relief.

SUPERSEDEAS

41.51.	General.
41.52.	Contents of petition for supersedeas.
41.53.	Circumstances affecting grant or denial.

INTERVENTION

41.61.	Filing of petitions to intervene.
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ANSWERS

41.71.	Answers generally.
41.72.	Answers to petitions to intervene.

CONSOLIDATION, AMENDMENT AND WITHDRAWAL OF APPEALS

41.81.	Consolidation of provider appeals.
41.82.	Amendments of requests for hearing.
41.83.	Withdrawal of provider appeals.

PREHEARINGS PROCEDURES AND HEARINGS

41.91.	Waiver of hearings.
41.92.	Expedited disposition procedure for certain appeals.

PREHEARING PROCEDURES AND PREHEARING CONFERENCES

41.101.	Prehearing procedure in certain provider appeals.
41.102.	Conferences.

DISCLOSURES AND DISCOVERY

41.111.	Disclosures.
41.112.	Filing of position paper.
41.113.	Content of provider position paper.
41.114.	Content of program office position paper.
41.115.	Statement regarding expert opinions.
41.116.	Amendments to position papers.
41.117.	Penalties for noncompliance.
41.118.	Authorized forms of discovery.
41.119.	General scope of discovery.
41.120.	Limitations on scope of discovery.
41.121.	Timing and sequence of discovery.
41.122.	Supplementing disclosures and responses.
41.123.	Signing of disclosures, discovery requests, responses and objections.

MOTIONS

41.131.	Motions in general.
41.132.	Actions on motions.
41.133.	Procedural motions.
41.134.	Discovery motions.
41.135.	Dispositive motions.
41.136.	Miscellaneous motions.

MEDIATION

41.141.	Voluntary mediation.
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HEARINGS

41.151.	Initiation of hearings.
41.152.	Continuance of hearings.
41.153.	Burden of proof and production.

EVIDENCE AND WITNESSES

41.161.	Written testimony.
41.162.	Subpoenas.

PRESIDING OFFICERS

41.171.	Independence.
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POSTHEARING PROCEDURES

41.181.	Posthearing briefs.
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AGENCY ACTION

41.191.	Determinations and recommendations by the Bureau.
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REOPENING OF RECORD

41.201.	Reopening of record prior to adjudication.
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RECONSIDERATION AND REVIEW BY THE SECRETARY

41.211.	Reconsideration of interlocutory orders.
41.212.	Review of Bureau determinations.
41.213.	Review of Bureau recommendations.
41.214.	Appeals.

GENERAL PROVISIONS

§ 41.1. Scope.

(a) This chapter governs the practice and procedures in MA provider appeals.

(b) In addition to this chapter, GRAPP and other applicable Departmental regulations apply to the practice and procedures in MA provider appeals, except as specifically superseded in relevant sections of this chapter.

(c) This chapter does not apply to appeals governed by Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

(d) This chapter does not apply to provider appeals commenced before December 3, 2002.

(e) This chapter applies in cases filed on or after December 3, 2002, but before July 1, 2003, except as follows:

(1) Nonconformity of a pleading or legal document with this chapter will not in itself be a basis for objection.

(2) Except for the time limits, schedules and periods specified in § 41.32 (relating to timeliness and perfection of requests for hearing), the time limits, schedules and periods specified in this chapter do not apply. When this chapter sets forth a time limit, schedule or period, the parties may agree to an alternative time limit, schedule or period or the Bureau may issue an order specifying an alternative time limit or period as the Bureau deems appropriate.

(3) Sections 41.111—41.117 and 41.122 do not apply.

§ 41.2. Construction and application.

(a) This chapter shall be liberally construed to secure the just, speedy and inexpensive determination of provider appeals.

(b) To the extent that GRAAP applies in MA provider appeals, the term “agency” as used in 1 Pa. Code Part II means “Bureau”; the term “participant” as used in 1 Pa. Code Part II means “party”; and the term “presiding officer” as used in 1 Pa. Code Part II shall mean “presiding officer.”

§ 41.3. Definitions.

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

Agency action—

(i) An adjudicative action of the Department or a program office that relates to the administration of the MA Program.

(ii) The term includes the actions identified in §§ 1101.84(a)—(c) and 1187.141(a) (relating to provider right of appeal; and nursing facility’s right to appeal and to a hearing) and other actions relating to a provider’s enrollment in, participation in, claims for payment or damages under or penalties imposed under the MA Program.

Bureau—The Bureau of Hearings and Appeals of the Department.

Department—The Department of Public Welfare.

Dispositive motion—

(i) A motion that seeks a final determination of one or more of the issues in a provider appeal without the need for hearing or further hearing.

(ii) The term includes the following:

(A) A motion to quash the provider appeal.

(B) A motion to dismiss the provider appeal.

(C) A motion for summary judgment.

(D) A motion for partial summary judgment.

(iii) The term does not include a motion in limine.

GRAPP—The General Rules of Administrative Practice and Procedure set forth in 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

Hearing—One of the following:

(i) A provider appeal.

(ii) A proceeding before a presiding officer for the purpose of creating a factual evidentiary record relative to the merits of one or more issues raised in a request for hearing.

(iii) A proceeding conducted by a presiding officer for the purpose of resolving an interlocutory matter, including, but not limited to, a petition for supersedeas.

Legal document—

(i) A motion, answer, brief, petition to intervene, request for reconsideration of an interlocutory chapter, request for review by the Secretary or other paper filed with the Bureau in a provider appeal, other than a pleading.

(ii) The term does not include attachments or exhibits.

MA—Medical Assistance.

Pa.R.C.P.—Pennsylvania Rules of Civil Procedure.

Party—A provider, a program office or an intervener.

Person—An individual, partnership, association, corporation, political subdivision, municipal authority or other entity.

Petition for relief—A document filed under § 35.17, § 35.18 or § 35.19 (relating to petitions generally; petitions for issuance, amendment, waiver or deletion of regulations; and petitions for declaratory orders) of the GRAPP.

Pleading—A request for hearing, including amendments thereto.

Program office—

(i) An office within the Department that is managed and operated by an individual who reports directly to the Secretary, including a deputy secretary, or a bureau or other administrative unit of an office within the Department that is managed and operated by an individual who reports directly to a deputy secretary.

(ii) The term does not include the Bureau.

Provider—One of the following:

(i) A person currently enrolled in the MA Program as a provider of services.

(ii) A person who has applied for enrollment in the MA Program as a provider of services.

(iii) A person whose enrollment in the MA Program as a provider of services has been suspended or terminated by the Department.

Provider appeal—A proceeding to obtain review of an agency action that is commenced by a provider by filing a request for hearing.

Request for hearing—The pleading filed by a provider in order to commence a provider appeal.

Secretary—The Secretary of Public Welfare.

Senior Department official—The Comptroller, the Chief Counsel of the Department, an individual who works in the office of the Secretary or who reports directly to the Secretary, including a deputy secretary or a director of a bureau within a program office.

Supersedeas—An order suspending the effect of an agency action pending the Bureau's determination in a provider appeal.

Waiver request—A request that the Secretary waive the application of a provision set forth in a Department regulation.

(b) The definition of "pleading" in subsection (a) supersedes the definition of "pleading" in 1 Pa. Code § 31.3 (relating to definition of pleading).

§ 41.4. Amendments to regulation.

(a) The Department retains continuing jurisdiction under 67 Pa.C.S. § 1106 (relating to regulations) to adopt and amend regulations establishing practice and procedure as may be necessary to govern provider appeals.

(b) The Bureau may establish forms as may be required to implement this chapter.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.6 (relating to amendments to rules).

§ 41.5. Jurisdiction of the Bureau.

(a) Except as provided in subsections (b), (c) and (d), the Bureau has exclusive original jurisdiction over provider appeals.

(b) The Bureau has no jurisdiction to make a final determination on a waiver request included in a request for hearing. The Bureau will create a record and make a recommendation to the Secretary regarding the waiver request as specified in § 41.191(b) (relating to determinations and recommendations by the bureau).

(c) The Bureau has no jurisdiction to issue a final determination on the merits of an issue properly raised in a petition for relief.

(d) The Bureau's jurisdiction in provider appeals is subject to §§ 41.211 and 41.212 (relating to reconsideration of interlocutory orders; and review of bureau determinations).

(e) The Bureau has no jurisdiction in a provider appeal involving an agency action if Federal law or Federal regulations require the aggrieved provider to use Federal appeal procedures in order to contest the agency action.

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.103 (relating to preliminary notice to Department of Justice).

§ 41.6. Timely filing required.

(a) Pleadings and legal documents required or permitted to be filed under this chapter, the regulations of the Department or another provision of law must be received for filing at the Bureau within the time limits permitted for the filing.

(b) Except as provided in § 41.32(b) (relating to timeliness and perfection of requests for hearing), the filing date is the date of receipt by the Bureau, and not the date of mailing.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.11 (relating to timely filing required).

§ 41.7. Extensions of time.

(a) Except when necessitated by the circumstances of the Bureau, no order or prehearing order will continue a provider appeal or extend the time for doing an act required by this chapter except upon written motion by a party filed in accordance with this chapter.

(b) When this chapter establishes a standard for an extension of time, a motion seeking an extension shall be resolved by the application of that standard. If this chapter does not otherwise establish a standard, the motion shall be resolved by the application of 1 Pa. Code § 31.15 (relating to extensions of time).

DOCUMENTARY FILINGS

§ 41.11. Title of document.

(a) Legal documents in a provider appeal commenced by a request for hearing, other than the initial pleading, shall display a caption at the top of the first page in the following form:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
BUREAU OF HEARINGS AND APPEALS

[Name of Provider] v. [Name of Program Office]

BHA I.D. No.:

Docket No.:

[Descriptive Title of Document]

(b) The descriptive title of a legal document must identify the party on whose behalf the filing is made.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.1 (relating to title).

§ 41.12. Form.

(a) Printed documents may not be less than 12-point font.

(b) An original hard copy of a pleading bearing an original signature must be filed with the Bureau by personal delivery or first-class mail.

(c) A legal document may be filed with the Bureau in hard copy by first-class mail or personal delivery.

(d) A legal document may be filed by facsimile if the document does not exceed 20 pages in length, including attachments and exhibits. An executed hard copy of a document filed by facsimile must be maintained by the filing party and produced at the request of the Bureau or other party.

(e) Subsection (a) supersedes 1 Pa. Code § 33.2(b) (relating to form) as it relates to font size of printed documents.

§ 41.13. Incorporation by reference.

(a) A legal document on file with the Bureau in a provider appeal, and the exhibits or attachments thereto, may be incorporated by reference into another legal document that is subsequently filed in the same provider appeal.

(b) A document may be incorporated by reference to the specific document and prior filing in which it was physically filed, but not by reference to another document that incorporates it by reference.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.3 (relating to incorporation by reference).

§ 41.14. Verification.

(a) A pleading or legal document that contains an averment of fact not appearing of record or that contains a denial of fact must be verified as specified in subsection (b).

(b) A verification of a pleading or legal document must substantially conform to the following:

I, (name of person signing verification), in my capacity as (title or statement describing relationship to the party submitting the document), hereby state that I am authorized to make this verification on behalf of (party submitting the document) and that the facts set forth in the (document being verified) filed in this matter are true and correct to the best of my knowledge, information, and belief, and that this verification is being made subject to 18 Pa.C.S. § 4904, (relating to unsworn falsification to authorities.)

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.12 (relating to verification).

§ 41.15. Copies of documents.

(a) Unless otherwise ordered by the Bureau, only the original of a pleading or a legal document shall be filed with the Bureau.

(b) One copy of a pleading or legal document filed with the Bureau will be served on each of the other parties to the provider appeal unless otherwise specified in this chapter.

(c) A document filed with the Bureau in a provider appeal is available for inspection and copying except that, if a document contains information protected by law against public disclosure, the document will not be available until the protected information has been redacted. When redaction is required, the person seeking access to or a copy of the document shall be required to pay the actual cost of redaction prior to the document being made available.

(d) Documents in the files of the Bureau may not be removed from the Bureau's custody. At the discretion of the Bureau, a person provided with access to a document under subsection (c) may make a copy using equipment available at the Bureau, or the Bureau may make a copy and provide it to the person requesting access. The rates for copies will be identical to the rates charged by the Department under the Right-to-Know Law (65 P. S. §§ 66.1—66.4).

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 33.15, 33.21, 33.22, 33.23 and 33.37.

SERVICE AND AMENDMENT OF DOCUMENTS

§ 41.21. Notice of agency actions.

(a) In the absence of a Department regulation specifying the method in which notice of an agency action is given, the Department or a program office may give notice of an agency action by one of the following methods:

(1) Mailing a written notice of the action to a provider at the provider's most recent business address on file with the Department.

(2) Serving notice of the action in the manner provided in Pa.R.C.P. Nos. 400—441.

(3) By publication in the *Pennsylvania Bulletin* if the agency action applies to a class of providers or makes system-wide changes affecting more than a single provider.

(b) In the absence of a Department regulation specifying the content of a notice of an agency action, notice of an agency action must include the following:

(1) The effective date of the agency action.

(2) The basis for the agency action.

(3) The date the notice was deposited in the mail or otherwise served on the provider.

§ 41.22. Service of pleadings and legal documents.

Service of pleadings and legal documents must be made on the same day the pleading or legal document is filed with the Bureau as follows:

(1) *Pleading.* The provider that files a pleading shall serve a copy on:

(i) The program office that initiated the agency action in dispute.

(ii) The Department's Office of General Counsel.

(2) *Petition for supersedeas.* The provider that files a petition for supersedeas shall serve a copy of the petition on:

(i) The program office that initiated the agency action in dispute.

(ii) The Department's Office of General Counsel.

(3) *Legal document.* The party that files a legal document in a provider appeal shall serve a copy of the document on each other party to the appeal.

(4) *Method of service.*

(i) Service must be made by delivering in person or by mailing, properly addressed with postage prepaid, one copy of the pleading or legal document.

(ii) When a legal document is filed by facsimile, service must be made by facsimile in addition to the method set forth in subparagraph (i).

§ 41.23. Proof of service.

(a) A certificate of service in the form prescribed in § 41.24 (relating to certificate of service) must accompany and be attached to a pleading or legal document filed with the Bureau.

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.31, 33.32, 33.35 and 33.36.

§ 41.24. Certificate of service.

(a) Each certificate of service must substantially conform to the following:

I hereby certify that I have this day served the foregoing document upon:

(Identify name and address of each person served) by (Indicate method of service).

(b) Subsection (a) supersedes 1 Pa. Code §§ 33.31, 33.32, 33.35 and 33.36.

§ 41.25. Amendment or withdrawal of legal documents.

(a) A party may amend a legal document, other than a position paper, by filing an amendment with the Bureau unless the Bureau otherwise orders.

(1) An amendment to a legal document will be deemed filed as of the date of receipt by the Bureau, unless the Bureau otherwise orders.

(2) A position paper may be amended as specified in § 41.116 (relating to amendments to position papers).

(b) A party may withdraw a legal document by filing a motion for leave to withdraw the document. The motion will be granted or denied by the Bureau as a matter of discretion.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 33.41, 33.42 and 33.51 (relating to amendments; withdrawal or termination; and docket).

REQUESTS FOR HEARING, PETITIONS FOR RELIEF AND OTHER PRELIMINARY MATTERS

§ 41.31. Request for hearing.

(a) A provider that is aggrieved by an agency action may appeal and obtain review of that action by the Bureau by filing a request for hearing in accordance with this chapter.

(b) A provider is aggrieved by an agency action if the action adversely affects the personal or property rights, privileges, immunities, duties, liabilities or obligations of the provider.

(c) When a provider files a request for hearing to contest an agency action, the program office that issued the notice of the agency action is a party to the provider appeal.

(d) A request for hearing must include the following:

(1) The name, address and telephone number of the provider.

(2) Detailed reasons why the provider believes the agency action is factually or legally erroneous.

(3) Identification of the specific issues that the provider will raise in its provider appeal.

(4) Specification of the relief that the provider is seeking.

(i) If the provider is challenging the validity of a regulation or statement of policy in its provider appeal, the provider shall state the challenge expressly and with particularity and identify the regulation or statement of policy involved.

(ii) If the provider is seeking relief from an agency action, in whole or in part, through waiver of the application of a regulation, the provider shall state its waiver request expressly and with particularity and identify the regulation involved.

(iii) A provider may not request a declaratory order or an order that the Department should be required to promulgate, amend or repeal a regulation as relief in a request for hearing. The requests shall be set forth in a petition for relief in accordance with 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations).

(e) If the provider received written notice of the agency action by mail or personal service, the provider shall attach to the request for hearing a copy of the transmittal letter forwarding the written notice and the first page of the written notice, or, if there is no transmittal letter, a copy of the entire written notice. If the provider received written notice of the agency action by publication in the *Pennsylvania Bulletin*, the provider shall identify the date, volume and page number of the *Pennsylvania Bulletin* in the request for hearing.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.1—35.11 and 35.20 (relating to appeals from actions of the staff).

§ 41.32. Timeliness and perfection of requests for hearing.

(a) Except as permitted in § 41.33 (relating to appeals nunc pro tunc), the Bureau lacks jurisdiction to hear a

request for hearing unless the request for hearing is in writing and is filed with the Bureau in a timely manner, as follows:

(1) If the program office gives notice of an agency action by mailing the notice to the provider, the provider shall file its request for hearing with the Bureau within 33 days of the date of the written notice of the agency action.

(2) If written notice of an agency action is given in a manner other than by mailing the notice to the provider, a provider shall file its request for hearing with the Bureau within 30 days of the date of the written notice of the agency action.

(b) If a provider files a request for hearing by first-class mail, the United States postmark appearing upon the envelope in which the request for hearing was mailed shall be considered the filing date of that request for hearing. If the provider files a request for hearing in another manner, or if the envelope in which the provider's request for hearing was mailed bears a postmark other than a United States postmark, the date the request for hearing is received in the Bureau will be considered the filing date.

(c) Except as permitted in § 41.33 (b) (relating to appeals nunc pro tunc), a request for hearing may be amended only as follows:

(1) A provider may amend a request for hearing as a matter of right within 90 days of the filing date of the request for hearing.

(2) Upon motion of the provider or in response to a rule or order to show cause issued under subsection (f). The Bureau may permit a provider to amend a request for hearing more than 90 days after the filing of a request for hearing if the provider establishes either of the following:

(i) The amendment is necessary because of fraud or breakdown in the administrative process.

(ii) Both of the following conditions are met:

(A) The amendment is based upon additional information acquired after the expiration of the 90-day period that contradicts information previously disclosed by the Department or provides entirely new information not previously disclosed by the Department.

(B) The program office and other parties to the appeal will not be prejudiced if the amendment is allowed.

(d) A legal or factual objection or issue not raised in either a request for hearing filed within the time prescribed in subsection (a) or in an amended request for hearing filed under subsection (c) shall be deemed waived. A general objection to an agency action shall be deemed a failure to object and shall constitute a waiver of the objections and issues relating to an action.

(e) The Bureau will dismiss a request for hearing, either on its own motion or on motion of a program office, if a provider fails to file its request in accordance with the time limits specified in subsection (a).

(f) The Bureau will dismiss a request for hearing on its own motion or a motion of the program office if the following conditions are met:

(1) The provider's request for a hearing fails to conform to the requirements of § 41.31(d)—(e) (relating to request for hearing).

(2) The 90-day time period for amendments specified in paragraph (c)(1) has expired.

(3) The provider fails to establish that an amendment should be permitted under subsection (c)(2).

(g) If the dismissal is based upon motion of the Bureau, the Bureau will issue a rule or order to show cause, with a date certain listed therein, and serve that rule or order to show cause upon the parties to the appeal.

(h) Subsections (a)—(g) supersede 1 Pa. Code §§ 35.1—35.11, 35.105 and 35.106.

§ 41.33. Appeals nunc pro tunc.

(a) The Bureau, upon written motion and for good cause shown, may grant leave to a provider to file a request for hearing nunc pro tunc under the common law standard applicable in analogous cases in courts of original jurisdiction.

(b) The Bureau, upon written motion and for good cause shown, may grant leave to a provider to file an amendment to a request for hearing nunc pro tunc under the common law standard applicable in analogous cases in courts of original jurisdiction.

(c) The Secretary, upon written motion and for good cause shown, may grant leave to a party to file a request for review of a Bureau determination by the Secretary nunc pro tunc under the common law standard applicable in analogous cases in courts of original jurisdiction.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.1—35.11.

PETITIONS

§ 41.41. Waiver request.

(a) A provider may include a waiver request in a petition for relief only if the regulation that is the subject of the waiver request is not a basis for an agency action involving the provider.

(b) If an agency action involving the provider depends, in whole or in part, upon the application of a regulation of the Department, a provider aggrieved by that agency action may only present a waiver request pertaining to that regulation in the context of a request for hearing filed in accordance with § 41.31 (relating to request for hearing).

(c) To the extent that the waiver sought by a provider in a petition for relief has been or could have been included in a request for hearing, the Bureau will dismiss the petition for relief.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations) to the extent that an appealable agency action is involved.

§ 41.42. Request for declaratory relief.

(a) A provider may include a request for declaratory relief in a petition for relief only if the relief sought by the provider would not modify or alter an agency action involving the provider.

(b) If the requested relief would modify an agency action involving the provider, the provider may only seek the relief in the context of a request for hearing filed in accordance with § 41.31 (relating to request for hearing).

(c) To the extent that a request for declaratory relief is sought by a provider in a petition for relief has been or could have been included in a request for hearing, the Bureau will dismiss the petition for relief.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.19 (relating to petitions for declaratory orders) to the extent that an appealable agency action is involved.

§ 41.43. Request for issuance, amendment or deletion of regulations.

The sole means by which a provider may formally petition the Department for the issuance, amendment or deletion of a regulation or statement of policy is by filing a petition for relief.

§ 41.44. Transfer of petition for relief.

(a) If a provider filed a petition for relief prior to the date of an agency action in which it has sought relief in connection with or relating to that agency action, the provider may file a motion to have the petition for relief transferred to the Bureau and deemed a request for hearing. The motion must be filed within the time allowed for the filing of a request for a hearing specified in § 41.32(a) (relating to timeliness and perfection of requests for hearing).

(b) Subsection (a) supersedes 1 Pa. Code § 35.17 (relating to petitions generally) to the extent that an appealable agency action is involved.

SUPERSEDEAS

§ 41.51. General.

(a) The filing of a request for hearing does not act as an automatic supersedeas. However, a provider who has filed a request for hearing may petition the Bureau to grant a supersedeas of the agency action. The Bureau may, upon good cause shown, grant a provider's petition for supersedeas in accordance with § 41.53 (relating to circumstances affecting grant or denial).

(b) A petition for supersedeas must be set forth in writing and may be filed during a provider appeal.

(c) The Bureau will not issue a supersedeas without first conducting a hearing, but a hearing may be limited under subsection (e). The Bureau, upon motion or sua sponte, may direct that a prehearing conference be held before scheduling or holding a hearing on a supersedeas.

(d) A hearing on a supersedeas, if necessary, will be held expeditiously, if feasible within 2 weeks of the filing of the petition. In scheduling the hearing the Bureau will take into account the availability of the presiding officer and program office staff and the urgency and seriousness of the problem to which the order or action of the Department applies. If good cause is shown, the hearing will be held as soon as possible after the filing of the petition.

(e) If necessary to ensure prompt disposition, and at the discretion of the Bureau, a supersedeas hearing may be limited in time and format, with parties given a fixed amount of time to present their entire case, and with restricted rights of discovery or of cross-examination.

(f) The Bureau may impose costs or other appropriate sanctions on a party that files a petition for supersedeas in bad faith or on frivolous grounds.

§ 41.52. Contents of petition for supersedeas.

(a) A petition for supersedeas must plead facts with particularity and be supported by one of the following:

(1) Affidavits prepared as specified in Pa.R.C.P. No. 76 and 1035.4 (relating to definitions; and motion for summary judgment), setting forth facts upon which issuance of the supersedeas may depend.

(2) An explanation of why affidavits have not accompanied the petition if no supporting affidavit is submitted with the petition for supersedeas.

(b) A petition for supersedeas must state with particularity the citations of legal authority the petitioner believes form the basis for the grant of supersedeas.

(c) A petition for supersedeas may be denied upon motion made before a supersedeas hearing or during the proceedings, or sua sponte, without hearing, for one of the following reasons:

(1) Lack of particularity of the facts pleaded.

(2) Lack of particularity or inapplicability of the legal authority cited as the basis for the grant of the supersedeas.

(3) An inadequately explained failure to support factual allegations by affidavit.

(4) A failure to state grounds sufficient for the granting of a supersedeas.

§ 41.53. Circumstances affecting grant or denial.

(a) The Bureau, in granting or denying a supersedeas, will be guided by relevant judicial precedent. Factors to be considered include the following:

(1) Irreparable harm to the provider.

(2) The likelihood of the provider prevailing on the merits.

(3) The likelihood of injury to the public or other parties.

(b) A supersedeas will not be issued if injury to the public health, safety or welfare exists or is threatened during the period when the supersedeas would be in effect. If State law or Federal law or regulation require that an action take effect prior to the final determination of an appeal, injury to the public health, safety or welfare shall be deemed to exist.

(c) In granting a supersedeas, the Bureau may impose conditions that are warranted by the circumstances, including the filing of a bond or the posting or provision of other security.

INTERVENTION

§ 41.61. Filing of petitions to intervene.

(a) Petitions to intervene and notices of intervention in a provider appeal may be filed following the filing of a request for hearing but in no event later than 60 days from the filing date on the provider's request for hearing, unless for extraordinary circumstances and for good cause shown, the Bureau authorizes a late filing.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.23, 35.24 and 35.39—35.41.

ANSWERS

§ 41.71. Answers generally.

(a) An answer to a pleading is not required.

(b) Answers to legal documents, if permitted or required by this chapter, must be filed with the Bureau within 20 days after the date of service of the legal document, unless either of the following occurs:

(1) A different period is specifically required in this chapter.

(2) For cause, the Bureau with or without motion prescribes a different time, but in no case may an answer be required in less than 10 days after the date of service.

(c) Answers must be in writing and conform to the requirements of this chapter. Answers must admit or deny in detail each material fact asserted in the legal document answered and state clearly and concisely the facts and law relied upon.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

§ 41.72. Answers to petitions to intervene.

(a) A party may file an answer to a petition to intervene, and in default thereof, may be deemed to have waived an objection to the granting of the petition.

(b) Answers must be filed within 20 days after the date of service of the petition, unless for cause the Bureau with or without motion prescribes a different time.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.36 (relating to answers to petitions to intervene).

CONSOLIDATION, AMENDMENT AND WITHDRAWAL OF APPEALS

§ 41.81. Consolidation of provider appeals.

(a) Each provider that wishes to appeal an agency action shall file an individual request for hearing in its own name, without joining another provider.

(b) The Bureau, on timely motion, may order that a provider appeal be consolidated with one or more other provider appeals if the Bureau determines that the provider appeals in question involve substantially similar or materially related issues of law or fact and that consolidation is otherwise appropriate.

(c) Consolidation is appropriate if it will not prejudice the ability of the nonmoving party to perform adequate discovery or to adequately present its claim or defense, and if it will not unduly delay the adjudication of the earlier-filed matter.

(d) A provider appeal will not be consolidated except upon motion filed by one or more parties.

(e) In addition to the general requirements for motions in §§ 41.131—41.136 (relating to motions), a motion for consolidation must include the following:

(1) Identification of the issues of law raised in each provider appeal and the extent to which each is shared or distinct.

(2) Identification of the material facts that serve as a basis for each appeal and the extent to which each of these facts is shared or distinct.

(3) Justification or advantages to support consolidation.

(f) In addition to the general requirements for answers to motions in § 41.72 (relating to answers to petitions to intervene), an answer to a motion for consolidation must explain how consolidation would, if allowed, adversely affect the nonmoving party's ability to conduct and complete discovery, or its ability to present its claims or defenses.

(g) A motion to consolidate will be considered untimely as to a provider appeal if it is filed after the date set for the conclusion of discovery in that provider appeal. An untimely motion to consolidate will only be granted with the consent of the nonmoving parties.

(h) If a provider seeks to consolidate its provider appeal with a provider appeal filed by a different provider, the motion for consolidation shall be deemed to be opposed by the other provider unless an affirmative statement to the contrary is set forth in the motion.

(i) A motion for consolidation and an answer thereto must be served on each person that is a party to the other provider appeals for which consolidation is sought.

(j) If the Bureau grants a provider's motion to consolidate, the discovery available to the providers in the consolidated appeals must, in the aggregate, comply with the limitations specified in § 41.120 (relating to limitations on scope of discovery).

(k) Subsections (a)—(j) supersede 1 Pa. Code §§ 35.45 and 35.122 (relating to consolidation; and consolidation of formal hearings).

§ 41.82. Amendments of requests for hearing.

(a) Amendments to a request for hearing will not be permitted except as specified in §§ 41.32(c) and 41.33(b) (relating to timeliness and perfection of requests for hearing; and appeals nunc pro tunc).

(b) Subsection (a) supersedes 1 Pa. Code § 35.48—35.50 (relating to amendments of pleadings generally; amendments to conform to the evidence; and directed amendments).

§ 41.83. Withdrawal of provider appeals.

(a) A provider may withdraw or end its provider appeal prior to adjudication by one of the following:

(1) The provider notifies the Bureau in writing that it is withdrawing its provider appeal.

(2) The parties to a provider appeal sign a written stipulation of settlement in which the provider agrees to withdraw the provider appeal.

(b) When a provider appeal is withdrawn prior to adjudication, the withdrawal shall be with prejudice.

(c) Unless the written notice or stipulation of settlement provides otherwise, a withdrawal of a provider appeal under this section shall be effective on the date the written notice or stipulation of settlement is received by the Bureau.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.51 (relating to withdrawal of pleadings).

PREHEARINGS PROCEDURES AND HEARINGS

§ 41.91. Waiver of hearings.

A hearing need not be held if one of the following occurs:

(1) The provider waives its right to hearing.

(2) The parties stipulate to the material facts or agree to submit direct and rebuttal testimony or documentary evidence in affidavit form (sworn or affirmed on personal knowledge) or by deposition.

(3) The Bureau determines that there are no material facts in dispute.

(4) Subsections (a)—(c) supersede 1 Pa. Code § 35.101 (relating to waiver of hearing).

§ 41.92. Expedited disposition procedure for certain appeals.

(a) This section applies to provider appeals involving the denial of claims for payment through the prior authorization process, the denial of requests for precertification, the recovery of overpayments or improper payments through the utilization review process, the denial of claims upon prepayment review, the denial of claims for payment under § 1101.68 (relating to invoicing for services), the denial, termination or suspension of an exceptional DME grant as defined in § 1187.2 (relating to

definitions) and the denial of a program exception request filed under § 1150.63 (relating to waivers).

(b) A request for hearing in a provider appeal subject to this section must be submitted in writing to the Bureau within the time limits specified in accordance with § 41.32(a) (relating to timeliness and perfection of requests for hearing) and include both of the following:

(1) The information specified in § 41.31(d) (relating to request for hearing).

(2) Relevant supporting documentation.

(c) The provider shall send a copy of its request for hearing to the program office issuing the notice of the agency action at the same time it files its request with the Bureau.

(d) Unless the information has already been exchanged, each party shall give to the other parties a document that it will introduce as an exhibit and a list of the persons, including medical or other experts, which it will call as a witness at the hearing.

(e) The Bureau will promptly schedule a hearing taking into due consideration the availability of expert witnesses. The Bureau will provide at least 3 weeks notice of a hearing from the date of notice.

(f) The following sections of this chapter do not apply to appeals subject to this section:

(1) § 41.11 (relating to title of document).

(2) § 41.12 (relating to form).

(3) § 41.14 (relating to verification).

(4) § 41.22(1)(ii) (relating to service of pleadings and legal documents).

(5) § 41.23 (relating to proof of service).

(6) § 41.24 (relating to certificate of service).

(7) § 41.101 (relating to prehearing procedure in certain provider appeals).

(8) §§ 41.111—41.117.

(9) § 41.118—41.121.

(10) § 41.122 (relating to supplementing disclosures and responses).

(11) § 41.123 (relating to signing of disclosures, discovery requests, responses and objections)

(12) § 41.134 (relating to discovery motions).

(13) § 41.135 (relating to dispositive motions), except for a motion to dismiss based upon timeliness.

(14) § 41.141 (relating to voluntary mediation).

(15) § 41.151 (relating to initiation of hearings).

(16) § 41.181 (relating to posthearing briefs).

(g) Upon motion of a party, and for good cause shown, the Bureau may order that a provider appeal identified in subsection (a) be exempt from this section or may order that one or more of the sections identified in subsection (f) apply in whole or in part to the appeal. In the case of a motion seeking an order to apply §§ 41.111—41.117 and §§ 41.118—41.121 to a provider appeal identified in subsection (a), in order to show good cause, the moving party shall establish that the disclosures or discovery will not prevent the prompt and efficient adjudication of the appeal and are reasonable and necessary given the facts involved in the appeal.

(h) Upon joint motion of the parties to a provider appeal, the Bureau may order that this section applies to a provider appeal not identified in subsection (a).

(i) A motion to exempt an appeal from this section under subsection (g) and a joint motion to apply this section to an appeal under subsection (h) may be filed with the request for hearing, but must be filed no later than 30 days from the filing date of the request for hearing in the provider appeal.

PREHEARING PROCEDURES AND PREHEARING CONFERENCES

§ 41.101. Prehearing procedure in certain provider appeals.

(a) Upon the filing of a request for hearing, the Bureau will issue a prehearing order specifying the following:

(1) The parties shall make disclosures in accordance with §§ 41.111—41.117.

(2) Discovery requests must be served within 90 days of the date of the prehearing order and discovery must be concluded within 120 days of the date of the prehearing order.

(3) Motions to compel discovery must be filed within 30 days of the close of discovery.

(4) Other miscellaneous prehearing motions, including motions in limine, must be filed within 60 days of the date of filing of the program office's position paper.

(5) Dispositive motions must be filed within 60 days of the date of the filing of the program office's position paper.

(b) The parties may, within 30 days of the date of the prehearing order, submit a joint proposed case management order to the Bureau that proposes alternative dates for completion of the matters specified in subsection (a), or that agrees to discovery beyond the limitations set forth in § 41.120 (relating to limitations on discovery).

(c) The Bureau may issue subsequent prehearing orders incorporating the alternate dates and discovery limitations proposed by the parties or specifying other dates and discovery limitations that the Bureau deems appropriate, except that the Bureau will not establish dates or impose limitations that are more restrictive than the dates or limitations otherwise provided for in this chapter without the agreement of each party to the appeal.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.111 (relating to conferences to adjust, settle or expedite proceedings).

§ 41.102. Conferences.

(a) The Bureau, on its own motion or on motion of a party, may hold a conference either prior to or during a hearing for the purpose of facilitating settlement, adjustment of the proceeding or another issue therein, or other matters to expedite the orderly conduct and disposition of a hearing.

(b) A stipulation of the parties or order of the Bureau as a result of the conference shall be binding upon the parties.

DISCLOSURES AND DISCOVERY

§ 41.111. Disclosures.

(a) A party to a provider appeal commenced by a request for hearing shall, without awaiting a discovery request, disclose information to each other party as specified in this section.

(b) The program office will disclose the following:

(1) The name, title, business address and telephone number of each staff person directly involved in the agency action, and, if different, the name, title, business address and telephone number of the officials or staff designated to testify on its behalf regarding the agency action and the issues on which the designated individual will testify. In the case of an audit appeal, the program office will, at a minimum, identify every auditor involved in the audit and every audit supervisor and audit manager who reviewed the audit report.

(2) A copy of, or a description by category and location of, the documents, data compilations and tangible things, not privileged or protected from disclosure, that were relied upon in issuing the agency action, or that formed the basis for the agency action.

(c) The provider shall disclose the following:

(1) The name, title, business address and telephone number of each person who provided facts, opinions or other information that were relied upon in drafting the request for hearing or petition for supersedeas or that support or form the basis for, the allegations contained therein; and, if different, the name, title, business address and telephone number of the officials or staff designated to testify on its behalf regarding the agency action and the issues on which designated person will testify.

(2) A copy of, or a description by category and location of, the documents, data compilations and tangible things, not privileged or protected from disclosure, that were relied upon in drafting the request for hearing or petition for supersedeas or that support or form the basis for, the allegations contained therein. In a case where a provider alleges in its request for hearing that its costs or its claim for payment is supported by documents, the provider shall disclose the supporting documents.

(d) The parties shall make their initial mandatory disclosures within 45 days of the date of the Bureau's initial prehearing order, unless a different time is set by stipulation of the parties or by the prehearing order of the Bureau.

(e) A party shall make its initial disclosures based on the information in its possession or otherwise then reasonably available to it. A party will not be excused from making its disclosures because it has not fully completed its investigation of the case, because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(f) An opposing party is not obligated to respond to a discovery request made under §§ 41.118—41.121 until the party that propounded the request has made its mandatory initial disclosures in compliance with this section. A provider whose initial mandatory disclosure identifies documents in the possession of the Department or program office, but fails to provide copies of the provider's own records or documents in support of one or more of the issues raised in the provider's request for hearing, will not be in compliance with this subsection.

§ 41.112. Filing of position paper.

(a) The provider shall file its position paper and required documentation with the Bureau and serve it on the program office within 60 days of the close of discovery or another date as may be specified in the Bureau's prehearing order. If the provider fails to meet the position paper due date or fails to supply the Bureau with the required documentation, the Bureau will dismiss the provider's appeal.

(b) The program office will file its position paper and required documentation with the Bureau and serve it on the provider within 60 days of the date of service of provider's position paper or another date as may be specified in the Bureau's prehearing order. If the program office fails to meet the position paper due date, the Bureau will schedule the case for hearing and will notify the Chief Counsel of the Department.

(c) The Bureau disfavors requests for extensions of time to file position papers. The Bureau may grant an extension if the following conditions are met:

- (1) A party submits a written request for extension.
- (2) The request is received by the Bureau in time for it to review the matter prior to the due date.
- (3) The party establishes that good cause exists to warrant an extension.
- (d) Failure to complete discovery before the due date of the position paper will ordinarily not be considered sufficient cause to extend the deadline, unless the failure is due to the noncooperation of the other side. A request for extension should be considered denied unless the Bureau affirmatively grants the extension in writing before the papers are due.

§ 41.113. Content of provider position paper.

(a) For each issue identified in its request for hearing or amended request for hearing, the provider's position paper must state the relevant facts and present arguments setting forth the provider's position.

(b) For each issue identified in its request for hearing or amended request for hearing, the provider shall include the following:

- (1) A summary of the pertinent facts and circumstances.
- (2) Citations to the relevant statutory provisions, regulations and other controlling authorities.
- (3) The monetary amount in dispute.
- (4) An explanation showing how the monetary amount was computed.
- (5) Other relief sought by the provider in connection with the issue.
- (6) The name and business address of every witness whose testimony the provider will present.
- (7) A copy of every document that the provider will offer into evidence to support its position with respect to the issue.

§ 41.114. Content of program office position paper.

(a) For each issue identified in the provider's position paper, the program office's position paper will state whether the program office accepts or disputes the provider's statements regarding the following:

- (1) Summary of the pertinent facts and circumstances.
- (2) Citations to the relevant statutory provisions, regulations and other controlling authorities.
- (3) Computation of the monetary amount in dispute.
- (b) If the program office disputes the facts, citations or monetary amount, the program office will provide a counterstatement of the items in dispute.

(c) The program office's position paper will identify those additional issues not addressed by the provider that the program office believes should be determined by the Bureau.

(d) For each disputed issue, the program office will include a summary of the pertinent facts, circumstances and citations to the relevant statutory provisions, regulations and other controlling authorities.

(e) The program office will provide the name and business address of every witness whose testimony the program office will present and a copy of every document that the program will offer into evidence to support its position on each issue identified in its position paper.

§ 41.115. Statement regarding expert opinions.

(a) For each issue in dispute, a party's position paper must address the party's reliance upon an expert. The party shall state whether its position depends, in whole or in part, upon the judgment, opinion or testimony of a person who, if called to testify, would be called as an expert.

(b) When a party's position depends, at least in part, upon the judgment, opinion or testimony of an expert, the party's position paper must include a "statement of expert opinion."

(c) Consistent with Pa.R.C.P. No. 4003.5 (relating to discovery of expert testimony, trial preparation material), and unless the Bureau orders to the contrary, each expert opinion statement must include the following:

- (1) An identification of the expert by name and address.
- (2) The subject matter on which the expert is expected to testify.
- (3) An identification of the substance of the facts and opinions to which the expert is expected to testify.
- (4) A summary of the grounds for each opinion to which the expert is expected to testify.
- (5) The signature of the expert.
- (d) The parties shall submit a joint statement of undisputed facts at least 20 days prior to the hearing.

§ 41.116. Amendments to position papers.

The Bureau may permit a party to amend its position paper upon motion of the party and for good cause shown except that no amendment to a position paper will be permitted within 30 days of the commencement of the hearing in the provider appeal.

§ 41.117. Penalties for noncompliance.

(a) A party will not be permitted to offer the testimony of a witness at a hearing on a provider appeal unless either the party disclosed the identity of the witness in the party's position paper or the party establishes that there is good cause to permit the testimony of the witness.

(b) A party will not be permitted to introduce a document into evidence at a hearing on a provider appeal unless the party identified the document as an exhibit and served the other parties to the provider appeal with a copy of the document at the time the party filed its position paper with the Bureau.

§ 41.118. Authorized forms of discovery.

Once the time period for mandatory disclosures has elapsed, a party to a provider appeal commenced by a request for hearing may obtain discovery by one or more of the following methods:

- (1) Interrogatories.
- (2) Requests for the production of documents.

- (3) Expert reports.
- (4) Requests for admission.
- (5) Depositions of witnesses and designees of parties.

§ 41.119. General scope of discovery.

(a) Parties may obtain discovery regarding a matter, not privileged, that is relevant to the claim or defense of another party in a provider appeal, including the existence, description, nature, custody, condition and location of the books, documents or other tangible things and the identity and location of persons having knowledge of a discoverable matter.

(b) Except to the extent inconsistent with or as otherwise provided in this chapter, discovery shall be governed by the relevant Pa.R.C.P applicable to the form of discovery authorized by this chapter. The term "court" as used in the Pa.R.C.P. means "Bureau"; the term "prothonotary" or "clerk of court" as used in the Pa.R.C.P. means "Formal Docketing Unit."

§ 41.120. Limitations on scope of discovery.

(a) In addition to the general limitation on the scope of discovery and deposition in Pa.R.C.P. No. 4011 (relating to limitation of scope of discovery and deposition), the following limitations on discovery apply:

(1) Interrogatories to a party, as a matter of right, may not exceed ten in number. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence each will be construed as one interrogatory.

(i) Other interrogatories, including subdivisions of one numbered interrogatory, will be construed as separate interrogatories.

(ii) If counsel for a party believes that more than ten interrogatories are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories.

(iii) Counsel are expected to comply with this requirement in good faith. If the parties cannot agree on a written stipulation, the Bureau, upon motion of a party, may permit the party to serve additional interrogatories if the party establishes to the Bureau's satisfaction that additional interrogatories are reasonable and necessary in light of the particular facts involved and that they will not prevent the prompt and efficient adjudication of the provider appeal.

(2) Request for admissions to a party, as a matter of right, will not exceed ten in number.

(i) Requests for admissions, including subdivisions of one numbered request, will be construed as a separate request.

(ii) If counsel for a party believes that more than ten requests for admission are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional requests.

(iii) Counsel are expected to comply with this requirement in good faith. If the parties cannot agree on a written stipulation, the Bureau, upon motion of a party, may permit the party to serve additional requests for admission if the party establishes to the Bureau's satisfaction that additional requests for admission are reasonable and necessary in light of the particular facts involved and that they will not prevent the prompt and efficient adjudication of the provider appeal.

(3) Depositions, as a matter of right, may not exceed three in number.

(i) A deposition of a person will not be permitted if the person has already been deposed in the appeal.

(ii) If counsel for a party believes that more than three depositions or that the deposition of a person who has already been deposed are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional depositions.

(iii) Counsel are expected to comply with this requirement in good faith. If the parties cannot agree on a written stipulation, the Bureau, upon motion of a party, may permit the party to take additional depositions if the party establishes to the Bureau's satisfaction that additional depositions are reasonable and necessary in light of the particular facts involved and that they will not prevent the prompt and efficient adjudication of the provider appeal.

(b) Unless the Secretary has been identified as a witness by the program office, a party may not depose the Secretary.

(c) Unless a senior Department official has been identified as a witness by the program office or agrees to submit to a deposition, a party may not depose a senior Department official regardless of the number of depositions taken, except that the Bureau, upon motion of a party, may permit the party to depose a senior Department official if the party establishes to the Bureau's satisfaction that the following apply:

(1) The senior Department official was personally involved in the disputed agency action.

(2) The deposition of the senior Department official is reasonable and necessary in light of the particular facts involved and will not prevent the prompt and efficient adjudication of the provider appeal.

(d) The Bureau may issue protective orders limiting or precluding discovery in accordance with § 41.120 (a)—(c) (relating to limitations on scope of discovery) or as specified in Pa.R.C.P. No. 4012 (relating to protective orders).

(e) Subsections (a)—(d) supersede 1 Pa. Code §§ 35.145—35.152 as the sections relate to discovery only.

§ 41.121. Timing and sequence of discovery.

Unless the Bureau upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used regardless of sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay another party's discovery.

§ 41.122. Supplementing disclosures and responses.

(a) A party has a duty to supplement or correct a disclosure under §§ 41.111—41.117 to include information thereafter acquired if ordered by the Bureau, if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(b) A party is under a duty to supplement responses made to discovery requests as set forth in Pa.R.C.P. No. 4007.4 (relating to supplementing responses).

§ 41.123. Signing of disclosures, discovery requests, responses and objections.

(a) Every disclosure shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(b) Every discovery request, response or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the signer's address.

(c) The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the request, response or objection is:

(1) Consistent with this chapter and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law.

(2) Not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(3) Not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(d) If a request, response or objection is not signed, it will be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection, and a party will not be obligated to take action with respect to it until it is signed.

(e) If without substantial justification a certification is made in violation of this section, the Bureau, upon motion or upon its own initiative, will impose upon the individual who made the certification, the party on whose behalf the disclosure, request, response or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney fees.

MOTIONS

§ 41.131. Motions in general.

(a) This section applies to every motion, except oral motions made during the course of a hearing.

(b) Motions and responses to motions must be in writing, signed by a party or its attorney and accompanied by a proposed order.

(c) Unless the time is extended by the Bureau, a response to a dispositive motion must be filed within 30 days of service of the motion, and a response to other motions must be filed within 20 days of service of the other motions.

(d) Except in the case of a dispositive motion, the Bureau will deem a party's failure to respond to a motion to be the party's lack of opposition to the motion.

(e) Except in the case of a dispositive motion, the moving party may not file a reply to a response to its motion, unless the Bureau orders otherwise.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.54, 35.55 and 35.179 (relating to motions as to complaint; motions as to answer; and objections to motions).

§ 41.132. Actions on motions.

(a) The Bureau will rule on dispositive motions within 60 days after the moving party's reply to the nonmoving party's response, if a reply is filed. If the moving party does not file a reply, the Bureau will rule on a dispositive motion within 60 days after the date on which the nonmoving party's response is due.

(b) The Bureau will rule on motions other than dispositive motions within 30 days after the date on which the nonmoving party's response is due.

(c) Notwithstanding subsections (a) and (b), the Bureau will rule on each outstanding prehearing motion no later than 20 days prior to the commencement of the hearing.

§ 41.133. Procedural motions.

(a) This section applies to motions that pertain to the procedural aspects of a case, including motions for continuance, expedited consideration, extensions of time in which to file documents and stays of proceedings.

(b) Procedural motions must contain a statement indicating the nonmoving party's position on the relief requested or a statement that the moving party, after a reasonable effort, has been unable to determine the nonmoving party's position.

(c) If the parties consent to the relief requested, the request may be embodied in a letter, provided the letter indicates the consent of the other parties.

(d) Requests for extensions or continuances, whether in letter or motion form, must be accompanied by a proposed order.

(e) Procedural motions and responses may not be accompanied by supporting memoranda of law unless otherwise ordered by the Bureau.

§ 41.134. Discovery motions.

(a) This section applies to motions filed to resolve disputes arising from the conduct of discovery under §§ 41.118—41.121.

(b) A motion to compel discovery must contain as exhibits the discovery requests and answers giving rise to the dispute.

(c) A party may file a memorandum of law in support of its discovery motion or its response to a discovery motion. The supporting memorandum of law must be filed at the same time the motion or response is filed.

§ 41.135. Dispositive motions.

(a) This section applies to dispositive motions.

(b) Motions for summary judgment or partial summary judgment and responses to those motions must conform to Pa.R.C.P. No. 1035.1—1035.5 (relating to motion for summary judgment).

(c) Dispositive motions must be accompanied by a supporting memorandum of law. The Bureau may deny a dispositive motion if a party fails to file a supporting memorandum of law.

(d) An affidavit or other document relied upon in support of a dispositive motion, response or reply, that is not already a part of the record, must be attached to the motion, response or reply or it will not be considered by the Bureau in ruling thereon.

§ 41.136. Miscellaneous motions.

(a) This section applies to a motion not otherwise addressed in §§ 41.133—41.135 (relating to procedural motions; discovery motions; and dispositive motions), including a motion in limine, a motion to strike and a motion for recusal.

(b) A memorandum of law in support of a miscellaneous motion or response to a miscellaneous motion must be filed with the miscellaneous motion or response.

MEDIATION**§ 41.141. Voluntary mediation.**

(a) Upon request by the parties, the Bureau may stay a provider appeal commenced by a request for hearing for up to 120 days to allow the parties to utilize voluntary mediation services through the Office of General Counsel Mediation Program.

(b) The parties shall file their request for stay with the Bureau at least 14 days before initiation of hearings by the Bureau.

(c) At the end of the initial stay, the parties shall jointly file a statement that sets forth the status of mediation activities conducted. The parties may request an additional stay if necessary to complete the mediation process.

(d) The grant of an additional stay for mediation is in the Bureau's discretion and the Bureau may impose limitations the Bureau deems appropriate.

(e) A party's participation in voluntary mediation may not be used as evidence in a proceeding before the Bureau.

(f) Communications between the parties during the mediation period shall be regarded as offers of settlement and are neither discoverable nor admissible as evidence in a proceeding before the Bureau.

HEARINGS**§ 41.151. Initiation of hearings.**

(a) If, after the Bureau has ruled on a dispositive motion, a hearing is required to determine the remaining issues, the Bureau will, after consultation with the parties, schedule a formal evidentiary hearing and send a notice of hearing to each of the parties to the provider appeal.

(b) A hearing may, if permitted by this chapter or by agreement of the parties, be conducted via telephone.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.121 (relating to initiation of hearings).

§ 41.152. Continuance of hearings.

(a) A hearing may not be continued except for compelling reasons.

(b) A motion for continuance of a hearing must be submitted to the Bureau in writing with a copy served upon the other parties to the proceedings, except that during the course of a hearing in a proceeding, the requests may be made by oral motion in the hearing.

(c) In the event that the parties are engaged in good faith settlement negotiations, the Bureau may grant a joint continuance request of not more than 60 days.

§ 41.153. Burden of proof and production.

(a) The provider has the burden of proof to establish its case by a preponderance of the evidence and is required to make a prima facie case by the close of its case-in-

chief. The provider has the burden of production, unless otherwise directed by the presiding officer, upon a determination included in the record by the presiding officer that the evidence is peculiarly within the knowledge or control of another party or participant, in which case the order of presentation may be varied by the presiding officer.

(b) Each party shall have the right to an opening statement, presentation of evidence, cross-examination, objection, motion and argument and closing argument.

(c) A pleading or a position paper must, without further action, be considered part of the record. A pleading or a position paper will never be considered as evidence of a fact other than that of the filing thereof, unless offered and received into evidence under this chapter.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.125 and 35.126 (relating to order of procedure; and presentation by the parties).

EVIDENCE AND WITNESSES**§ 41.161. Written testimony.**

(a) Written testimony of a witness, including an expert witness, on numbered lines in question and answer form, may be admitted into evidence provided the witness is present for cross-examination at the hearing or the parties agree that the witness' presence at the hearing is not required.

(b) Written testimony must be filed concurrently with the proffering party's position paper unless a different time is prescribed by the Bureau. Objections to written testimony that can be reasonably anticipated prior to hearing must be in writing and filed within the time prescribed for prehearing motions in limine, unless otherwise ordered by the Bureau.

(c) If a party desires to file written testimony prior to the close of the record, it may do so only upon motion approved by the Bureau for good cause. This approval will include the scope of the written testimony and the time for filing the testimony and service upon opposing counsel.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.138 and 35.139 (relating to expert witnesses; and fees of witnesses).

§ 41.162. Subpoenas.

(a) Except as otherwise provided in this chapter or by order of the Bureau, requests for subpoenas and subpoenas will be governed by Pa.R.C.P. No. 234.1—234.4 (relating to subpoena to attend and testify, subpoena, issuance, service, compliance fees, prisoners, notice to attend, notice to produce, subpoena, notice to attend, notice to produce, relief from compliance, motion to quash) and 234.6—234.9 (relating to form of subpoena, form of notice to attend, form of notice to produce, notice and acknowledgment of receipt of subpoena by mail). The term "court" as used in Pa.R.C.P. means "Bureau"; the term "Prothonotary" or "clerk of court" as used in Pa.R.C.P. means "Formal Docketing Unit."

(b) Proof of service of the subpoena need not be filed with the Bureau.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.142 (relating to subpoenas).

PRESIDING OFFICERS**§ 41.171. Independence.**

(a) The presiding officers will act independently of employees or public officials of the Department whose actions are subject to review before the Bureau.

(b) The presiding officers may not engage in ex parte communications concerning a hearing with a party to the hearing.

POSTHEARING PROCEDURES

§ 41.181. Posthearing briefs.

(a) The initial posthearing brief of each party must be as concise as possible and may not exceed 50 pages. An initial posthearing brief must contain proposed findings of fact, with references to the appropriate exhibit or page of the transcript, an argument with citation to supporting legal authority and proposed conclusions of law.

(b) The provider shall file its initial posthearing brief first and within the time specified by the presiding officer, which may not be less than 30 days from the closing of the record unless the provider consents to a shorter period of time. The program office will file its initial posthearing brief within 30 days of the date of service of the provider's brief.

(c) The provider may file a reply brief within 20 days of service of the program office posthearing brief. A reply brief must be as concise as possible and may not exceed 25 pages.

(d) Longer briefs and surreply briefs may be permitted at the discretion of the presiding officer.

(e) A party may waive the filing of a posthearing brief.

(f) If a party files a posthearing brief, a disputed issue or legal theory that is not argued in the party's posthearing brief will be deemed waived.

(g) Subsections (a)—(f) supersede 1 Pa. Code §§ 35.191—35.193 (relating to proceedings in which briefs are to be filed; content and form of briefs; and filing and service of briefs).

AGENCY ACTION

§ 41.191. Determinations and recommendations by the Bureau.

(a) The Bureau will conduct a de novo review of the factual and legal issues that are timely raised and properly preserved in a provider appeal. Except as provided in subsection (b), the Bureau will issue a determination adjudicating the contested issues of law and fact within its jurisdiction, and issue an appropriate order, decree or decision.

(b) If a request for hearing includes a waiver request, the Bureau will make a written recommendation for consideration by the Secretary proposing that the waiver be either granted or denied and stating the Bureau's reasoning in support of its position. If the request for hearing raises factual and legal issues in addition to the waiver request, the Bureau will issue its written recommendation together with its final determination adjudicating the remaining factual and legal issues, as specified in subsection (c). If the request for hearing does not raise other issues, the Bureau's written recommendation on the waiver request will be issued within the time limits and served on the parties as specified in subsection (c).

(c) The Bureau will issue a determination in a provider appeal within 30 days of the filing of the posthearing briefs, or, if the parties waive the filing of posthearing briefs, within 30 days of the close of the record or receipt of the transcript, whichever is later. The Bureau will serve a copy of its determination on the parties to the proceeding or their representatives.

(d) A party aggrieved by a determination of the Bureau may request the Secretary to review the determination

under § 41.212 (relating to review of bureau determinations). For purposes of this section, a program office will be deemed to be aggrieved if the Bureau determination does one or more of the following:

(1) Sustains the provider's appeal in whole or in part.

(2) Interprets a statute, regulation, statement of policy or bulletin applied by the program office in a manner inconsistent with the interpretation of that office.

(3) Alters a policy of the program office or purports to impose a new or different rule or policy on the program office.

(e) The Secretary will review written recommendations of the Bureau issued under subsection (b) or (c) under § 41.213 (review of bureau recommendations).

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.201—35.221.

REOPENING OF RECORD

§ 41.201. Reopening of record prior to adjudication.

(a) After the conclusion of the hearing on the merits and before the Bureau issues an adjudication, the Bureau, upon its own motion or upon a motion filed by a party, may reopen the record as provided in this section.

(b) The record may be reopened upon the basis of recently discovered evidence when each of the following circumstances are present:

(1) Evidence is discovered that conclusively establishes a material fact of the case or that contradicts a material fact that had been assumed or stipulated by the parties to be true.

(2) Evidence is discovered after the close of the record and could not have been discovered earlier with the exercise of due diligence.

(3) Evidence is not cumulative.

(c) The record may also be reopened to consider evidence that has become material as a result of a change in legal authority occurring after the close of the record. A motion to reopen the record on this basis must specify the change in legal authority and demonstrate that it applies to the matter pending before the Bureau. The motion need not meet the requirements of subsection (d)(2) and (3).

(d) A motion seeking to reopen the record must:

(1) Identify the evidence that the moving party seeks to add to the record.

(2) Describe the efforts that the moving party had made to discover the evidence prior to the close of the record.

(3) Explain how the evidence was discovered after the close of the record.

(e) A motion filed under subsection (b) must be verified and motions to reopen must contain a certification by counsel that the motion is being filed in good faith and not for the purpose of delay. The motion must be served upon the parties to the proceedings.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.231 and 35.232 (relating to reopening of application of party; and reopening by presiding officer).

RECONSIDERATION AND REVIEW BY THE SECRETARY

§ 41.211. Reconsideration of interlocutory orders.

(a) A motion for reconsideration by the Secretary of an interlocutory order or ruling of the Bureau must be filed

within 10 days of the order or ruling. The petition must demonstrate that extraordinary circumstances justify immediate consideration of the matter by the Secretary. A party may file a memorandum of law at the time the motion or response is filed.

(b) A copy of the motion must be served upon the parties. A party wishing to file an answer may do so within 10 days of service or as ordered by the Bureau or the Secretary.

(c) The failure of a party to file a motion under this section will not result in a waiver of an issue.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

§ 41.212. Review of Bureau determinations.

(a) A determination of the Bureau will be deemed the final adjudication of the Department effective upon expiration of the 30-day time period specified in subsection (b) unless an aggrieved party requests review by the Secretary within that 30-day time period.

(b) A request for review must be filed within 30 days of the mailing date of the Bureau determination. An untimely request for review shall be dismissed as of course unless the filing party can satisfy the requirements of § 41.33 (relating to appeals nunc pro tunc).

(c) A request for review must be in writing, state concisely the alleged errors in the Bureau determination and identify the particular relief sought. If the party requesting review is seeking relief by reason of matters that have arisen since the hearing and Bureau determination, or by reason of a matter that would arise from compliance with the Bureau determination, the party shall specifically identify those matters in its request.

(d) If an aggrieved party timely requests review of a Bureau determination, the Secretary may enter an order granting or denying the request for review within 30 days of receipt of the request. No party has a right to have a Bureau determination reviewed by the Secretary, but only a right to request this review. The decision to grant or deny a request lies within the discretion of the Secretary.

(e) If the Secretary enters an order denying a request for review within 30 days of receipt of the request, the Bureau's determination will be deemed the final adjudication of the Department effective on the date of the order denying the request for review.

(f) If the Secretary fails to act on a request for review within 30 days of receipt of the request, the request for review will be deemed denied. The Bureau's determination will be deemed the final adjudication of the Department effective on the date on which the request for review is deemed denied.

(g) Answers to a request for review will not be considered by the Secretary unless the Secretary has granted review. If, and to the extent the Secretary has granted review, a response in the nature of an answer may be filed by a party, other than the party requesting review. The response must be confined to the issues upon which the Secretary has granted review.

(h) If the Secretary grants review, the Secretary will enter a final order within 180 days of the date of the order granting review. The final order may affirm, reverse or modify the findings of fact, conclusions of law or the relief set forth in the Bureau's determination, and may, to promote fairness and the proper administration of the MA Program, waive compliance with program requirements.

(i) If the Secretary fails to act within 180 days of the order granting review, the determination of the Bureau will be deemed approved by, and the final order of, the Secretary effective the date it is deemed approved.

§ 41.213. Review of Bureau recommendations.

(a) The Secretary will review and issue a final order adopting, rejecting or modifying a recommendation of the Bureau issued under § 41.191(b) (relating to determinations and recommendations by the bureau).

(b) A party to the provider appeal in which the Bureau's recommendation was issued may file a brief with the Secretary setting forth its position regarding the recommendation at the same time the party requests review of the Bureau's related determination under § 41.212 (relating to review of bureau determinations) or, if the party is not seeking review of the Bureau's determination, within 30 days of the date of the mailing date of the Bureau recommendation.

(c) A brief supporting or opposing the Bureau's recommendation must state concisely the reasons for the party's position on the recommendation, set forth proposed findings of fact and conclusions of law for consideration by the Secretary and specify what relief should be granted or denied by the Secretary. The brief may not exceed 25 pages.

(d) The Secretary's final order regarding a recommendation issued under § 41.191(b) will be issued in accordance with the following:

(1) If review is granted under § 41.212, the date on which the Secretary issues a final order.

(2) If review is not granted under § 41.212, 180 days from the date of receipt of the written recommendation.

(e) If the Secretary does not issue a final order regarding a recommendation issued under § 41.191(b) within the time frames specified in subsection (d), the recommendation of the Bureau will be deemed adopted by, and the final order of, the Secretary effective the date it is deemed adopted.

§ 41.214. Appeals.

A provider aggrieved by a final adjudication of the Department issued under § 41.212(a), (e) or (f) (relating to review of bureau determinations), or a final order of the Secretary issued under § 41.212 (e), (h) or (i) or § 41.213(a) or (d) (relating to review of bureau recommendations) may petition for judicial review in accordance with 2 Pa.C.S. Chapter 7, Subchapter A (relating to judicial review of Commonwealth agency action).

[Pa.B. Doc. No. 04-1490. Filed for public inspection August 13, 2004, 9:00 a.m.]

**[55 PA. CODE CH. 1187]
MA Day of Care Definition**

The Department of Public Welfare (Department), under the authority of sections 201(2), 206(2), 403(b) and 443.1 of the Public Welfare Code (62 P.S. §§ 201(2), 206(2), 403(b) and 443.1), proposes to amend § 1187.2 (relating to definitions).

Purpose of the Proposed Rulemaking

The proposed rulemaking expands the definition of "MA day of care" under § 1187.2 to include additional categories of days of care provided to Medical Assistance (MA)

nursing facility residents. In addition, the proposed rulemaking adds definitions for “LTCCAP—Long Term Care Capitated Assistance Program” and “MA MCO—Medical Assistance Managed Care Organization,” as these terms are included in the amended definition of “MA day of care.”

Need for the Proposed Rulemaking

Currently, § 1187.2 defines an MA day of care as “a day of care for which the Department pays 100% of the MA rate for an MA resident or a day of care for which the Department and the resident pay 100% of the MA rate for the MA resident’s care.” Under the case-mix payment system in Chapter 1187 (relating to nursing facility services), the Department uses the definition of “MA day of care” for two purposes. First, the Department uses the definition to determine which residents are included in the calculation of every nursing facility’s quarterly MA Case-Mix Index (CMI) under § 1187.93 (relating to CMI calculations). Under § 1187.93(2), a nursing facility’s MA CMI is “the arithmetic mean of the individual CMIs for residents for whom the Department paid an MA day of care on the [quarterly] picture date.” The Department uses the MA CMI to adjust a nursing facility’s case-mix per diem rate every quarter during the rate year as specified in § 1187.95(b)(1) (relating to general principles for rate and price setting).

Second, the Department uses the definition of “MA day of care” to determine which nursing facilities are eligible to receive a disproportionate share incentive payment under § 1187.111 (relating to disproportionate share incentive payments). To qualify for a disproportionate share incentive payment, a nursing facility must maintain an annual overall occupancy rate of at least 90% along with an annual MA occupancy rate of at least 80%. A nursing facility’s MA occupancy rate is determined by dividing the MA days of care paid by the Department by the total actual days of care provided by the nursing facility.

As it is presently written, the definition only recognizes as an “MA day of care” days for which payment is made under the Department’s Fee-For-Service Program (Program). While most MA nursing facility residents receive nursing facility services through the Program, some MA recipients may receive nursing facility services through the HealthChoices Program, the Department’s managed care program, and the Long Term Care Capitated Assistance Program (LTCCAP), the Department’s community-based managed care program for the frail and elderly. When a HealthChoices managed care organization under contract with the Department (MA MCO) or an LTCCAP provider authorizes nursing facility services for an enrolled MA recipient, the MA MCO or LTCCAP provider, and not the Department, pays the nursing facility for the days of care which the nursing facility provides to the MA recipient. Since these days of care do not meet the current definition of “MA day of care,” they are not counted in calculating the nursing facility’s MA CMI or in determining whether the nursing facility qualifies for a disproportionate share incentive payment.

During the past several years, the number of MA recipients receiving services under the HealthChoices Program and the LTCCAP has grown. As these managed care programs continue to expand, more MA recipients who are admitted to nursing facilities will likely be enrolled in either an MA MCO or the LTCCAP and more days of care provided in nursing facilities will be paid for by MA MCOs and LTCCAP providers. In anticipation of this change in circumstance, MA nursing facility providers have asked the Department to modify its policies to

recognize these days as MA days of care. Upon consideration of this request, the Department agrees that expanding the current definition of “MA day of care” is appropriate and in the best interest of the MA Program.

Requirements

The Department is proposing to expand the definition of “MA day of care” to include days of care for which an MA MCO or an LTCCAP provider pays 100% of its negotiated rate or fee for the MA resident’s care in a nursing facility and days of care for which the resident and an MA MCO or an LTCCAP provider pays 100% of their negotiated rate or fee for the MA resident’s care in a nursing facility. The Department is also proposing to amend the definition to clarify that days of care provided to an MA resident receiving hospice services in a nursing facility which are paid for by the Department are also considered as MA days of care.

In addition, the definitions for “LTCCAP” and “MA MCO” are being added to clarify the terms included in the revised definition of “MA day of care.” LTCCAP is the Department’s community-based managed care program for the frail elderly based on the Federal Program of All-Inclusive Care for the Elderly. MA MCO is an entity under contract with the Department that manages the purchase and provision of health services, including nursing facility services, for MA recipients who are enrolled as members in the entity’s health service plan.

The intent of the proposed rulemaking is to define an MA day of care in a manner that fully recognizes the services that nursing facilities are providing to MA recipients. This proposed rulemaking is consistent with the Department’s ongoing efforts to ensure that MA recipients continue to receive access to medically necessary nursing facility services.

Affected Organizations

The proposed rulemaking will affect nursing facilities enrolled in the MA Program.

Accomplishments and Benefits

Consistent with the recommendation of nursing facility providers, the proposed rulemaking will amend the current regulation to expand the definition of “MA day of care.” The proposed rulemaking may result in increased reimbursement and, therefore, benefit both nursing facility providers and residents who will be assured continued access to medically necessary nursing facility services.

Fiscal Impact

Public Sector

Commonwealth

By expanding the definition of “MA day of care,” more nursing facilities may qualify for disproportionate share incentive payments and nursing facilities that currently receive disproportionate share incentive payments may experience an increase in those payments. Nursing facilities may also experience an increase in their case-mix per diem rates as a result of an increase in the MA CMI used to establish the nursing facility’s case-mix per diem rate.

Political Subdivisions

The amendment to the definition of “MA day of care” may result in increased disproportionate share incentive payments to county operated nursing facilities that provide nursing facility services to MA recipients. County operated nursing facilities may also experience an increase in their case-mix per diem rates as a result of an

increase in the MA CMI used to establish the nursing facility's case-mix per diem rate.

Private Sector

The amendment to the definition of "MA day of care" may result in increased disproportionate share incentive payments to qualified privately owned and operated nursing facilities that provide nursing facility services to MA recipients. Privately owned and operated nursing facilities may also experience an increase in their case-mix per diem rates as a result of an increase in the MA CMI used to establish the nursing facility's case-mix per diem rate.

General Public

Although the proposed rulemaking amends policies that may result in increased disproportionate share incentive payments and case-mix per diem rates to MA nursing facilities, there will be no fiscal impact on the general public.

Paperwork Requirements

There are no new or additional paperwork requirements.

Effective Date

The Department proposes that the amendment to the definition of "MA day of care" should take effect January 1, 2004, and apply to disproportionate share incentive payments for fiscal periods ending on and after December 31, 2003, and to the MA CMI for picture dates beginning February 1, 2004.

Sunset Date

There is no sunset date. The Department will review the effectiveness of this regulation on an ongoing basis and evaluate the need for further amendments.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department of Public Welfare, Division of Long Term Care Client Services, P. O. Box 2675, Harrisburg, PA 17105, Attn: Gail Weidman within 30 calendar days after the date of publication in the *Pennsylvania Bulletin*. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 3, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Depart-

ment, the General Assembly and the Governor of comments, recommendations or objections raised.

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-486. (1) General Fund; (2) Implementing Year 2003-04 is \$106,000; (3) 1st Succeeding Year 2004-05 is \$237,000; 2nd Succeeding Year 2005-06 is \$245,000; 3rd Succeeding Year 2006-07 is \$252,000; 4th Succeeding Year 2007-08 is \$260,000; 5th Succeeding Year 2008-09 is \$268,000; (4) 2002-03 Program—\$777,084,000; 2001-02 Program—\$761,877,000; 2000-01 Program—\$722,565,000; (7) Medical Assistance—Long Term Care; (8) recommends adoption. Funding for this proposed rulemaking has been provided through the Department's Intergovernmental Transfer Agreement for fiscal years 2003-04 and 2004-05.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1187. NURSING FACILITY SERVICES

Subchapter A. GENERAL PROVISIONS

§ 1187.2. Definitions.

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

* * * * *

LTCCAP—Long Term Care Capitated Assistance Program—The Department's community-based managed care program for the frail elderly based on the Federal Program of All-inclusive Care for the Elderly (PACE) (see section 1894 of the Social Security Act (42 U.S.C.A. § 1395eee)).

* * * * *

MA day of care—[A day of care for which the Department pays 100% of the MA rate for an MA resident or a day of care for which the Department and the resident pay 100% of the MA rate for the MA resident's care.] A day of care for which one of the following applies:

(i) The Department pays 100% of the MA rate for an MA resident.

(ii) The Department and the resident pay 100% of the MA rate for an MA resident.

(iii) An MA MCO or an LTCCAP provider that provides managed care to MA residents, pays 100% of the negotiated rate or fee for an MA resident's care.

(iv) The resident and either an MA MCO or LTC-CAP provider that provides managed care to an MA resident, pays 100% of the negotiated rate or fee for an MA resident's care.

(v) The Department pays for care provided to an MA resident receiving hospice services in a nursing facility.

MA MCO—Medical Assistance Managed Care Organization—An entity under contract with the Department that manages the purchase and provision of health services, including nursing facility ser-

vices, for MA recipients who are enrolled as members in the entity's health service plan.

* * * * *

[Pa.B. Doc. No. 04-1491. Filed for public inspection August 13, 2004, 9:00 a.m.]

**[55 PA. CODE CH. 1187]
Metropolitan Statistical Area**

The Department of Public Welfare (Department), under the authority of sections 201(2), 206(2), 403(b) and 443.1 of the Public Welfare Code (62 P. S. §§ 201(2), 206(2), 403(b) and 443.1), proposes to amend § 1187.94 (relating to peer grouping for price setting) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

If adopted, the proposed rulemaking will amend the method by which the Department establishes the peer groups used to set net operating prices under the case-mix payment system. See § 1187.94.

Need for the Proposed Rulemaking

The Medical Assistance (MA) Program pays each enrolled MA nursing facility provider for nursing facility services provided to MA residents using the Department's case-mix payment system. See Chapter 1187 (relating to nursing facility services). Under this payment system, the Department sets a prospective per diem rate for each MA nursing facility provider. A nursing facility's case-mix per diem rate is comprised of three "net operating" rate components and one "capital rate" component. See § 1187.96(e) (relating to price and rate setting computations). The three net operating rate components are based upon peer group prices. See § 1187.96(a)—(e).

The Department computes net operating peer group prices annually using the nursing facility cost report data available in the Nursing Home Information System database. See § 1187.94 and § 1187.95 (relating to general principles for rate; and price setting). The Department's case-mix payment system regulations specify that, in setting net operating prices, the Department will classify each nursing facility participating in the MA Program, except nursing facilities that meet the definition of a hospital-based nursing facility or special rehabilitation facility (as defined in § 1187.2 (relating to definitions)), into 1 of 12 mutually exclusive peer groups based on Metropolitan Statistical Areas (MSA) group classification and the nursing facility's certified bed complement. See § 1187.94(1). The regulations further state that "the Department will use the most recent MSA group classification, as published by the Federal Office of Management and Budget (OMB) on or before April 1 of each year" to make the peer group classifications. See § 1187.94(1)(i).

Prior to 2003, the OMB categorized MSAs into three levels based on the total population of the counties in the MSA: Level A (areas with a total population of 1 million or more), Level B (areas with a total population of 250,000 to 999,999) and Level C (areas with a total population of 100,000 to 249,000). The Department's case-mix payment system regulations in § 1187.94(1)(iii), make explicit reference to MSA groups A, B and C in

identifying the 12 peer groups into which nursing facilities are classified under the case-mix payment system.¹

On June 6, 2003, the OMB published OMB Bulletin No. 03-04 (relating to revised definitions of "Metropolitan Statistical Areas," new definitions of "Micropolitan Statistical Areas" and "Combined Statistical Areas" and guidance on uses of the statistical definitions of these areas) that revised the definitions of MSAs. In publishing these revised MSA definitions, the OMB added definitions for "Micropolitan Statistical Areas" and "Combined Statistical Areas" based on Federal Census Bureau data derived from the 2000 census. However, the OMB eliminated the use of the MSA group levels A, B and C that are specifically referenced in § 1187.94(1)(iii).

The OMB's elimination of the three MSA group levels makes it impossible for the Department to apply the existing language of § 1187.94(1) in classifying nursing facilities into peer groups. More specifically, the Department cannot use the most recent MSA group classifications published by the OMB, as required by § 1187.94(1)(i), and also classify nursing facilities into the 12 peer groups identified in § 1187.94(1)(iii). To address this problem, the Department has determined that the language of § 1187.94 should be amended.

In evaluating the alternative ways in which § 1187.94 might be amended, the Department considered the potential effects that adopting the new Federal definitions for MSAs might have on peer group prices and nursing facility rates. The Department's preliminary analyses indicate that a majority of nursing facility providers would be adversely affected (that is, the case-mix payment system would compute lower rates for the majority) if the Department were to adopt the new Federal MSA definitions.

Instead of adopting the new Federal definitions, the Department is proposing to amend § 1187.94(1)(i) and the Commonwealth's Title XIX State Plan to specify that the Department will use the MSA group classification published by the OMB in OMB Bulletin No. 99-04 (relating to revised statistical definitions of "Metropolitan Areas" and guidance on uses of "Metropolitan Area" definitions) to peer group nursing facilities. By using the MSA classification in OMB Bulletin No. 99-04, the Department will maintain the historical MSA groups and will continue to classify each MA nursing facility as MSA A, B or C or as non-MSA. Although the language of § 1187.94 will change, the effect of this amendment will be to preserve the status quo.

Requirements

The Department is proposing to amend § 1187.94 to change the method used for peer grouping by specifying that the Department will use the MSA group classification published in OMB Bulletin No. 99-04 to classify nursing facilities into peer groups instead of the most recent MSA group classification published on or before April 1 of each year.

Affected Organizations

Nursing facilities enrolled in the MA Program except nursing facilities that meet the definition of "hospital-based nursing facility" or "special rehabilitation facility." See § 1187.2.

¹ Nursing facilities that are located in counties that are not included in one of the three MSA group levels are classified in a "non-MSA" peer group under the regulations. See § 1187.94(1)(iii).

Accomplishments and Benefits

Amending § 1187.94 to specify that the Department will use the MSA group classifications published in OMB Bulletin 99-04 enables the Department to ensure that the case-mix payment system takes into account variables that may impact the cost of providing nursing facility services while the Department continues and completes its discussions with the nursing facility industry, consumers and other stakeholders on a more comprehensive overhaul of the case-mix payment system.

*Fiscal Impact**Commonwealth, Political Subdivisions and Private Sector*

No fiscal impact will result from this proposed rulemaking since the effect is to preserve the status quo by maintaining the same MSA group classification method which the Department has used to assign nursing facilities to peer groups since the case-mix payment system was implemented in January 1996.

No fiscal impact will result from this proposed amendment since the effect is to preserve the status quo by maintaining the same MSA group classification method which the Department has used to assign nursing facilities to peer groups since the case-mix payment system was implemented in January 1996.

General Public

There will be no fiscal impact on the general public.

Paperwork Requirements

No new or additional paperwork requirements result from the proposed rulemaking.

Effective Date

The proposed rulemaking will take effect with July 1, 2004, rate setting.

Sunset Date

There is no sunset date. However, the Department will review the effectiveness of the regulation and the issue of peer group classifications as part of its continuing discussions with the nursing facility industry, consumers and other stakeholders on a more comprehensive overhaul of the case-mix payment system.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Department of Public Welfare, Division of Long Term Care Client Services, Attn: Gail Weidman, P. O. Box 2675 Harrisburg, PA 17105-2675 within 30 calendar days after the date of publication in the *Pennsylvania Bulletin*. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 3, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the

close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-483. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 55. PUBLIC WELFARE****PART III. MEDICAL ASSISTANCE MANUAL****CHAPTER 1187. NURSING FACILITY SERVICES****Subchapter G. RATE SETTING****§ 1187.94. Peer grouping for price setting.**

To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program into 14 mutually exclusive groups as follows:

(1) Nursing facilities participating in the MA Program, except those nursing facilities that meet the definition of a special rehabilitation facility or hospital-based nursing facility, will be classified into 12 mutually exclusive groups based on MSA group classification and nursing facility certified bed complement:

(i) [**The**] **Effective for rate-setting periods commencing July 1, 2004, the** Department will use the [**most recent**] MSA group classification[, as] published by the Federal Office of Management and Budget [**on or before April 1 of each year**] in the OMB Bulletin No. 99-04 (relating to revised definitions of Metropolitan Areas and guidance on uses of Metropolitan Area definitions), to classify each nursing facility into one of three MSA groups or one non-MSA group.

* * * * *

[Pa.B. Doc. No. 04-1492. Filed for public inspection August 13, 2004, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 103, 105, 107 AND 111]

Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 103, 105, 107 and 111. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to the definition of "slow, no wake speed" and eliminating the term "slow, minimum height swell speed" as used throughout the Commission's regulations.

A. Effective Date

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2005.

B. Contact Person

For further information on the proposed rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposal is available on the Commission's website: ww.fish.state.pa.us.

C. Statutory Authority

The proposed amendments to §§ 103.2, 103.3, 103.16, 105.3 and 107.5 are published under section 5123 of the code (relating to general boating regulations). The proposed amendments to §§ 111.2—111.4, 111.6, 111.9, 111.13, 111.14, 111.17, 111.20—111.25, 111.27, 111.30, 111.31, 111.36, 111.40—111.43, 111.46, 111.49, 111.52, 111.56, 111.58, 111.59, 111.62, 111.64 and 111.66 are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. Purpose and Background

The proposed rulemaking is designed to update, modify and improve the Commission's boating regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposal. The Commission's Boating Advisory Board considered the proposed changes and recommended that the Commission publish a notice of proposed rulemaking containing the proposed amendments.

E. Summary of Proposal

Historically, the Commission's regulations have used the term "slow, minimum height swell speed," as opposed to the more common term "slow, no wake speed." Section 103.2 (relating to definitions) defines "slow, minimum height swell speed" as the "lowest engagement speed for the engine and that the wake or wash creates a minimum disturbance." The section also provides that "Buoys and signs marked 'slow, no wake' shall mean operation at slow, minimum height swell speed."

The current definition does not adequately describe what the Commission means by "slow, no wake speed." There have been misunderstandings by the boating public and problems when citations by Commission officers for wake violations have been challenged in court. Staff have reviewed the definitions for "slow, no wake speed" in other states and by the National Park Service. Other states and the Federal government do not use the term "slow, minimum height swell speed."

The Commission therefore proposes that the term "slow, minimum height swell speed" be replaced with "slow, no wake speed" so the public better understands the term. In addition, the Commission proposes to amend the definition to reflect the accepted standards in other states. The Commission proposes that § 103.2 be amended to read as set forth in Annex A.

In addition, there are several references to "slow, minimum height swell speed" throughout the Commission's regulations. The Commission proposes that these references in §§ 103.3, 103.16, 105.3, 107.5, 111.2—111.4, 111.6, 111.9, 111.13, 111.14, 111.17, 111.20—111.25, 111.27, 111.30, 111.31, 111.36, 111.40—111.43, 111.46, 111.49, 111.52, 111.56, 111.58, 111.59, 111.62, 111.64 and 111.66 be amended to reflect the new term to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically 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.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-157. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 103. RULES OF THE ROAD

§ 103.2. Definitions.

[(a) **Definitions.**] The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

[**Slow, minimum height swell speed**—The lowest engagement speed for the engine and that the wake or wash creates a minimum disturbance.]

Slow, no wake speed—The slowest possible speed of a motorboat required to maintain maneuverability so that the wake or wash created by the motorboat on the surface of the water is minimal.

[(b) **Buoys and signs marked "slow, no wake"** shall mean operation at slow, minimum height swell speed.]

§ 103.3. Restriction for special areas.

* * * * *

(b) Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed when within 100 feet of the shore line; docks; launching ramps; swimmers or downed skiers; persons wading in the water; anchored, moored or drifting boats; floats, except for ski jumps and ski landing floats; or other areas so marked. This subsection does not apply in a zoned ski area or authorized ski return areas when those areas are found within the areas described in this subsection.

* * * * *

§ 103.16. Speed restrictions.

* * * * *

(b) *Specific speed restrictions.* In addition to the general restriction on speed of watercraft set forth in subsection (a), the Commission may by general or special boating regulations set forth specific restrictions such as “[**slow, minimum height swell**] **slow, no wake** speed” restrictions. The observation of an officer authorized to enforce this part shall be evidence of violation of nonnumerical specific speed restrictions.

* * * * *

CHAPTER 105. OPERATIONAL CONDITIONS

§ 105.3. Unacceptable boating practices.

It is unlawful to:

(1) Operate a motorboat not equipped with railings or other safeguards at greater than a [**slow, minimum height swell**] **slow, no wake** speed while a person is riding on bow decking, gunwales, transom or motor cover. It is not a violation of this paragraph to ride on the motor cover of an inboard motorboat while underway at that speed if the motor cover is designed by the manufacturer for the operator or a passenger to ride on it.

(2) Operate a motorboat—less than 20 feet in length—at greater than [**slow, minimum height swell**] **slow, no wake** speed while a person is standing on or in the boat. It is not a violation of this paragraph if the boat is designed for the operator or a passenger, or both, to stand while underway at that speed.

* * * * *

(7) Follow too close to another boat, including personal watercraft. For the purposes of this paragraph, following too close shall be construed as operating in excess of [**slow, minimum height swell**] **slow, no wake** speed within 100 feet to the rear or 50 feet to the side of another boat that is underway, unless the boats are operating in a narrow channel, in which case the boats may operate at the speed and flow of other boat traffic.

* * * * *

CHAPTER 107. BOATING RESTRICTIONS

§ 107.5. Streams less than 200 feet across.

(a) A boat may not exceed [**slow, minimum height swell**] **slow, no wake** speed on an area of a stream that measures less than 200 feet across except where special regulations have been promulgated by the Commission that provide for zoned areas where higher speeds are permitted under controlled conditions.

* * * * *

CHAPTER 111. SPECIAL REGULATIONS COUNTIES

§ 111.2. Allegheny County.

(a) *Allegheny River.* The following special regulations apply to the Allegheny River:

(1) Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed from Miles 12.8 to Lock and Dam Number 2 at Mile 14.5 in the back channel of Twelve and Fourteen Mile Islands.

(2) The area behind Nine Mile Island, Mile 10.0 to Mile 10.4 is a designated ski zone. Boats not actively engaged in towing water skiers are limited to [**slow, minimum height swell**] **slow, no wake** speed.

* * * * *

(c) *Allegheny, Monongahela and Ohio Rivers (City of Pittsburgh).* Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed from the Fort Pitt Bridge over the Monongahela River and the Fort Wayne (Norfolk Southern) Bridge over the Allegheny River to the West End Bridge over the Ohio River. This zone shall be in effect on weekends from May 1 to October 1 from 3 p.m. Friday until midnight Sunday and from 3 p.m. on the day preceding Memorial Day, July 4 and Labor Day until midnight of the holiday.

(d) *Youghiogheny River.* Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed from the mouth of the Youghiogheny River to the McKeesport Access Area, a distance of about 200 yards.

§ 111.3. Armstrong County.

(a) *Crooked Creek Lake.*

* * * * *

(4) Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed in the following areas:

* * * * *

§ 111.4. Beaver County.

(a) *Beaver River.* Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed from the mouth of the Beaver River (Mile 0.0) to a point 2 miles upstream (Mile 2.3).

(b) *Connoquenessing Creek Dam.*

* * * * *

(2) The speed of boats is restricted to [**slow, minimum height swell**] **slow, no wake** speed upstream from a marked point 8/10 of a mile above the Route 65 bridge.

* * * * *

§ 111.6. Berks County.

(a) *Blue Marsh Lake.* The following special regulations apply to Blue Marsh Lake:

* * * * *

(2) Boats are limited to a [**slow, minimum height swell**] **slow, no wake** speed in the two arms of the lake formed by Spring Creek and Tulpehocken Creek.

* * * * *

§ 111.9. Bucks County.

* * * * *

(b) *Neshaminy Creek.* Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed from the mouth of Neshaminy Creek to a point approximately 200 yards upstream from the Route 13 Bridge, a distance of approximately 1.5 miles.

* * * * *

(d) *Delaware River.*

(1) Boats are limited to [**slow minimum height swell**] **slow, no wake** speed in the following areas:

* * * * *

(2) Boats are limited to [**slow minimum height swell**] **slow, no wake** speed while passing through the following bridge spans:

* * * * *

§ 111.13. Carbon County.

(a) *Beltzville Lake—Beltzville State Park.* The following regulations apply to Beltzville Lake:

(1) Boats are limited to [slow, minimum height swell] slow, no wake speed at Pine Run, Wild Creek and Pohopoco Creek Bays.

* * * * *

§ 111.14. Centre County.

* * * * *

(d) *Foster Joseph Sayers Lake—Bald Eagle State Park.*

(1) Boats are limited to [slow, minimum height swell] slow, no wake speed in the following areas:

* * * * *

§ 111.17. Clearfield County.

* * * * *

(b) *Treasure Lake.*

(1) Boats are limited to [slow, minimum height swell] slow, no wake speed from the established buoy line at the following areas:

* * * * *

§ 111.20. Crawford County.

* * * * *

(f) *Woodcock Creek Lake.*

* * * * *

(3) Boats are limited to [slow, minimum height swell] slow, no wake speed in a zone defined by the area east of the L. R. 20063 Causeway.

* * * * *

§ 111.21. Cumberland County.

* * * * *

(c) *Power Company Dam (Cove Hill) Conodoguinet Creek.*

* * * * *

(5) Boats are limited to [slow, minimum height swell] slow, no wake speed in the channel behind the island from the breast of the dam to the inlet.

§ 111.22. Dauphin County.

Susquehanna River, Lake Frederick. Boats are limited to [slow, minimum height swell] slow, no wake speed between Bashore Island and the York County shoreline.

§ 111.23. Delaware County.

(a) *Delaware River.* Boats are limited to [slow, minimum height swell] slow, no wake speed between Tincum Island and the Pennsylvania shoreline.

(b) *Tincum Lagoons.* Boats are limited to [slow, minimum height swell] slow, no wake speed.

§ 111.24. Elk County.

East Branch Clarion River Lake—Elk State Park.

* * * * *

(2) Boats are limited to [slow, minimum height swell] slow, no wake speed in the following areas:

* * * * *

§ 111.25. Erie County.

(a) *Lake Erie and Presque Isle Bay.*

(1) Boats are limited to [slow, minimum height swell] slow, no wake speed in the following areas:

* * * * *

(b) *Lake Leboeuf.* It is unlawful to operate a boat in excess of [slow, minimum height swell] slow, no wake speed.

* * * * *

§ 111.27. Forest County.

Tionesta Lake.

* * * * *

(2) Boats are limited to [slow minimum height swell] slow, no wake speed upstream from the confluence of Little Piney Run.

§ 111.30. Greene County.

* * * * *

(b) *Ten Mile Creek.* It is unlawful to operate a boat in excess of [slow, minimum height swell] slow, no wake speed.

§ 111.31. Huntingdon County.

(a) *Lake Raystown.*

(1) Boats are limited to [slow, minimum height swell] slow, no wake speed in the following areas:

* * * * *

§ 111.36. Lancaster County.

(a) *Lake Aldred—Susquehanna River.* Boats are limited to [slow, minimum height swell] slow, no wake speed from the York County shoreline to the northern point of Urey Islands to the southern tip of Blair Island, and back to the York County shoreline. The area is about 1 mile in length.

* * * * *

(c) *Susquehanna River.* Boats are limited to [slow, minimum height swell] slow, no wake speed for both of the following:

* * * * *

§ 111.40. Luzerne County.

* * * * *

(c) *Lily Lake.*

* * * * *

(2) Boats are limited to [slow, minimum height swell] slow, no wake speed except those operating within the buoyed high speed operating zone, between noon and sunset between the Saturday preceding Memorial Day and September 30.

* * * * *

(f) *Harveys Lake.* The speed of boats is limited to [slow, minimum height swell] slow, no wake speed between sunset and sunrise.

§ 111.41. Lycoming County.

* * * * *

(c) *Susquehanna River*. Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed between Swimmers Island and the south shore of the Susquehanna River.

* * * * *

§ 111.42. McKean County.

Allegheny River Reservoir (Kinzua Dam).

* * * * *

(2) Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed in the following areas:

* * * * *

§ 111.43. Mercer County.

Shenango River Lake.

* * * * *

(4) Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed in the following areas:

* * * * *

§ 111.46. Montgomery County.

Schuylkill River. Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed between Barbadoes Island and the Norristown shore from the Barbadoes Island Bridge downriver to the Norristown Dam.

§ 111.49. Northumberland County.

Susquehanna River. Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed from the vicinity of the Shikellamy State Park boat launch on the south side of Packard's Island upriver a distance of 1/3 mile.

§ 111.52. Pike County.

* * * * *

(c) *Lake Wallenpaupack*.

* * * * *

(4) Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed in the following areas:

* * * * *

(i) *Fairview Lake*. Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed from the Commission boat launch to the head of the cove.

* * * * *

§ 111.56. Somerset County.

* * * * *

(b) *Youghiogeny River Lake*. Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe or kayak. Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed within the following areas:

* * * * *

§ 111.58. Susquehanna County.

* * * * *

(d) *Laurel Lake*.

* * * * *

(3) *Restrictions on operation of boats powered by internal combustion motors*. Operation of boats powered by internal combustion motors is subject to the following restrictions:

* * * * *

(ii) *Upper Lake*. Boat speed is limited to [**slow, minimum height swell**] **slow, no wake** speed except that, during the period from noon until 6 p.m., no more than two boats powered by internal combustion motors may, at any one time, operate at speeds greater than [**slow, minimum height swell**] **slow, no wake** speed in the marked boat operating zone. Boats operating in the marked zone shall circle in a counter-clockwise direction and shall be subject to the restrictions in this subsection and the code and this subpart. It is unlawful to waterski or to operate a boat at greater than [**slow, minimum height swell**] **slow, no wake** speed at any location on the upper lake from 6 p.m. until noon of the following day.

(iii) *Lower Lake*. It is unlawful to water ski or to operate a boat at greater than [**slow, minimum height swell**] **slow, no wake** speed at any time at any location on the lower lake.

* * * * *

(4) *Restrictions on competing uses of marked boat operating zone*. Boats powered by internal combustion motors operating at authorized speeds greater than [**slow, minimum height swell**] **slow, no wake** speed in the marked boat operating zone shall have priority during the time periods when the operation is authorized under paragraph (3)(ii). It is unlawful to operate or stop a boat in the marked boat operating zone in a manner that interferes with authorized operation of internal combustion powered motorboats in the zone.

* * * * *

§ 111.59. Tioga County.

* * * * *

(b) *Cowanesque Lake*. Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed in the following areas:

* * * * *

(c) *Hammond Lake*. Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed from a buoy line across the lake in the vicinity of Ives Run to the extreme backwaters of the lake.

* * * * *

(f) *Tioga Lake*. Boats are limited to [**slow minimum height swell**] **slow, no wake** speed in the following areas:

* * * * *

§ 111.62. Warren County.

(a) *Allegheny River Reservoir (Kinzua Dam)*.

* * * * *

(2) Boats are limited to [**slow, minimum height swell**] **slow, no wake** speed in the following areas:

* * * * *

§ 111.64. Wayne County.

* * * * *

(b) *Duck Harbor Pond.*

* * * * *

(2) The speed of boats is limited to [**slow, minimum height swell**] **slow, no wake** speed between the hours of 6 p.m. and 10 a.m.

(c) *Long Pond.*

* * * * *

(3) The speed of boats is limited to [**slow, minimum height swell**] **slow, no wake** speed from sunset until sunrise.

* * * * *

§ 111.66. Wyoming County.

* * * * *

(b) *Lake Winola.*

* * * * *

(2) The speed of boats is limited to [**slow, minimum height swell**] **slow, no wake** speed from sunset to sunrise, 7 days a week, year-round, and from sunrise to 11 a.m. on Sundays from the day before Memorial Day until Labor Day.

* * * * *

[Pa.B. Doc. No. 04-1493. Filed for public inspection August 13, 2004, 9:00 a.m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Dog Control Facility Bill Reimbursement Grant Program

The Department of Agriculture (Department) gives notice of the guidelines and conditions under which it will award up to \$250,000 in grants under the Year 2005 Dog Control Facility Bill Reimbursement Program (program). The program will award bill reimbursement grants of up to \$10,000 per recipient to humane societies or associations for the prevention of cruelty to animals that meet the guidelines and conditions of the program. The program will be funded from the Dog Law Restricted Account from funds which are declared to be "surplus" funds for the limited purposes set forth in section 1002(b) of the Dog Law (3 P. S. § 459-1002(b)).

A proposed version of these guidelines and conditions was published at 34 Pa.B. 3151 (June 19, 2004). The Department invited public and legislative review of these proposed guidelines and conditions in accordance with 7 Pa. Code § 23.4 (relating to guidelines and conditions).

The Department received a single comment on the proposed guidelines and conditions. The commentator suggested that the eligibility guideline that excludes facilities with annual operating budgets of over \$350,000 from participating in the program disqualifies larger facilities from participating in the program, and that this dollar figure should be increased to allow participation by more (and larger) facilities. The commentator also suggested that the eligibility criteria be based on other factors, including number of animals handled.

Given the limited funding that is available for the program for 2005, the Department declines to implement the commentator's suggestions. The Department will evaluate its program needs and will reconsider its eligibility guidelines for subsequent funding years and will continue to consult with affected parties in this process.

Guidelines and Conditions for the Year 2005 Dog Control Facility Bill Reimbursement Grant Program

1. Definitions.

The following words and terms, when used in these guidelines and conditions, have the following meanings:

Department—The Department of Agriculture.

Dog control—The apprehending, holding and disposing of stray or unwanted dogs, or as otherwise defined in section 102 of the Dog Law (3 P. S. § 459-102).

Eligible bill—A document seeking payment for materials, services or utilities from a grant recipient, setting forth the following:

- i. The date the document is issued.
- ii. The name and address of the humane society or association for the prevention of cruelty to animals to which the bill is issued.
- iii. If for materials, a description of the materials and the date of delivery. Invoices and/or receipts for materials must set forth or be accompanied by a written description of the intended use of the material and the date the

material is used. Materials may not include computers, computer equipment or software. Examples of eligible materials include the following:

- Cleaning supplies.
- Office supplies—typical supplies used to carry on daily office duties.
- Materials for building and repair projects.
- Purchases of medication, needles, and the like.

iv. If for services, a description of the nature of the services and the dates upon which the services were rendered. Veterinarian services for the spaying or neutering of dogs are ineligible. Examples of services include the following:

- Labor charges with respect to which the invoice details the exact service performed and the date of performance.
- Veterinarian services with respect to which the invoice identifies the dog treated and the reason for the treatment.
- Cremation services with respect to which the invoice either verifies that only dogs were cremated or, in the event that animals other than dogs were cremated, separates the dogs from those other animals and identifies a charge attributable to only the cremation of the dogs.

v. If for utilities (such as electricity, water, sewer, waste disposal and similar purposes), a statement of the period for which the utility, for which payment is sought, was provided.

vi. The name, address and telephone number of the entity issuing the document.

Humane society or association for the prevention of cruelty to animals—A nonprofit society or association duly incorporated under 15 Pa.C.S. Chapter 53, Subchapter A (relating to incorporation generally) for the purpose of prevention of cruelty to animals, or as otherwise defined in section 102 of the Dog Law.

Program—The Year 2005 Dog Control Facility Bill Reimbursement Program.

2. Eligibility.

A humane society or association for the prevention of cruelty to animals is eligible to apply to receive a grant under the program if that humane society or association for the prevention of cruelty to animals:

- a. Has been in operation for at least 1 year immediately preceding the application date.
- b. Has performed dog control functions for at least 1 year immediately preceding the application date.
- c. Has, in the performance of its dog control functions, accepted at least 100 stray or unwanted dogs into its facility within the year immediately preceding the application date.
- d. Is not a party to a contract with the Department under which the Department pays that humane society or association for the prevention of cruelty to animals for dog control activities performed in 2005.
- e. Agrees, as a condition of receiving any grant money under the program, to continue to perform dog control activities through 2005.

f. Has a total operating budget of \$350,000 or less for the 2005 calendar year or, if its budget is on a basis other than calendar year, has a total operating budget of \$350,000 or less for each fiscal year comprising any portion of calendar year 2005.

3. *Use of Grant Funds.*

The Department will allocate a specific maximum grant amount to a successful grant applicant through a written grant agreement. This maximum grant amount will be specified in the grant agreement and will not exceed \$10,000 with respect to any application. The maximum grant amount will be retained by the Department and used to reimburse the grant recipient for eligible bills the grant recipient has paid with respect to materials, services or utilities provided to the grant recipient from January 1, 2005, through December 31, 2005. The total reimbursement the Department will pay a grant recipient will not exceed the maximum grant amount. Money remaining in a grant allocation beyond the termination date of the grant agreement will lapse into the Dog Law Restricted Account. If a bill covers materials, services or utilities provided, in whole or in part, before January 1, 2005, or after December 31, 2005, that bill is not an eligible bill and will not be reimbursed by the Department under the program. The sole exception to the prohibition set forth in the preceding sentence is as follows: If a bill covers materials, services or utilities provided in part in 2004 and in part in 2005, and the grant recipient was also a grant recipient under the Year 2004 Dog Control Facility Bill Reimbursement Program, the Department may, at its discretion, consider the bill an eligible bill.

4. *Application Process.*

a. *Application required.* A humane society or association for the prevention of cruelty to animals seeking a grant under the program must complete a written application form and deliver it to the Department no later than 30 days from the date this notice is published in the *Pennsylvania Bulletin*. Applications received by the Department beyond that date will not be considered.

b. *Obtaining an application form.* The Department will provide grant application forms upon request. Requests for application forms should be directed to Mary Bender, Director, Bureau of Dog Law Enforcement, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 787-4833, fax (717) 772-4352.

c. *Contents of grant application form.* A grant application form requires the following information:

- i. The name and address of the applicant.
- ii. Information to verify that the applicant is a humane society or association for the prevention of cruelty to animals and otherwise meets the eligibility requirements in paragraph 2.
- iii. The maximum grant amount sought by the applicant, not to exceed \$10,000.
- iv. A description of the eligible bills for which the grant applicant intends to seek reimbursement, including a description (and copies, if available) of bills received by the applicant in 2004 for the same type of materials, services or utilities for which reimbursement will be sought under the grant agreement.

v. Other information as the Department might reasonably require.

5. *Review and approval of grant application.*

a. *Review and notification.* The Department will review each timely grant application and provide the applicant written notification of whether the Department awards the grant, denies the grant or awards a grant in some amount less than the applicant sought. This written notification will be mailed no later than 60 days from the date the Bureau of Dog Law Enforcement receives the grant application to the address provided by the applicant on the grant application form. If an application is incomplete or the Department requires additional information or documentation to evaluate the grant request, it will so advise the applicant within 60 days from the date it receives the grant application.

b. *Review criteria.* The Department will consider the following, among other factors, in determining whether to award a grant application:

- i. The number of applications received and the availability of funds for the grants sought.
- ii. The relative contribution of the applicant to dog control activities in the area it serves.
- iii. The relative contribution of the applicant to dog control as compared to the relative contribution of other applicants.
- iv. The relative importance of the grant to the continued operation of the applicant's dog control facility.

v. The expense or logistical difficulty the Department would encounter if the applicant's dog control facility was no longer in operation.

6. *Grant agreement.*

a. *Grant agreement required.* A successful grant applicant must execute a grant agreement with the Department, setting forth the terms and conditions under which the grant money will be used by the Department to reimburse the grant recipient for payment of eligible bills.

b. *Reimbursement requests.* The grant agreement will set forth the exact procedure by which a grant recipient shall seek reimbursement from the Department for payment of eligible bills. The basic reimbursement request procedure will be as follows:

By May 15, 2005, the grant recipient will: (1) deliver copies of the eligible bills it has paid between January 1, 2005, and April 30, 2005; (2) verify that these bills have been paid and are eligible for reimbursement; and (3) provide a detailed report of the dog control activities performed by the successful applicant during the referenced 4-month period.

By September 15, 2005, the grant recipient will: (1) deliver copies of the eligible bills it has paid between May 1, 2005, and August 31, 2005; (2) verify that these bills have been paid and are eligible for reimbursement; and (3) provide a detailed report of the dog control activities performed by the successful applicant during the referenced 4-month period.

By January 15, 2006, the grant recipient will: (1) deliver copies of the eligible bills it has paid between September 1, 2005, and December 31, 2005; (2) verify that these bills have been paid and are eligible for reimbursement; and (3) provide a detailed report of the dog control activities performed by the successful applicant during the referenced 4-month period.

c. *Payment by the Department.* The Department will reimburse a grant recipient for eligible bills within 90 days of receiving a complete and timely reimbursement request.

d. *Termination.* The Department may terminate a grant agreement at any time by providing the grant

recipient written notice of termination at the address set forth on the grant application.

DENNIS C WOLFF,
Secretary

[Pa.B. Doc. No. 04-1494. Filed for public inspection August 13, 2004, 9:00 a.m.]

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 19, 1990 (P. L. 834, No. 198), known as the Credit Union Code, has taken the following action on applications received for the week ending August 3, 2004.

BANKING INSTITUTIONS

New Charters

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
7-28-04	MoreBank Philadelphia Philadelphia County	470 West Cheltenham Avenue Philadelphia Philadelphia County	Approved

Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-2-04	First Columbia Bank & Trust Company Bloomsburg Columbia County Assumption of certain liabilities of two branch offices of First Susquehanna Bank & Trust, Sunbury Located at: 209 Twelfth Street Berwick Columbia County	Bloomsburg Weis Market 725 Columbia Boulevard Bloomsburg Columbia County	Filed

Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
7-29-04	First Commonwealth Bank Indiana Indiana County	Corner of Washington Road and Trinity Place Washington Washington County	Filed
7-29-04	First Commonwealth Bank Indiana Indiana County	4198 Washington Road Route 19 McMurry Washington County	Filed
8-2-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	Acme Store Lawrence Park Shopping Center 11 Sproul Road Broomall Delaware County	Approved
8-2-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	Acme Store 720 Downingtown Pike West Chester Chester County	Approved
8-2-04	1st Summit Bank Johnstown Cambria County	Super WalMart 2600 Plank Road Commons Altoona Blair County	Approved

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-2-04	1st Summit Bank Johnstown Cambria County	Super WalMart Old Greengate Mall U. S. Route 30 Greensburg Westmoreland County	

Branch Relocations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-2-04	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>To:</i> 2801 East Carson Street Pittsburgh Allegheny County <i>From:</i> 1401 Carson Street Pittsburgh Allegheny County	Approved

Branch Discontinuances

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
7-29-04	The Juniata Valley Bank Mifflintown Juniata County	100 East Market Street Lewistown Mifflin County	Filed

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS

No activity.

A. WILLIAM SCHENCK, III,
Secretary

[Pa.B. Doc. No. 04-1495. Filed for public inspection August 13, 2004, 9:00 a.m.]

Maximum Lawful Rate of Interest for Residential Mortgages for the Month of August 2004

The Department of Banking (Department), under the authority contained in section 301 of the act of January 30, 1974 (P. L. 13, No. 6) (41 P. S. § 301), hereby determines that the maximum lawful rate of interest for residential mortgages for the month of August 2004 is 7 1/2%.

The interest rate limitations under the State's usury statute were preempted to a great extent by Federal law, the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. No. 96-221). Further preemption was instituted with the signing of Pub. L. No. 96-399, which overrode State interest rate limitations on any individual who finances the sale or exchange of residential real property which the individual owns and which the individual occupies or has occupied as a principal residence.

Each month the Department is required by State law to compute and announce the ceiling rate on residential mortgages in this Commonwealth. This maximum rate is determined by adding 2.50 percentage points to the yield rate on long-term government bonds as published by the Federal Reserve Board and/or the United States Treasury. The latest yield rate on long-term government securities is 5.04 to which was added 2.50 percentage points for a total of 7.54 that by law is rounded off to the nearest quarter at 7 1/2%.

A. WILLIAM SCHENCK, III,
Secretary

[Pa.B. Doc. No. 04-1496. Filed for public inspection August 13, 2004, 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 (Department) is preparing its 2005 Action Plan that supplements the Commonwealth's annual Action Plan for its Consolidated Plan for Federal fiscal years 2004-2008. 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 Consolidated 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 2005 Action 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.

Public Meeting

The public meeting will be held on September 9, 2004, from 9 a.m. to 12 p.m. in the Commonwealth Keystone Building, PUC Hearing Room No. 1, 2nd Floor, 400 North

Street, Harrisburg, PA 17120. The public meeting may be shortened if there is minimal response.

Individuals or organizations may give testimony or comments at the public meeting. 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 or organizations who want to speak must call to schedule a time to give oral testimony at the meeting. The public meeting will be shortened if no one is scheduled to testify or if there is minimal response. Call Karen Overly Smith at (717) 214-5340 to schedule oral testimony at the public meeting at least 24 hours prior to the meeting date.

Written Comments

Written testimony to be read into the record may be submitted by 5 p.m. on September 3, 2004, 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 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 Department regarding housing and community development needs, as well as assist in fair housing planning. These meetings will be held as follows:

August 24, 2004, 9 a.m. to 12 p.m.
Conference Room 171
Chester County Government Center
601 Westtown Road
West Chester, PA 19380-0990

August 25, 2004, 9:30 a.m. to 12:30 p.m.
Borough of State College Municipal Office
Conference Room 201
243 South Allen Street
State College, PA 16801

August 26, 2004, 9 a.m. to 12 p.m.
Conference Room 43B
Lehigh County Government Services Center
17 South 17th Street
Allentown, PA 18101

September 1, 2004, 1 p.m. to 4 p.m.
Conference Room
Kittanning Belmont Complex
415 Butler Road
Kittanning, PA 16201

September 2, 2004, 8:30 a.m. to 11:30 a.m.
William Bainbridge Technical Center
RCTC—Presentation Center
Industrial Blvd.
Meadville, PA 16335

Individuals who have a disability who wish to attend a committee meeting and require an auxiliary aid, service or other accommodation to participate in the proceeding should contact Karen Overly Smith at the previous address or telephone number to discuss how the Department can best accommodate their needs. Text Telephone

calls can be placed through the Pennsylvania Relay System at (800) 654-5984.

DENNIS YABLONSKY,
Secretary

[Pa.B. Doc. No. 04-1497. Filed for public inspection August 13, 2004, 9:00 a.m.]

DEPARTMENT OF EDUCATION

Availability of 2004-2005 Innovative Learning and Workforce Development Agriculture Funds

Applications are invited for FY 2004-2005 Innovative Learning and Workforce Development Agriculture funding. The project period is from September 17, 2004, to June 30, 2005. The maximum amount per application is \$30,000. Available funds total \$315,000.

1. *Eligibility Requirements*

Funding is available on a competitive basis to career and technical education centers and area school districts with approved agriculture programs.

2. *Applications Deadline*

Applications are due September 17, 2004.

3. *How to Apply*

The Department of Education (Department) has implemented an Internet-based e-grant system that requires eligible applicants to apply for funding on-line. The grant guidelines will be available on the Department's website: www.pde.state.pa.us. Click on "K-12 Schools," "Career/Technical Education," "Grants and Funding," "Funding Sources" and "Innovative Learning and Workforce Development Grant: Agriculture Programs."

4. *Questions Concerning the Grant Application*

Questions concerning the grant application should be addressed to John Bonchalk, General Vocational Education Advisor, Department of Education, Bureau of Career and Technical Education, Division of Contract Administration, 333 Market Street, 6th Floor, Harrisburg, PA 17126-0333, (717) 772-4177, jbonchalk@state.pa.us.

GERALD L. ZAHORCHAK, Ed.D.,
Acting Secretary

[Pa.B. Doc. No. 04-1498. Filed for public inspection August 13, 2004, 9:00 a.m.]

Availability of 2004-2005 Innovative Learning and Workforce Development Funding

Applications are invited for FY 2004-2005 Innovative Learning and Workforce Development funding. The project period is from September 17, 2004, to June 30, 2005. The maximum amount per application is \$50,000. Available funds total \$2.3 million.

1. *Eligibility Requirements*

Funding is available on a competitive basis to career and technical education centers and area school districts with approved career and technical programs.

2. Applications Deadline

Applications are due September 17, 2004, by 5 p.m.

3. How to Apply

The Department of Education (Department) has implemented an Internet-based e-grant system that requires eligible applicants to apply for funding on-line. The grant guidelines will be available on the Department's website: www.pde.state.pa.us. Click on "K-12 Schools," "Career/Technical Education," "Grants and Funding," "Funding Sources" and "Innovative Learning & Workforce Development Grants."

4. Questions Concerning the Grant Application

Questions concerning the grant application should be addressed to John Bonchalk, General Vocational Education Advisor, Department of Education, Bureau of Career and Technical Education, Division of Contract Administration, 333 Market Street, 6th Floor, Harrisburg, PA 17126-0333, (717) 772-4177, jbonchalk@state.pa.us.

GERALD L. ZAHORCHAK, Ed.D.,
Acting Secretary

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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 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 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 in 40 CFR 123.24(d).

Persons wishing to comment on an NPDES application are invited to submit a statement to the regional office noted before an 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 regional 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. 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 a public hearing is 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

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

<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>
PA0062511	Roy E. Laudenslager 6278 Route 309 New Tripoli, PA 18066	Lehigh County Heidelberg Township	Jordan Creek 2C	Y
PA0061034	Abington Township Municipal Authority Lake Henry Drive P. O. Box 8 Waverly, PA 18471	Abington Township Lackawanna County	Unnamed tributary to Ackerly Creek CWF Lackawanna Basin 5A	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>
PA0221325	Abbey Woods Homeowners Association P. O. Box 407 Zelienople, PA 16063-0407	Jackson Township Butler County	Unnamed tributary to Brush Creek 20-C	Y
PA0221023	Christopher S. Arford 942 Hatch Run Road Warren, PA 16365-4232	Glade Township Warren County	Unnamed tributary to Hatch Run	Y
PA0220981	Darrell L. Kysor P. O. Box 34 Corry, PA 16407-0034	Elgin Borough Erie County	Beaver Run	Y
PA0210153	Coinco Incorporated d/b/a MORCO Manufacturing 125 High Street Cochranton, PA 16314	Cochranton Borough Crawford County	Unnamed tributary to French Creek 16-D	Y

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

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

PA0030457, Sewage, **Forbes Trail Mobile Home Park and Thorn Run Estates**, 100 Forbes Trail Drive, Export, PA 15632-9614. This application is for renewal of an NPDES permit to discharge treated sewage from the Forbes Trail MHP and the Thorn Run Estates STP in Salem Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary to Thorn Run, which are classified as a HQ-CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Westmoreland Municipal Authority.

Outfall 001: existing discharge, design flow of 0.031 mgd.

<i>Parameter</i>	<i>Concentration (mg/l)</i>			
	<i>Average Monthly</i>	<i>Average Weekly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	10			20
Suspended Solids	10			20
Ammonia Nitrogen				
(5-1 to 10-31)	3			6
(11-1 to 4-30)	9			18
Phosphorus	2			4
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000 as a geometric mean			
Total Residual Chlorine	1.4			3.3
Dissolved Oxygen	not less than 5 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PA0091049, Sewage, **United States Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health**, P. O. Box 18070, Pittsburgh, PA 15236-0070. This application is for renewal of an NPDES permit to discharge treated sewage from the Lake Lynn Laboratory STP in Springhill Township, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as unnamed tributary of Rubles Run—Dragoo Hallow, which are classified as a CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Albert Gallatin Municipal Authority on the Cheat River.

Outfall 001: existing discharge, design flow of 0.00035 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD ₅	25			50
Suspended Solids	30			60
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a geometric mean			
(10-1 to 4-30)	2,000/100 as a geometric mean			
Total Residual Chlorine	Monitor and Report			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

PAS206108, Industrial Waste, SIC, 3466, **Crown Cork & Seal**, 1840 Baldrige Street, Connellsville, PA 15425. This application is for an issuance of an NPDES permit to discharge stormwater from the Crown Cork & Seal in South Connellsville, **Fayette County**.

The following effluent limitations are proposed for discharge to the receiving waters, Youghiogheny River, classified as a HQ-CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Westmoreland Municipal Authority, approximately 1 mile below.

Outfalls 001—003: existing discharge, design flow of N/A mgd (stormwater).

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Aluminum (Total)					Monitor and Report
Iron (Total)					Monitor and Report
Zinc (Total)					Monitor and Report
NO ₂ -NO ₃					Monitor and Report

The EPA waiver is in effect.

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

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

WQM Permit No. 0104402, Sewerage, **Hundredfold Farm Joint Venture**, 1668F Old Route 30, Orrtanna, PA 17353. This proposed facility is in Franklin Township, **Adams County**.

Description of Proposed Action/Activity: Construction of a wastewater treatment, recycling and disposal system that is proposed to serve the planned Hundredfold Farm Community.

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

WQM Permit No. 6304406, Sewerage, **Center-West Joint Sewer Authority**, 134 Main Street, P. O. Box 542, Brownsville, PA 15417. This proposed facility is in Centerville Borough, **Washington County**.

Description of Proposed Action/Activity: Application for the construction and operation of the Center-West Joint Sewer Authority sewage treatment plant and collection system.

WQM Permit No. WQG016103, Sewerage, **G Thomas Hall**, R. D. 9 Box 483, Greensburg, PA 15601. This proposed facility is in Mt. Pleasant Township, **Westmoreland County**.

Description of Proposed Action/Activity: Application for the construction and operation of a small flow sewage treatment plant to serve the G Thomas Hall property.

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

WQM Permit No. 4204402, Sewerage, **Borough of Kane Authority**, 112 Bayard Street, Kane, PA 16735. This proposed facility is in Wetmore Township, **McKean County**.

Description of Proposed Action/Activity: This project is for the construction of sanitary sewers, force mains, an access road and a pump station for the proposed Northwest Development.

IV. NPDES Applications for Stormwater Discharges from MS4**V. Applications for NPDES Waiver Stormwater Discharges from MS4****VI. NPDES Individual Permit Applications for Discharges of Stormwater Associated with Construction Activities**

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011504053	JA Forcine, Inc. Warehouse and Office Addition 282 Woodland Road Radnor, PA 19087-2453	Chester	East Whiteland Township	Valley Creek EV
PAS10-G267	The Hankin Group Eagleview Corporate Center Review No. 1—Lot 2 707 Eagleview Blvd. P. O. Box 562 Exton, PA 19341	Chester	Upper Uwchlan Township	Shamona Creek HQ

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

Monroe County Conservation District: 8050 Running Valley Road, Stroudsburg, PA 18360, (570) 629-3060.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAS10S019-R	Big Ridge Developers, LLP 130 Buck Rd., Suite 201 Holland, PA 18966	Monroe	Middle Smithfield Township	Pond Creek UNT Pond Creek HQ-CWF

Northampton County Conservation District: Greystone Building, Gracedale Complex, Nazareth, PA 18064-9211, (610) 746-1971.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024804028	Charles Tuskes Stone Creek Development Corp. 4511 Falmer Drive Bethlehem, PA 18020	Northampton	Upper Nazareth Township	Monocacy Creek HQ-CWF

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>
PAI026404006	Roger Hirschorn 810 Seventh Ave. New York, NY 10019	Wayne	Texas Township	Unnamed tributary to Lackawaxen River HQ-CWF

Pike County Conservation District: HC 6, Box 6770, Hawley, PA 18428, (570) 226-8220.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI025204008	Milford Arcadia Milford Highlands 113 7th Street, No. 122 Milford, PA 18337	Pike	Milford Township	Deep Brook EV Vandermark Creek HQ-CWF Crawford Branch HQ-CWF UNT to Delaware HQ-CWF

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI025204009	Peter Timan Pike County Plaza Land Dev. R. D. 1, Box 875 Dingmans Ferry, PA 18328	Pike	Delaware Township	Adams Creek EV

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAS10Q177-R	Lehigh West Land Assoc. 1390 Ridgeview Dr., Suite 302 Allentown, PA 18104	Lehigh	Lower Macungie Township	Little Lehigh Creek HQ-CWF
PAI023904031	Polaris Iron Run, LP 7562 Penn Dr., Suite 100 Allentown, PA 18106	Lehigh	Upper Macungie Township	Little Lehigh Creek HQ-CWF
PAI023904032	Robert Bayuk 11 Hillside Dr. Annandale, PA 08801	Lehigh	Lower Macungie Township	Little Lehigh Creek HQ-CWF
PAI023904033	Minukumar Desai 5650 Tilghman St. Allentown, PA 18104	Lehigh	Upper Macungie Township	Little Lehigh Creek HQ-CWF

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

Washington County Conservation District: 602 Courthouse Square, Washington, PA 15301, (724) 228-6774.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI056304005	McDowell Estates, LP 300 Weyman Plaza, Suite 210 Pittsburgh, PA 15236	Washington	North Strabane Township	Little Chartiers Creek HQ-WWF

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

PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

PUBLIC WATER SUPPLY (PWS) PERMIT

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice. Comments received within the 30-day comment period will be considered in the formulation of the final determinations regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of Environmental Protection (Department) of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

Following the comment period, the Department will make a final determination regarding the proposed permit. Notice of this final determination will be published

in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

The permit application and any related documents are on file at the office listed before the application and are available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received under the Pennsylvania Safe Drinking Water Act

Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401.

Permit No. 0904505, Public Water Supply.

Applicant	Hilltown Township Water and Sewer Authority
Township	Hilltown
Responsible Official	James Groff 316 Highland Park Road Sellersville, PA 18960

Type of Facility PWS
 Consulting Engineer Castle Valley Consultant, Inc.
 10 S. Clinton Street, Suite 302
 Doylestown, PA 18901
 Application Received July 26, 2004
 Date
 Description of Action Changing the disinfection from
 chlorine gas to sodium
 hypochlorite.

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

Permit No. 3804501, Public Water Supply.

Applicant **Amvets Post 293**
 Municipality Swatara Township
 County **Lebanon**
 Responsible Official Walter J. Bernheisel Jr., Post
 Commander/President
 2074 Route 72 N
 Lebanon, PA 17046
 Type of Facility PWS
 Consulting Engineer Jeffrey D. Steckbeck
 Steckbeck Engineering Assoc.
 43 N. Cornwall Rd.
 Lebanon, PA 17042
 Application Received July 20, 2004
 Date
 Description of Action Installation of a nitrate removal
 system with pH neutralization.

Permit No. 0104502, Public Water Supply.

Applicant **Bonneauville Borough
 Municipal Authority**
 Municipality Bonneauville Borough
 County **Adams**
 Responsible Official Bernard Shanbrook
 86 W. Hanover St.
 Gettysburg, PA 17325
 Type of Facility PWS
 Consulting Engineer Mark S. Snyder, P. E.
 Buchart-Horn, Inc.
 445 West Philadelphia Street
 York, PA 17405-7040
 Application Received July 20, 2004
 Date
 Description of Action This PWS permit application is
 for the construction of
 Bonneauville Borough Municipal
 Authority's well no. 9 and
 corresponding well house
 containing manganese treatment
 and disinfection facilities.

Permit No. 0604513, Public Water Supply.

Applicant **Borough of Bally**
 Municipality Bally Borough
 County **Berks**
 Responsible Official Toni Hemerka, Borough Manager
 P. O. Box 217
 Bally, PA 19503-0217

Type of Facility PWS
 Consulting Engineer Kenneth R. Miller, P. E.
 Civil & Environmental
 Consultants, Inc.
 333 Balwin Road
 Pittsburgh, PA 15205
 Application Received July 22, 2004
 Date
 Description of Action Provide redundancy to the
 existing VOC treatment with the
 addition of a backup air stripper.

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

Application No. 6286502-T1-MA1, Minor Amendment.

Applicant **Valley View Village MHP**
 Township or Borough Pittsfield Township, Warren
 County
 Responsible Official Timothy Shield, Owner
 Type of Facility PWS
 Application Received August 3, 2004
 Date
 Description of Action Modification of existing facilities
 to increase chlorine retention
 time by the addition of four
 120-gallon tanks, two at each
 well location.

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 before 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. 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:

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

William Hilger Property, Worth Township, **Centre County**. Mountain Research, Inc. on behalf of William Hilger, 220 East Flat Rock Road, Port Matilda, PA 16870, has submitted a Notice of Intent to Remediate soil contaminated with fuel oil. This site is being remediated to meet the Statewide Health Standards.

DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

Application for Determination of Applicability Received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and residual waste regulations for a general permit to operate residual waste processing facilities and/or the beneficial use of residual waste other than coal ash

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

General Permit Application No. WMGR081D007. AERC.com, Inc., 2591 Mitchell Ave., Allentown, PA 18103-6609. For the recycling of various uncontaminated and source-separated electronic equipment and components electronics equipment by sorting, disassembling and mechanical processing (by sizing, shaping, separating and volume reduction only). The application for determination of applicability was deemed administratively complete by the Division of Municipal and Residual Waste on July 28, 2004.

Persons interested in obtaining more information about the general permit application should contact the Division of Municipal and Residual Waste, General Permits/Beneficial Use Section, Rachel Carson State Office Building, P. O. Box 8472, Harrisburg, PA 17105-8472, (717)

787-7381. TDD users should contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

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 the applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to receive a copy of a proposed plan approval or operating permit must indicate their interest to the Department regional office within 30 days of the date of this notice and must file protests or comments on a proposed plan approval or operating permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department regional offices must include a concise statement of the objections to the issuance of the Plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior to 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 before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act (act) and regulations adopted under the act.

PLAN APPROVALS

Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.

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

38-03045A: Valspar Corp. (4406 Industrial Park Road, Camp Hill, PA 17011) for construction of a latex paint manufacturing plant in North Lebanon Township, **Lebanon County**.

67-03128A: Bookspan, Inc. (501 Ridge Avenue, Hanover, PA 17331) for construction of a no. 6 oil-fired boiler rated at 8.5 mmBtu/hr at their book distribution facility in Penn Township, **York County**.

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

26-00546B: Atlas Pipeline Pennsylvania LLC (311 Rouser Road, P. O. Box 611, Moon Township, PA 15108) for installation of two natural gas fired engine/compressors at the Prah Compressor Station in German Township, **Fayette 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, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

09-0048C: H and K Materials (300 Skunk Hollow Road, Chalfont, PA 18914) for construction of a rotary mixer at their existing batch asphalt plant in Hilltown Township, **Bucks County**. This facility is a non-Title V facility. H and K Materials is requesting to increase the amount of recycled asphalt pavement (RAP) used in the batch asphalt plant. H and K Materials is currently permitted to use a maximum of 15% RAP in the asphalt production and is requesting to increase the RAP usage up to 40% through the use of the rotary mixer. The Plan Approval will contain recordkeeping, operating restrictions and performance testing requirements designed to keep the facility operating within all the applicable air quality requirements.

09-0176: Metal Improvement Co. (3434 State Road, Bensalem, PA 19020) for installation of four paint booths and two chromium anodizing lines, at the company's existing facility in Bensalem Township, **Bucks County**. This facility is a non-Title V facility. The Plan Approval will contain work performance standards, monitoring and recordkeeping requirements, add-on air control equipment, emission restrictions and performance testing requirements designed to keep the facility operating within the allowable emission limits and all applicable air quality requirements.

23-0100: Pyramid Materials—a Division of Haines and Kibblehouse, Inc. (P. O. Box 196, Skippack, PA 19474) for construction of a nonmetallic mineral processing plant in Aston Township, **Delaware County**. The plant has a rated capacity of 350 tons per hour. The hours of operation will be limited to 3,000 hours per year (12-month rolling sum). The plant will use a wet suppression system to reduce fugitive emissions of PM. 40 CFR Part 60 Subpart OOO—Standard of Performance for Nonmetallic Processing Plants applies to this Plan Approval. The Plan Approval will require the company to perform stack tests for opacity.

23-0003E: ConocoPhillips (4101 Post Road, Trainer, PA 19061) for construction and/or modification of several refinery units, as described in the applicant's application

of April 4, 2003, for the company's refinery in the Borough of Trainer, **Delaware County**.

Under 25 Pa. Code §§ 127.44(a) and 127.424(b) as well as 40 CFR 52.21, the Department intends to issue a Plan Approval to ConocoPhillips for the company's refinery in the Borough of Trainer, Delaware County. This plan approval will authorize the applicant to construct and/or modify several refinery units, as described in the applicant's application of April 4, 2003. For ConocoPhillips to comply with the new regulations regarding sulfur in gasoline the following units will be constructed, installed, replaced or modified: a fluid catalytic cracking unit (FCCU) fresh feed heater; FCCU air blowers, reactor feed nozzles, main fractionator overhead condensers, FCCU rerun tower, a wet gas scrubber and an enhanced selective noncatalytic reduction (SNCR) system on the FCCU; an existing kerosene hydrodesulfurization unit to process FCCU heavy naphtha; an existing diesel hydrodesulfurization unit to produce ultra-low sulfur diesel; next generation ultra-low NOx burners in the existing 544 Vacuum Heater; distillation trays and installation of tie-ins for a future project on the naphtha hydrodesulfurization unit stabilizer; new product drying facilities for jet fuel and heating oil; and utilities, interconnecting piping and storage tank tie-ins. The Plan Approval will subsequently be incorporated into the company's Title V Operating Permit through an administrative amendment in accordance with 25 Pa. Code § 127.450.

Plan Approval 23-0003E is for the construction, installation, replacement or modification of: a FCCU fresh feed heater; FCCU air blowers, reactor feed nozzles, main fractionator overhead condensers, FCCU rerun tower, a wet gas scrubber and an enhanced SNCR system on the FCCU; an existing kerosene hydrodesulfurization unit to process FCCU heavy naphtha; an existing diesel hydrodesulfurization unit to produce ultra-low sulfur diesel; next generation ultra-low NOx burners in the existing 544 Vacuum Heater; distillation trays and installation of tie-ins for a future project on the naphtha hydrodesulfurization unit stabilizer; new product drying facilities for jet fuel and heating oil; and utilities, interconnecting piping and storage tank tie-ins. Based on the information provided by the applicant and the Department's own analysis, the modification or installation of the units listed will result in an emissions change of: -408.34 tons of NOx per year; -188.59 tons of NO₂ per year; 491.79 tons of CO per year; 20.6 tons of VOC per year; -1,602.99 tons per year of SO₂; 7.06 tons of PM per year; and 9.87 tons of PM₁₀ per year.

To assure compliance with the applicable standards, the Department has placed the following conditions in the proposed Plan Approval:

1. Operational Limitations

A. The following conditions apply to the FCC heavy naphtha hydrodesulfurization unit:

i. The company shall limit the hydrogen sulfide in the refinery fuel gas combusted to 0.1 grain per dry standard cubic foot (0.1 gr/dscf), or less.

ii. The company shall install, operate and maintain the FCC heavy naphtha hydrodesulfurization unit in accordance with manufacturer's specifications as well as good air pollution control practices.

iii. The company shall limit the FCC heavy naphtha hydrodesulfurization unit heater to a heat input of 23 mmBtu/hr, calculated as a 365-day rolling average.

iv. The FCC heavy naphtha hydrodesulfurization unit is subject to Subpart J of the Standards of Performance for

New Stationary Sources and shall comply with all applicable requirements of this subpart. 40 CFR 60.4 requires submission of copies of all requests, reports, applications, submittals and other communications to both the EPA and the Department. The EPA copies shall be forwarded to the Director, Air, Toxics and Radiation Division, U. S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103.

v. The FCC heavy naphtha hydrodesulfurization unit is subject to Subpart CC of the National Emission Standards for Hazardous Air Pollutants and shall comply with all applicable requirements of this subpart. 40 CFR 60.4 requires submission of copies of all requests, reports, applications, submittals and other communications to both the EPA and the Department. The EPA copies shall be forwarded to the Director, Air, Toxics and Radiation Division, U. S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103.

vi. The company shall, prior to the issuance of an Operating Permit, demonstrate which components of the hydrodesulfurization plant are in hydrogen service.

vii. Each valve, pump, pressure relief device, sampling connection system, open-ended valve or line, flange and/or other connector in VOC service is subject to Subpart GGG of the Standards of Performance for New Stationary Sources and shall comply with all applicable requirements of this subpart. 40 CFR 60.4 requires submission of copies of all requests, reports, applications, submittals and other communications to both the EPA and the Department. The EPA copies shall be forwarded to the Director, Air, Toxics and Radiation Division, U. S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103.

B. The following conditions apply to the modified diesel hydrodesulfurization unit:

i. The company shall limit the diesel hydrodesulfurization unit heater to a heat input of 27 mmBtu/hr, calculated as a 365-day rolling average.

ii. The company shall, prior to the issuance of an Operating Permit, demonstrate which components of the hydrodesulfurization plant is in hydrogen service.

C. The following conditions apply to the modified FCCU:

i. The company shall limit the amount of coke combusted in the FCCU regenerator to 42,554 pounds per hour, calculated as a 30-day rolling average.

ii. The company shall install, operate and maintain a wet gas scrubber to control the emissions of SO₂ and PM.

iii. The company shall continuously monitor the flow rate of the scrubbing liquid to the wet gas scrubber.

iv. The company shall maintain the pH of the scrubbing liquid between 6.0 and 8.0.

v. The company shall install, operate and maintain a continuous monitor for pH.

vi. Prior to the issuance of an Operating Permit, the company shall determine the operating range of the scrubbing liquid flow rate to the scrubber.

vii. The company shall install a rotameter, or equivalent as approved by the Department, to determine the flow rate to the wet gas scrubber.

viii. The company shall install, operate and maintain an enhanced SNCR system to control the emissions of NO_x.

ix. The company shall continuously monitor the amount of reagent flowing to the SNCR system.

x. The company shall install, operate and maintain the wet gas scrubber and SNCR systems in accordance with manufacturer's specifications as well as good air pollution control practices.

xi. The company shall conduct an initial stack test for PM, NO_x, SO₂ and CO. The company shall comply with Condition 4 of this Plan Approval, regarding stack testing requirements.

xii. The FCCU is subject to Subpart J of the Standards of Performance for New Stationary Sources and shall comply with all applicable requirements of this subpart. 40 CFR 60.4 requires submission of copies of all requests, reports, applications, submittals and other communications to both the EPA and the Department. The EPA copies shall be forwarded to the Director, Air, Toxics and Radiation Division, U. S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103.

xiii. The FCCU is subject to Subpart UUU of the National Emission Standards for Hazardous Air Pollutants for Refineries and shall comply with all applicable requirements of this subpart. The FCCU shall comply with Subpart UUU by April 11, 2005. 40 CFR 63.9 requires submission of copies of all requests, reports, applications, submittals and other communications to both the EPA and the Department. The EPA copies shall be forwarded to the Director, Air, Toxics and Radiation Division, U. S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103.

xiv. The company shall install, operate and maintain continuous emission monitors for NO_x, CO, SO₂, opacity and oxygen on the FCCU.

xv. In the event that the opacity cannot be monitored by a continuous emission monitor, the company shall submit an alternative monitoring plan for approval by the Department.

D. The following conditions apply to the new FCCU feed heater:

i. The company shall only combust refinery fuel gas and/or natural gas.

ii. The company shall limit the FCCU feed heater to 95 mmBtu/hr, or less, calculated as a 365-day rolling average.

iii. The company shall install, operate and maintain next generation ultra-low NO_x burners on the FCCU feed heater.

iv. The company shall operate and maintain the next generation ultra-low NO_x burners in accordance with manufacturer's specifications as well as good air pollution control practices.

v. The company shall limit the hydrogen sulfide in the refinery fuel gas combusted to 0.1 grain per dry standard cubic foot (0.1 gr/dscf), or less, calculated as a 3-hour rolling average.

vi. The company shall install, operate and maintain the new FCCU feed heater in accordance with manufacturer's specifications as well as good air pollution control practices.

vii. The company shall conduct an initial stack test for PM, NO_x, SO₂ and CO. The company shall comply with Condition 4 of this Plan Approval, regarding stack testing requirements.

viii. The new FCCU feed heater is subject to Subpart J of the Standards of Performance for New Stationary Sources and shall comply with all applicable requirements of this subpart. 40 CFR 60.4 requires submission of copies of all requests, reports, applications, submittals and other communications to both the EPA and the Department. The EPA copies shall be forwarded to the Director, Air, Toxics and Radiation Division, U. S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103.

ix. The new FCCU feed heater is subject to Subpart CC of the National Emission Standards for Hazardous Air Pollutants and shall comply with all applicable requirements of this subpart. 40 CFR 63.9 requires submission of copies of all requests, reports, applications, submittals and other communications to both the EPA and the Department. The EPA copies shall be forwarded to the Director, Air, Toxics and Radiation Division, U. S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103.

E. The following conditions apply to the 544 Vacuum Heater:

i. The company shall only combust refinery fuel gas and/or natural gas in the 544 Vacuum Heater.

ii. The company shall install, operate and maintain next generation ultra-low NO_x burners to control the emissions of NO_x from the 544 Vacuum Heater.

iii. The company shall limit the 544 Vacuum Heater to 160 mmBtu/hr, or less, calculated as a 365-day rolling average.

iv. The company shall install, operate and maintain the next generation ultra-low NO_x burners in accordance with manufacturer's specifications as well as good air pollution control practices.

v. The company shall conduct an initial stack test for NO_x, SO₂ and CO. The company shall comply with Condition 4 of this Plan Approval, regarding stack testing requirements.

2. Emission Limitations

A. The following air contaminant emission limits are approved for the FCCU:

i. NO_x: 654.5 tons per year calculated as a 12-month rolling sum.

ii. CO: 250 ppm_{dv} corrected to 0% oxygen, calculated as a 24-hour average, 150 ppm_{dv} corrected to 0% oxygen, calculated as a 365-day rolling average and 434.1 tons per year calculated as a 12-month rolling sum.

iii. VOCs: 8.1 tons per year calculated as a 12-month rolling sum.

iv. PM: 93.3 tons per year calculated as a 12-month rolling sum.

v. Ammonia (NH₃): 10 ppm_{dv} corrected to 0% oxygen.

vi. SO₂: 50 ppm_{dv} corrected to 0% oxygen, calculated as a 3-hour rolling average and 165.8 tons per year calculated as a 12-month rolling period.

vii. The company shall comply with 25 Pa. Code § 123.41, regarding visible emissions, and/or 40 CFR 60.102(a)(2), regarding the standard for PM, whichever is more stringent.

viii. The Department reserves the right to establish and impose more stringent limitations based on the results from stack testing and/or continuous monitoring.

B. The following air contaminant emission limits are approved for the FCCU feed heater:

i. NO_x: 0.03 lb/mmBtu, calculated as a 3-hour rolling average and 12.5 tons per year calculated as a 12-month rolling sum.

ii. CO: 36.8 tons per year calculated as a 12-month rolling sum.

iii. VOCs: 2.4 tons per year calculated as a 12-month rolling sum.

iv. PM: 3.3 tons per year calculated as a 12-month rolling sum.

C. The following air contaminant emission limits are approved for the diesel hydrodesulfurization unit:

i. NO_x: 50.7 tons per year calculated as a 12-month rolling sum.

ii. CO: 14.2 tons per year calculated as a 12-month rolling sum.

iii. VOCs: 3.4 tons per year calculated as a 12-month rolling sum.

iv. PM: 1.5 tons per year calculated as a 12-month rolling sum.

D. The company shall limit the emissions of SO₂ from the sulfur recovery unit to 0.036 pound of SO_x per pound of sulfur compounds, expressed as sulfur, in the feed gases. The company shall limit the increase in the emissions of SO₂ from the sulfur recovery unit to 10.3 tons per year, or less, calculated as a 12-month rolling average.

E. The following air contaminant emission limits are approved for the 544 Vacuum Heater:

i. NO_x: 0.06 lb/mmBtu, calculated as a 3-hour rolling average and 42.1 tons per year calculated as a 12-month rolling sum.

ii. CO: 84.1 tons per year calculated as a 12-month rolling sum.

iii. VOCs: 6.6 tons per year calculated as a 12-month rolling sum.

iv. PM: 9.1 tons per year calculated as a 12-month rolling sum.

3. Monitoring Requirements

A. The company shall install, operate and maintain a Department certified continuous monitor for hydrogen sulfide for all sources that are subject to 40 CFR Part 60, Subpart J. If the sources have a common refinery fuel gas supply, then only one continuous emission monitor for hydrogen sulfide shall be installed.

B. The continuous emission monitoring systems required by this Plan Approval must be approved by the Department. The continuous emission monitoring systems shall be installed, operated and maintained in accordance with 25 Pa. Code Chapter 139. Proposals containing the information as listed in Phase I section of the Department's Continuous Source Monitoring Manual for the continuous emission monitoring system must be submitted at least 3 months prior to the start-up of each source that is required to install continuous emission monitoring systems.

C. Testing as listed in the Phase II section of the Department's Continuous Source Monitoring Manual must be completed for the CEMs no later than 180 days after initial source start-up date and no later than 60

days after the source achieves normal process capacity.

D. The Final Report as listed in the Phase III section of the Department's Continuous Source Monitoring Manual must be submitted no later than 60 days after the completion of testing.

E. All of the continuous emission monitoring system installed to comply with the requirements of this Plan Approval shall be maintained and operated to achieve the following data availability requirements:

F. For NO_x (measured as NO₂), hydrogen sulfide, CO, opacity and oxygen continuous emission monitors, the company shall maintain a data availability standard of equal to or greater than 90% valid hours per calendar month or equal to or greater than 95% valid hours per calendar quarter. A valid hour is defined as an hour where the number of minutes with valid readings is equal to or greater than 45.

F. Continuous monitoring shall be conducted at the locations approved by the Department.

G. The continuous emission monitors shall be operated in a manner as to determine compliance with the applicable limits in Condition 2.

H. The company, on a daily basis, shall monitor the heating value of the refinery fuel gas using gas chromatography, calorimeter or another Department approved method. The company may apply to the Department to change the monitoring schedule based upon the results of the daily monitoring.

4. Testing Requirements

A. Within 60 days after achieving the maximum production rate at which the affected source will be operated, but not later than 180 days after the initial start-up of the source, the owner or operator shall conduct performance tests as per section 60.8 and 40 CFR Part 60, Subpart J and/or 25 Pa. Code Chapter 139. The company shall include in the stack test report all pertinent operational data for the source. Pertinent information shall include the amount of refinery fuel/natural gas combusted, the feed rate to the unit, amount of coke combusted, the temperature of the feeds to the reactors and all pertinent information relating to the control device (if applicable).

B. The company shall perform an initial stack test on the following units: FCCU, sulfur plant, FCCU feed heater and 544 Vacuum Heater.

C. At least 30 days prior to each test, the regional air quality manager shall be informed of the date and time of the test.

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

E. Within 60 days after each source test, two copies of the complete test report, including all operating conditions, shall be submitted to the regional air quality manager for approval. Test reports shall be complete and include all operating conditions.

5. Recordkeeping and Reporting Requirements

Sufficient data shall be recorded so that compliance with the conditions in the Plan Approval can be determined. Records shall be kept for a minimum of 5 years

and shall be made available to the Department upon request:

A. The company shall keep a copy of all stack tests that are required.

B. The company shall, on a monthly basis, keep a record of the emissions from the FCCU, the FCC heavy naphtha heater, FCCU feed heater, diesel hydrodesulfurization unit and sulfur recovery plant to demonstrate compliance with Condition 2.

C. The company shall keep a copy of the manufacturer's specifications for the units listed, certified continuous emission monitors and any other equipment associated with the hydrodesulfurization plant units listed.

D. The company shall keep a record of the components that are in hydrogen service.

E. The company shall, on a daily basis, keep a record of the heating value of the refinery fuel gas that is combusted.

Copies of the application, the Department's analysis and other documents used in the evaluation are available for public inspection between 8 a.m. and 4 p.m. To make an appointment, contact Records Management at (484) 250-5910.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.

48-309-123: Hercules Cement Co. (501 Center Street, Stockertown, PA 18083) for reactivation of the no. 1 stock-house railcar load-out system and the replacement/installation of the associated air cleaning device (fabric collector) at their facility in the Borough of Stockertown, **Northampton County**. The particulate emissions from the fabric collector will not exceed the Best Available Technology standard of 0.02 grain/dscf and will result in an annual particulate emission rate of 1.16 tons per year. The Plan Approval and Operating Permit will include emission restrictions, work practice standards and monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements. The facility currently has Title V Operating Permit 48-00005. 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.

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

36-05017A: Conestoga Wood Specialties Corp. (245 Reading Road, East Earl, PA 17519-0518) for construction of Spray Booth in East Earl Township, **Lancaster County**. This source has a potential to increase the facility VOC emissions by 6.4 tons per year. The facility's major sources of emissions include woodworking operations controlled by dust collectors and coating booths, which primarily emit VOCs. This Plan Approval will be incorporated into the facility's Title V Operating Permit 36-05017. The Title V operating permit will contain the facility VOC emission limit and monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

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

42-158I: Temple Inland Forest Products (Hutchins Road, Mt. Jewett, PA 16740) for the Mt. Jewett Complex in Sargeant Township, **McKean County**. This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V operating permit through an administrative amendment at a later date. The plan approval is for the issuance of a Plant Wide Applicability Limit (PAL) and Federally Enforceable Emission Cap (FEEC) and will incorporate conditions from existing Plan Approval 42-158H and allow for facility wide flexibility of operation. The permit will allow the facility to return to burning clean wood fuel in the existing dual fueled Westec Coen and Geka Coen burners. The facility had been burning only natural gas in these units for approximately the past 3 years. The permit will limit facility-wide emissions from all sources combined to be less than 233.77 tpy, 184.19 tpy, 126.90 tpy and 264.55 tpy for NOx, CO, VOC and PM PAL emission limits, respectively. In addition, the facility will limit NOx and VOC emissions limits to 171.14 tpy and 126.90 tpy, respectively, under the FEEC. The limits provide reduced emissions for all pollutants when compared to the total emissions under previous Plan Approval 42-158H. The Plan Approval contains conditions for testing to establish source specific emission factors, monitoring in accordance with the PAL and FEEC requirements to ensure the emission caps are not exceeded based on a 12-month rolling total and additional recordkeeping and reporting to keep the facility operating within the PAL and FEEC requirements. In addition, the plan approval contains conditions requiring deviation reports, work practice standards for the sources and control devices, preventative maintenance inspections and daily inspections of the sources and control devices to ensure compliance with all applicable air quality requirements.

OPERATING PERMITS

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

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

36-05014: Alumax Mill Products, Inc. (1480 Manheim Pike, Lancaster, PA 17604) for a Title V Operating Permit renewal to operate their secondary aluminum production facility in Manheim Township, **Lancaster County**. The facility is a major source of NOx and VOC emissions. The facility is subject to 40 CFR Part 63, Subpart RRR—National Emission Standards for Hazardous Air Pollutants; an aluminum coil coating system is subject to 40 CFR Part 60, Subpart TT—Standards of Performance for Metal Coil Surface Coating. The Title V Operating Permit will contain emission limits along with appropriate monitoring, recordkeeping and reporting requirements to ensure the facility operates in accordance with the applicable air quality regulations.

Intent to Issue Operating Permits under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

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

06-03090: Western Berks Refuse Authority (455 Poplar Neck Road, Birdsboro, PA 19508) for operation of a municipal solid waste landfill controlled by an enclosed ground flare in Cumru Township, **Berks County**. The landfill is not subject to Title V (State-only operating permit). The permit will include testing, monitoring, work practices, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

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); 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 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 an 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 district mining office indicated before an application 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, 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 NPDES permit requirements for a particular mining activity within the previously mentioned public comment period will be provided with a 30-day period to review and submit comments on the requirements.

Written comments or objections should contain the name, address and telephone number of the person submitting comments or objections; the 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; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor wishes to have the conference conducted in the locality of the proposed mining activities.

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

* The parameter is applicable at all times.

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

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

13940201R2. Rossi Excavating Company (9 West 15th Street, Hazleton, PA 18201), renewal of an existing coal refuse reprocessing operation in Banks Township, **Carbon County**, affecting 11.5 acres. Receiving stream: none. Application received July 21, 2004.

54773215R3. Jeddo-Highland Coal Company (46 Public Square, Suite 600, Wilkes-Barre, PA 18701), renewal of an existing coal refuse reprocessing operation in Reilly and Frailey Townships, **Schuylkill County**, affecting 46.4 acres. Receiving stream: none. Application received July 22, 2004.

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

30940701 and NPDES Permit No. PA0215465. Cobra Mining, LLC (P. O. Box 40, 178 Chess Mine Road, Dilliner, PA 15327), to transfer the permit for the Refuse Dump No. 4 in Monongahela Township, **Greene County** and related NPDES permit from Dunkard Mining Company. No additional discharges. Application received June 17, 2004.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

56890111 and NPDES Permit No. PA0598577. Duppsstadt Coal (2835 Stutzman Road, Somerset, PA 15501), SMP transfer to Ritchie Trucking and Excavating, Inc. (19709 Winner View Terrace, Frostburg, MD) in Elk Lick Township, **Somerset County**, affecting 66.3 acres. Receiving streams: Tub Mill Run, unnamed tributaries to Tub Mill Run, unnamed tributaries to Casselman River and Casselman River (CWF and WWF). There are no potable water supply intakes within 10 miles downstream. Application received July 21, 2004.

56990102 and NPDES Permit No. PA0235105. Duppsstadt Coal (2835 Stutzman Road, Somerset, PA 15501), SMP transfer to Ritchie Trucking and Excavating,

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:

Inc. (19709 Winner View Terrace, Frostburg, MD) in Elk Lick Township, **Somerset County**, affecting 87.8 acres. Receiving streams: Tub Mill Run, unnamed tributaries to Tub Mill Run, unnamed tributaries to Casselman River and Casselman River (CWF and WWF). There are no potable water supply intakes within 10 miles downstream. Application received July 21, 2004.

56763114 and NPDES Permit No. PA0608238. Svonavec, Inc. (150 West Union Street, Suite 201, Somerset, PA 15501), surface mining permit renewal in Milford Township, **Somerset County**, affecting 96.8 acres. Receiving streams: unnamed tributaries to South Glade Creek and South Glade Creek (WWF). There are no potable water supply intakes within 10 miles downstream. Application received July 9, 2004.

56940105 and NPDES Permit No. PA0212890. Action Mining, Inc. (1117 Shaw Mines Road, Meyersdale, PA 15552), surface mining permit renewal in Elk Lick and Summit Townships, **Somerset County**, affecting 108 acres. Receiving streams: unnamed tributaries to and Casselman River (CWF and WWF). There are no potable water supply intakes within 10 miles downstream. Application received July 14, 2004.

Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.

03010103 and NPDES Permit No. PA0202991. Rosebud Mining Company (301 Market Street, Kittanning, PA 16201), application received for transfer of permit currently issued to Marquise Mining Corporation for continued operation and reclamation of a bituminous surface mining site in Kiskiminetas Township, **Armstrong County** and Conemaugh Township, **Indiana County**, affecting 145.6 acres. Receiving streams: unnamed tributary to Long Run and Sulphur Run to Kiski River, unnamed tributaries to and Kiskiminetas River (CWF and WWF). The first downstream potable water supply intake from the point of discharge is the Avonmore Municipal Authority. Transfer application received July 14, 2004.

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 of 0.5 ml/l applied to surface runoff resulting from a precipitation 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.

40040301. Airport Sand & Gravel Co., Inc. (500 Swetland Lane, West Wyoming, PA 18644), commencement, operation and restoration of a quarry operation in Duryea Borough, **Luzerne County**, affecting 75.0 acres. Receiving stream: none. Application received July 23, 2004.

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, Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit comments, suggestions or objections within 30 days of the date of this notice, as well as questions, to the regional office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Individuals will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on each working day at the regional office noted before the application.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users should 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 FWPCA (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

E46-962. Abington School District, 970 Highland Avenue, Abington, PA 19001, Abington Township, **Montgomery County**, ACOE Philadelphia District.

To perform the following activities associated with the demolition and construction of the Roslyn Elementary School:

1. To construct and maintain three outfall structures with tide flex check valves along tributary no. 1 to Sandy Run (TSF).
2. To grade and place fill in the portions of the 100 year floodplain of tributary no. 1 to Sandy Run associated with parking lots and athletic fields.

The site is at the intersection of Susquehanna Road (SR 2017) and Johnston Avenue (Amber, PA USGS Quadrangle N: 0.2 inch; W: 2.1 inches) in Abington Township, Montgomery County.

E46-963. Cheltenham Township, 8230 Old York Road, Cheltenham, PA 19027, Cheltenham Township, **Montgomery County**, ACOE Philadelphia District.

To perform the following activities associated with the existing walking trail in Tookany Creek Park:

1. To rehabilitate and widen an existing pedestrian bridge across the Tacony Creek (also known as Tookany Creek) just downstream of the confluence with Jenkintown Creek.
2. To construct and maintain a 6-foot wide by 70-foot long pedestrian bridge across the Jenkintown Creek upstream from the Jenkintown Creek confluence with Tacony Creek.
3. To construct and maintain a 6-foot wide by 57-foot long pedestrian bridge across the Tacony Branch no. 1, upstream from its confluence with the Tacony Creek.

The park is between Central Avenue and Jenkintown Road (Frankford, PA USGS Quadrangle N: 11.5 inches; W: 13.75 inches).

E15-723. Upper Uwchlan Township, Sunoco Pipeline, 525 Fritztown Road, Reading, PA 19608, **Chester County**, ACOE Philadelphia District.

The Marsh Creek Pipeline Maintenance Project proposes to excavate and replace up to a 500-foot segment of an existing deteriorated Sunoco Steel pipeline, which traverse an unnamed tributary to Marsh Creek (HQ-TSF) and adjacent wetland (PEM-EV). The work will involve construction of a temporary road crossing, excavation of a trench and backfilling of approximately 278 cubic yards of wetland soils. The project will temporarily impact up to 10 linear feet of stream and a maximum of 0.12 acre of the wetland associated with the pipe replacement. The project lies about 500 feet northeast of the Marsh Creek Area and is situated approximately 710 feet northwest of

the intersection of Park and Moore Roads in Upper Uwchlan Township, Chester County (Downing-town, PA Quadrangle N: 13.66 inches; W: 10.91 inches).

E15-724. Department of Transportation, 7000 Geerdes Blvd., King of Prussia, PA 19406, West Pikeland Township, **Chester County**, ACOE Philadelphia District.

To replace the existing Yellow Springs Road Bridge (SR 1024) and to construct and maintain, at the same location, a 49.5-foot long by 32-foot wide by 7.33-foot high bridge across Pickering Creek (HQ-TSF). The site is approximately 300 feet southeast of the intersection of Art School Road and Yellow Springs Road (Malvern, PA USGS Map N: 17.5 inches; W: 14.5 inches).

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

E45-470. Nyles J. Possinger, 256 Rimrock Road, Stroudsburg, PA 18360 in Hamilton Township, **Monroe County**, U. S. Army Corps of Engineers, Philadelphia District.

To place fill in approximately 0.2 acre of PFO wetlands and in the floodway of a tributary to Pocono Creek (HQ-CWF) for the purpose of constructing a road to access a 43-acre property. The project is on the east side of SR 3023 (Rimrock Road), approximately 0.2 mile south of SR 0080 (Mt. Pocono, PA Quadrangle N: 0.1 inch; W: 4.2 inches).

E45-469. Arrowhead Lake Community Association, HC 88, Pocono Lake, PA 18347 in Coolbaugh Township, **Monroe County**, U. S. Army Corps of Engineers, Philadelphia District.

To remove the existing structures and to construct and maintain an open-bottom concrete arch culvert having a span of 24.0 feet and an underclearance of approximately 8.0 feet in Trout Creek (HQ-CWF) and a de minimis area of adjacent PFO wetlands. The project is along Awassa Drive in Arrowhead Lake Residential Community (Thornhurst, PA Quadrangle N: 5.7 inches; W: 7.6 inches).

E52-198. Department of Conservation and Natural Resources, P. O. Box 8451, Harrisburg, PA 17105-8451 in Porter Township, **Pike County**, U. S. Army Corps of Engineers, Philadelphia District.

To modify and maintain an existing bridge (known as Bridge 19-0002) across Middle Branch (HQ-CWF) with work consisting of replacing the superstructure utilizing concrete spread box beams on the existing stone masonry abutments and placing rock protection along the abutments. The bridge has a clear span of approximately 21.8 feet and an underclearance of approximately 5.0 feet. The project includes a temporary road crossing to be immediately downstream of the bridge. The total length of channel impact is approximately 60 feet, including temporary measures. The project is along Hay Road in Forest District 19, Delaware State Forest (Twelvemile Pond, PA Quadrangle N: 19.6 inches; W: 14.9 inches).

E40-638. Harry V. Cardoni, 340 Market Street, Kingston, PA 18704 in Harveys Lake Borough, **Luzerne County**, U. S. Army Corps of Engineers, Baltimore District.

To remove the existing structure and to construct and maintain a pile-supported dock/boathouse, having an area of 2,790 square feet, on Harveys Lake (HQ-CWF). The project will extend approximately 50 feet from the shoreline, with an overall width of approximately 62 feet. The applicant proposes to place fine gravel over approximately 1,845 square feet of the lake bottom in shallow water as

mitigation for the net increase in structure area above shallow water and over approximately 300 square feet of lakebed in deep water for swimming purposes. The project is at Pole No. 260 (Harveys Lake, PA Quadrangle N: 19.0 inches; W: 5.9 inches).

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

E67-766. J. G. Leasing, Co., Inc., 2780 York Haven Road, York, Haven, PA 17370 in Manchester Township, **York County**, ACOE Baltimore District.

To construct and maintain a 15-inch pipe culvert which will cross a wetland associated with an unnamed tributary to Conewago Creek (TSF). The roadway will impact 0.10 acre of palustrine emergent wetlands which will require mitigation (Dover, PA Quadrangle N: 4.8 inches; W: 2.5 inches) in Manchester Township, York County.

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

E08-414. Calvin C. Cole, Inc., 809 North Elmira Street, Sayre, PA 18840. Athens Township, **Bradford County**, U. S. Army Corps of Engineers, Baltimore District (Sayre, PA 7.5 feet Quadrangle N: 8.7 inches; W: 3.8 inches).

To place and maintain fill in 2.616 acres of a palustrine emergent wetland system and to place and maintain fill in 0.437 acre of an open water system for the purpose of consolidating business and administrative operations. Replacement wetlands are proposed. The site is approximately 0.2 mile south of the SR 220 and T-811 (Macaffe Road) intersection on the west side of SR 220.

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

E03-425. West Penn Power d/b/a Allegheny Power, 800 Cabin Hill Drive, Greensburg, PA 15601-9442. Kittanning Substation in Manor North Township, **Armstrong County**, Pittsburgh ACOE District (Kittanning, PA Quadrangle N: 8.0 inches; W: 2.4 inches—Latitude: 40° 47' 37" and Longitude: 79° 31' 03"). The applicant proposes to remove bays and a concrete platform that span Garretts Run (WWF) and to remove, replace, install and maintain numerous electrical facilities along Garretts Run including transformers, breakers and arresters. The project is at the Kittanning Substation along the west side of Old Route 66.

E65-852. South Gate Plaza, L. P., 420 Jamie Drive, Belle Vernon, PA 15012. Sheet South Gate Plaza stream relocation in Rostraver Township, **Westmoreland County**, Pittsburgh ACOE District (Donora, PA Quadrangle N: 11.1 inches; W: 9.5 inches—Latitude: 40° 11' 9" and Longitude: 79° 49' 5"). The applicant proposes to construct a Sheetz Food Mart and fuel dispensing facility, also to relocate and maintain approximately 600 linear feet of the channel of an unnamed tributary to Pollock Run (WWF) by constructing a stream enclosure 170 feet long, 5 feet in diameter and 320 linear feet of channel in the stream starting from the outlet of the proposed structure. The project is off the intersection of SR 51 and Fellsburg Road.

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

E10-393. John Volkar and Matthew Volkar, 454 Mower Drive, Apt. A, Pittsburgh, PA 15239. Bridge over Glade Run in Adams Township, **Butler County**, ACOE Pittsburgh District (Valencia, PA Quadrangle N: 14.65 inches; W: 15.9 inches).

The applicant proposes to construct and maintain a single span prestressed concrete box beam bridge having a clear span of 35 feet and an underclearance of 3.85 feet across Glade Run (WWF, perennial) approximately 1,000 feet northwest of the intersection of Huch and Three Degree Roads. The project is in support of two single family residences and includes a direct impact of 0.23 acre of PEM wetland for driveway construction. The application is for an after-the-fact permit. A portion of the driveway (with wetland impacts) has already been constructed. The project proposes to directly affect 0.23 acre of PEM wetlands and approximately 30 feet of stream.

E62-401, Sugar Grove Area Sewage Authority. Sugar Grove sewer pipeline in Sugar Grove Borough and Sugar Grove Township, **Warren County**, ACOE Pittsburgh District (Sugar Grove, PA-NY Quadrangle N: 18.3 inches; W: 14.9 inches).

The applicant proposes to construct and maintain a wastewater treatment plant and conveyance systems within the Borough of Sugar Grove and Sugar Grove Township. The project includes installing lines having diameters of 1.5 inches, 2 inches, 2.5 inches, 3 inches, 4 inches, 6 inches, 8 inches and 10 inches (65,000 lineal feet of gravity sewer line and 80,000 lineal feet of pressure sewer line) involving: (1) construct and maintain a 10-inch diameter PVC plastic sewage treatment plant effluent outfall pipe discharging to Stillwater Creek; (2) temporarily affect 0.507 acre of nonexceptional value wetland and 0.207 acre exceptional value wetland with 23 crossings by sewer lines; and (3) to temporarily affect

Stillwater Creek (CWF), unnamed tributaries to Stillwater Creek (CWF), Jackson Run (CWF) and unnamed tributaries to Jackson Run with 43 crossings by sewer lines. The project proposes to temporarily impact approximately 860 linear feet of stream and 0.507 acre of nonexceptional value wetland and 0.207 acre exceptional value wetland.

ENVIRONMENTAL ASSESSMENTS

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

EA43-06-004, Whittaker Corporation, 1955 N. Surveyor Ave., Simi Valley, CA. Mercer Alloys (Whittaker) Site remediation in Pymatuning Township, **Mercer County**, ACOE Pittsburgh District (Sharpsville, PA Quadrangle N: 19.8 inches; W: 3.7 inches).

Restoration plan provided under section 105.12(a)(16) for the remediation of the Mercer Alloys (Whittaker) Site at the Reynolds Industrial Park. Restoration includes the removal of radioactive slag and slag-like material from the floodway of the Shenango River based on onsite characterization and hand removal of chunks of radioactive slag from wetlands in the floodway of the Shenango River based on onsite characterization. The site is a waste and slag storage area regulated under United States Nuclear Regulatory Commission Source Material License No. SMA-1018 for the possession of source material and the performance of specified surveillance, maintenance and control activities in support of decontamination and decommissioning.

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 (NOI) for coverage under general permits. 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 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 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. 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 should 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 of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. NPDES Renewal Permit Actions

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

<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>
PA0062618 Renewal	City of Bethlehem City Administration Building 10 East Church Street Bethlehem, PA 18018-6025	Lehigh Township Northampton Country	Unnamed tributary to Indian Creek 02C	Y

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

<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>
PA0081035 Sewage	Paul Miller Oakwood Heights Mobile Home Park 17880 Barrens Road North Stewartstown, PA 17363	York County Hopewell Township	UNT Deer Creek 7I	Y
PA0087947 Sewage	Amy Ellis Columbia Gas Transmission Corp. 1700 MacCorkel Avenue SE Charlestown, WV 25314-1273	Adams County Straban Township	Beaverdam Creek 7F	Y
PAS104507-R	Edge Wood Estates, Inc.	Brown Township Mifflin County	Tea Creek HQ-CWF	Y

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

<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>
PA0025798 Sewage	Centerville Borough Sanitary Authority P. O. Box 332 Richeyville, PA 15358	Washington County Centerville Borough	Pike Run	Y
PA0031984 Sewage	Department of Conservation and Natural Resources Bureau of State Parks Raccoon Creek State Park 300 SR 18 Hookstown, PA 15050	Beaver County Hanover Township	Traverse Creek	Y
PA0032271 Sewage	Bureau of State Parks Keystone State Park R. R. 2, Box 101 Derry, PA 15627-9617	Westmoreland County Derry Township	McCune Run	Y
PA0096229 Sewage	Marianna-West Bethlehem Jt. Sew. Auth. P. O. Box 428 Marianna, PA 15345	Washington County West Bethlehem Township	Ten Mile Creek	Y
PA0096318 Sewage	Municipal Authority of the Township of Robinson P. O. Box 15539 Pittsburgh, PA 15244-0539	Allegheny County Robinson Township	Tributary of Moon Run	Y
PA0098817 Sewage	Hickory Acres 669 Nelson Road F Farmington, PA 15437	Fayette County Wharton Township	UNT of Meadow Run	Y

<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>
PA0110302 Sewage	Johnstown Industrial Development Corp. 111 Market Street Johnstown, PA 15901	Somerset County Quemahoning Township	Quemahoning Creek	Y
PA0216437 Sewage	William L. Kovach 1027 South 88 Road Greensboro, PA 15338	Greene County Dunkard Township	Meadow Run	Y
PA0216984 Sewage	Shannock Valley General Services Auth. P. O. Box 168 111 South Center Street NuMine, PA 16244-0168	Armstrong County Cowanshannock Township	Cowanshannock Creek	Y
PA0218111 Sewage	Conemaugh Township Supervisors 1120 Tire Hill Road Johnstown, PA 15905-7707	Somerset County Conemaugh Township	Stony Creek	Y
<i>Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.</i>				
<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>
PA0222887	Gateway Lodge Box 125, Route 36 Cooksburg, PA 16217	Barnett Township Jefferson County	Unnamed tributary to Clarion River 17-B	Y
PA0222712	Borough of Sykesville 21 East Main Street Sykesville, PA 15865	Henderson Township Jefferson County	Stump Creek 17-D	Y
PA0036064	Washington Township Sewer Authority Angling Road Sewage Treatment Plant 11800 Edinboro Road Edinboro, PA 16412	Washington Township Erie County	Unnamed tributary to Edinboro Lake (Whipple Creek) 16-A	Y
PA0222593	William C. Hickman Building 104 Atlantic Avenue Elizabeth, PA 13037	North East Township Erie County	Unnamed tributary to Sixteen Mile Creek 15	Y

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

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

NPDES Permit No. PA0028720, Sewage, **John Rinehart, Reading Regional Airport Authority**, 2501 Bernville Road, Reading, PA 19605. This proposed facility is in Bern Township, **Berks County**.

Description of Proposed Action/Activity: Authorization to discharge to Schuylkill River in Watershed 3-C.

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

NPDES Permit No. PA0252689, Sewage, **C. Harper Ford**, P. O. Box 748, Belle Vernon, PA 15012. This proposed facility is in Rostraver Township, **Westmoreland County**.

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

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

WQM Permit No. 4804403, Sewerage, **Palmer Township Municipal Sewer Authority**, 3 Weller Place, P. O. Box 3039, Palmer, PA 18043-3039. This proposed facility is in Palmer Township, **Northampton County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit.

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

WQM Permit No. 0604401, Sewerage, **John Rinehart, Reading Regional Airport Authority**, 2501 Bernville Road, Reading, PA 19605. This proposed facility is in Bern Township, **Berks County**.

Description of Proposed Action/Activity: Authorization for wastewater treatment plant expansion.

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

WQM Permit No. 0303404, Sewerage, **Mahoning Township**, R. D. 1, Box 110, New Bethlehem, PA 16242. This proposed facility is in Mahoning Township, **Armstrong County**.

Description of Proposed Action/Activity: Construction of treatment plant, pump stations and sewers to serve the Village of Distant. The Pennsylvania Infrastructure Investment Authority, which administers the Commonwealth's State Revolving Fund, has been identified as the funding source. The Department's review of the sewage facilities plan revision has not identified any significant environmental impacts resulting from this proposal.

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

WQM Permit No. 510652, Sewerage, **Christine A. Shupenko**, 25674 Capp Road, Edinboro, PA 16412. This proposed facility is in Venango Township, **Crawford County**.

Description of Proposed Action/Activity: Sewage discharge for a single residence.

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

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI010903007	Heritage Building Group, Inc. Fox Field Estates Development 3326 Old York Road, Suite A100 Furlong, PA 18925	Bucks	Milford Township	Barrell Run HQ-TSF
PAI2011503021	The Harlan Corporation The Hendrick Property 214 Pond View Drive Chadds Ford, PA 19317	Chester	West Pikeland Township	Pigeon Run HQ

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

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023904023	Buckeye Pipe Line Company, LP P. O. Box 368 5002 Buckeye Road Emmaus, PA 18049	Lehigh	Lower Macungie and Upper Milford Townships	Little Lehigh Creek HQ-CWF
PAI024504017	Sevenson Environmental Services, Inc. 2749 Lockport Rd. Niagara Falls, NY 14305-2229	Monroe	Coolbaugh Township	Tobyhanna Creek HQ-CWF
PAI024504001	David Quarsimo Route 209 Brodheads ville, PA 18322	Monroe	Chestnuthill Township	McMichael 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>
PAS10F107	Woods at Sand Ridge Phase IV—Minor Modification Tom McGeoy, North-Lands, Inc. PMB 233 416 River Ave. Williamsport, PA 17701	Centre	Marion and Walker Townships	East Branch, Lick Run HQ-CWF

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

Westmoreland County Conservation District: Center for Conservation Education, 211 Donohoe Road, Greensburg, PA 15601, (724) 837-5271.

<i>NPDES Permit No.</i>	<i>Applicant Name and Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI056503001	Manor Development Group II 109 Gateway Avenue, Suite 202 Wexford, PA 15090	Westmoreland	Municipality of Murrysville	Unnamed tributary to Steele Run HQ-CWF

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>
PAI062404001	MiCale Construction Services, Inc. MiCale Subdivision 416 Main Street Kersey, PA 15846	Elk	Fox Township	UNT Byrnes Run EV

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>
PAI084204001	DL Resources, Inc. 1066 Hoover Road Smicksburg, PA 16256	McKean	Hamilton Township	Markham Run HQ-CWF

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Single Residence Sewage Treatment Plants
PAG-5	General Permit for Discharges from Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
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	CAFOs
PAG-13	Stormwater Discharges from 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>
Hilltown Township Bucks County	PAG2000903002	Telegraph Investment Company Pond View Estates 235 North Sycamore Street Newtown, PA 18940	Unnamed tributary East Branch Perkiomen Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Hilltown Township Bucks County	PAG2000904103	Eric Thrush Aichele Tract 115 County Side Lane Telford, PA 18696-1857	Unnamed tributary East Branch Perkiomen Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Warrington Township Bucks County	PAG2000904012	Easton Road Retail, LP Retail and Restaurant at Warrington 4427 Spruce Street Philadelphia, PA 19104	Tributary Little Neshaminy Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

NOTICES

4497

<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>
Newtown Borough Bucks County	PAG2000903146	Cologne Associates, LP Phillips Court 10 North State Street Newtown, PA 18940	Newtown Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Warrington Township Bucks County	PAG2000903117	WVS Associates, LP Valley Square 232 North 22nd Street Philadelphia, PA 19102	Little Neshaminy Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
East Rockhill Township Bucks County	PAG2000904123	Bucks County Community College BCC College Parking Lot Expansion 275 Swamp Road Newtown, PA 18940	East Branch Perkiomen Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Warrington Township Bucks County	PAG2000903158	The Cutler Group, Inc. The Estates at Warrington Ridge 5 Sentry Park West Suite 100 Blue Bell, PA 19422	Unnamed tributary Neshaminy Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Sellersville Borough Bucks County	PAG2000904035	North Penn Polishing and Plating, Inc. 40 West Park Avenue P. O. Box 305 Sellersville, PA 18960	East Branch Perkiomen Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Rockhill Township Bucks County	PAG2000904015	East Coast Hoist, Inc. 146 Keystone Drive Telford, PA 18965	Mill and Perkiomen Creeks TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Buckingham Township Bucks County	PAG2000903187	TB Enterprises, LLC Campbell Tract 1005 Floral Vale Blvd. Yardley, PA 19087	Tributary to Mill Creek CWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Warrington Township Bucks County	PAG2000904137	Sal Paone Builder Grauer Tract 1120 North Bethlehem Pike Springhouse, PA 19477	Little Neshaminy Creek MF, WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
South Abington Township Lackawanna County	PAG2003504023	Ed Baldoni 806 Layton Rd. Clarks Summit, PA 18411	Leggetts Creek TSF	Lackawanna County Conservation District (570) 281-9495
Clarks Summit Borough Lackawanna County	PAG2003504024	Richard Feibus 1000 Greenbriar Drive Clarks Summit, PA 18411	Tributary to Leggetts Creek CWF	Lackawanna County Conservation District (570) 281-9495
Allen Township Northampton Borough Northampton County	PAG2004804017	J.B. Reilly Traditions of America, LLC 1 Saucon View Drive Bethlehem, PA 18017	Catasauqua Creek CWF	Northampton County Conservation District (610) 746-1971
City of Easton Northampton County	PAG2004803045	Director of Corrections County of Northampton 669 Washington St. Easton, PA 18042	Lehigh River WWF	Northampton County Conservation District (610) 746-1971
Jackson Township Lebanon County	PAG2003804007	Landis W. and Edna G. Weaver 336 Brethren Church Road Leola, PA 17540	Little Swatara Creek WWF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908

<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>
Clearfield County City of DuBois	PAG2001704010	Carney Cataldo 10040 Tyler Rd. Penfield, PA 15849	Beaver Run CWF	Clearfield County Conservation District 650 Leonard St. Clearfield, PA 16830 (814) 765-2629
Allegheny County City of Pittsburgh	PAR10A510-1	William J. Rogers 407 West 8th Avenue West Homestead, PA 15120	Unnamed tributary to Monongahela River	Allegheny County Conservation District (412) 241-7645
Allegheny County City of Pittsburgh	PAR10A520-2	Port Authority of Allegheny County 345 Sixth Avenue Pittsburgh, PA 15222 Bruce & Merrilees Electric Company 930 Cass Street New Castle, PA 16101	Chartiers Creek WWF Campbells Run WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Plum Borough	PAG2000203083-1	Meritage Group 772 Pine Valley Drive Pittsburgh, PA 15239	Pierson Run TSF	Allegheny County Conservation District (412) 241-7645
Allegheny County Mount Lebanon	PAG2000204005	Kossman Development Company 11 Parkway Center Pittsburgh, PA 15220	Painters Run WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Baldwin Borough	PAG2000204014	William Tomko 2559 Route 88 Finleyville, PA 15332	Streets Run WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Jefferson Hills Borough	PAG2000204049	MB2K Development P. O. Box 18671 Pittsburgh, PA 15236	Unnamed tributary to Beams Run TSF	Allegheny County Conservation District (412) 241-7645
Allegheny County White Oak Borough	PAG2000204053	First Christian Church Ripple Road White Oak, PA 15132	Long Run TSF	Allegheny County Conservation District (412) 241-7645
Allegheny County Franklin Park Borough	PAG2000204054	YMCA of Pittsburgh 330 Blvd. of the Allies Pittsburgh, PA 15222-1980	Pine Creek CWF	Allegheny County Conservation District (412) 241-7645
Allegheny County Monroeville	PAG2000204056	Wal-Mart Stores, Inc. 2001 SE 10th Street Bentonville, AR 72716	Thompson Run WWF	Allegheny County Conservation District (412) 241-7645
Allegheny County City of Pittsburgh Wilkinsburg Borough	PAG2000204057	Covenant Church of Pittsburgh 1111 Wood Street Pittsburgh, PA 15221	Nine Mile Run TSF	Allegheny County Conservation District (412) 241-7645
Allegheny County Collier Township	PAG2000204070	Chartiers Valley School District 2030 Swallow Hill Road Pittsburgh, PA 15220	Chartiers Creek WWF	Allegheny County Conservation District (412) 241-7645
Armstrong County Rayburn and Boggs Townships	PAG2000304005	Allegheny Valley Land Trust P. O. Box 777 Kittanning, PA 16201	Allegheny River WWF	Armstrong County Conservation District (724) 548-3425
Washington County Peters Township	PAG2006304021	South Hills Bible Chapel 300 Gallery Drive McMurray, PA 15317	Brush Run WWF	Washington County Conservation District (724) 228-6774
Washington County Peters Township	PAG2006304022	Peters Township 610 East McMurray Rd. McMurray, PA 15317	Brush Run WWF	Washington County Conservation District (724) 228-6774
Jefferson County Punxsutawney Borough	PAG2003304001	University Acquisitions, Inc. Student Housing—Indiana University of PA S. Trevor Hadley Union Building 319 Pratt Drive Indiana, PA 157001	UNT to Saw Mill Run CWF	Jefferson County Conservation District (814) 849-7463

NOTICES

4499

<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>
Jefferson County Washington Township	PAG2003304002	Glenn O. Hawbaker, Inc. DuBois Jefferson County Airport Interchange Waste Area 1952 Waddle Road State College, PA 16803	Horm Run CWF	Jefferson County Conservation District (814) 849-7463
Mercer County City of Hermitage	PAG2004304005	Cedarwood Development, Inc. Hermitage Crossing 1765 Merriman Road Akron, OH 44313	Pine Hollow 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>
Washington County Chartiers Township	PAR116112	Joy Technologies Inc. Thorn Hill Industrial Park 177 Thorn Hill Road Warrendale, PA 15086	Chartiers Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Westmoreland County East Huntingdon Township	PAR116127	ABB Inc. 100 Distribution Circle Mount Pleasant, PA 15666	Tributary to Buffalo Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Westmoreland County South Greensburg Borough	PAR206102	Moore & Morford Inc. P. O. Box 759 Broad Street Greensburg, PA 15601-0759	Jacks Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Washington County Chartiers Township	PAR206115	Industrial Gasket & Shim Co. 200 Country Club Road P. O. Box 368 Meadowlands, PA 15347	UNT to Chartiers Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Beaver County Monaca	PAR216141	Newell Company 29 East Stephenson Street Freeport IL 61032	Ohio River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Armstrong County Rayburn Township	PAR606144	Rupp's Auto Wrecking R. R. 6 Kittanning, PA 16201	UNT to Allegheny River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

<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>
Westmoreland County New Kensington	PAR606193	Rex Lucchetti Auto Parts 2460 Constitution Blvd. New Kensington, PA 15068	Allegheny River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Allegheny County Elizabeth Township	PAR706125	Yurechko Auto 830 Golfview Drive McKeesport, PA 15135	Youghiogheny River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Allegheny County Bethel Park Borough	PAR806118	Laidlaw Transit Services Inc. 4780 Library Road Bethel Park, PA 15102-2918	Saw Mill Run Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Allegheny County Braddock Borough	PAR806127	S H Bell Company 644 Alpha Drive P. O. Box 11495 Pittsburgh, PA 15238-3190	Monongahela River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Beaver County Ohioville Borough	PAR806233	S H Bell Company 644 Alpha Drive P. O. Box 11495 Pittsburgh, PA 15238-3190	Ohio River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
<i>General Permit Type—PAG-4</i>				
<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>
Lancaster County Conoy Township	PAG043503	John Augustine P. O. Box 111 2447 River Road Bainbridge, PA 17502	Stony Run (WWF) to Susquehanna River	SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
West Salem Township Mercer County	PAG048596	Steven J. Higgins, Jr. 199 Coal Hill Road Greenville, PA 16125	Unnamed tributary of Big Run	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Venango Township Crawford County	PAG048633	Christine A. Shupenko 25674 Capp Road Edinboro, PA 16412	Boles Run	NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

Permit Type—PAG-5

<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>
Lancaster County Mountville Borough	PAG053580	HyWay Inc. 534 Kansas Avenue Suite 1200 Topeka, KS 66603	West Branch Little Conestoga Creek TSF	SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Former Shawville Grocery and Gas 18792 Shawville Croft Highway Shawville, PA 16873 Goshen Township Clearfield County	PAG054833	David and Sarah Amon 470 Trout Run Road Shawville, PA 16873	West Branch of the Susquehanna River (Stream Code 18668)	Northcentral Regional Office 208 West Third Street, Suite 101 Williamsport, PA 17701-6448

PUBLIC WATER SUPPLY (PWS) PERMITS

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P.S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should 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 of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

SAFE DRINKING WATER

Actions taken under the Pennsylvania Safe Drinking Water Act.

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

Permit No. 3604504, Public Water Supply.

Applicant	Fairmount Homes Inc
Municipality	West Earl Township
County	Lancaster
Type of Facility	The addition of well no. 4 to augment the existing sources of supply. Also will add new treatment to the existing treatment system that will consist of pH adjustment using caustic soda and polyphosphate addition for sequestering manganese and corrosion control.
Consulting Engineer	David J. Gettle Kohl Bros., Inc. P. O. Box 350 Myerstown, PA 17067
Permit to Construct Issued	July 9, 2004

Permit No. 5003502 , Public Water Supply.	
Applicant	Roberts Investment Group LLC
Municipality	Centre Township
County	Perry
Type of Facility	Installation of iron and manganese treatment system.
Consulting Engineer	James A. Cieri Sr., P. E. Act One Consultants Inc. 2656 Walnut Street Harrisburg, PA 17103
Permit to Construct Issued	July 6, 2004
Permit No. 0603514 , Public Water Supply.	
Applicant	Pennsylvania American Water Company
Municipality	Amity Township
County	Berks
Type of Facility	Addition of Rosecliff Pointe Well Facility to the Douglasville Water System.
Consulting Engineer	Michael J. Daschbach, P. E. Entech Engineering Inc. 4 South Fourth Street Reading, PA 19603

Permit to Construct Issued July 26, 2004

Permit No. 3603511, Public Water Supply.

Applicant **Getty Petroleum Marketing Inc.**

Municipality Leacock Township

County **Lancaster**

Type of Facility Installation of granular activated carbon to treat for TCE in the groundwater source.

Consulting Engineer N. Dennis Eryou, P. E.
Eryou Engineering
Nine Lady Janes Way
Northport, NY 11768

Permit to Construct Issued July 8, 2004

Permit No. 3602516, Public Water Supply.

Applicant **Borough of Lititz**

Municipality Lititz Borough

County **Lancaster**

Type of Facility Addition of two 1 mg storage tanks, a new wastewater holding tank, new filters and building, new pump station and related piping and upgrading existing filters.

Consulting Engineer David T. Lewis, P. E.
ARRO Consulting Inc.
270 Granite Run Drive
Lancaster, PA 17601

Permit to Construct Issued March 17, 2003

Permit No. 2204505 MA, Minor Amendment, Public Water Supply.

Applicant **United Water Pennsylvania**

Municipality Susquehanna Township

County **Dauphin**

Type of Facility Construction of a pretreatment caustic soda injection.

Consulting Engineer John Hollenbach, P. E.
4211 East Park Circle
Harrisburg, PA 17111-0151

Permit to Construct Issued July 27, 2004

Permit No. 3104501, Public Water Supply.

Applicant **Trough Creek State Park Youth Forestry Camp No. 3**

Municipality Todd Township

County **Huntingdon**

Type of Facility Construction of a 22,000-gallon finished water storage tank with an in-line booster pump.

Consulting Engineer Dennis K. Hosler, P. E.
Department of Public Welfare
1401 N. 7th Street
P. O. Box 2675
Harrisburg, PA 17105

Permit to Construct Issued July 21, 2004

Permit No. 6704506, Public Water Supply.

Applicant **PADE—PA Auto Dealers Exchange**

Municipality Conewago Township

County **York**

Type of Facility Installation of nitrate treatment utilizing reverse osmosis.

Consulting Engineer Edward M. Lesny, P. E.
Hydro-Geo Services, Inc.
1542 Bridge St.
New Cumberland, PA 17070

Permit to Construct Issued July 30, 2004

Permit No. 3603513, Public Water Supply.

Applicant **Ridgewood Manor Inc.**

Municipality Rapho Township

County **Lancaster**

Type of Facility Proposal is for a new source of supply known as well no. 3 to augment the existing sources of supply. No change in treatment is proposed.

Consulting Engineer David J. Gettle
Kohl Bros., Inc.
P. O. Box 350
Myerstown, PA 17067

Permit to Construct Issued July 9, 2004

Permit No. 3603514, Public Water Supply.

Applicant **Columbia Water Company**

Municipality Columbia Borough

County **Lancaster**

Type of Facility Modification to the new Lockhard's Hollow booster pump station which will include the installation of additional pumps and controls. The project will also include the construction of a new 1 MG storage tank that will serve the new Columbia Pressure Zone.

Consulting Engineer David T. Lewis, P. E.
ARRO Consulting Inc.
270 Granite Run Drive
Lancaster, PA 17601

Permit to Construct Issued March 31, 2004

Permit No. 0504501, Public Water Supply.

Applicant **Saxton Borough Municipal Authority**

Municipality Saxton Borough

County **Bedford**

Type of Facility Construction of a new 300,000 gpd membrane filtration system to replace the existing treatment facility.

Consulting Engineer Mark V. Glenn, P. E.
Gwin, Dobson & Foreman, Inc.
3121 Fairway Dr.
Altoona, PA 16602-4475

Permit to Construct May 17, 2004
Issued

Permit No. 2204504, Public Water Supply.

Applicant **Tulpehocken Spring Water Inc.**

Municipality Gratz Borough

County **Dauphin**

Type of Facility Installation of ozone disinfection equipment.

Consulting Engineer Thomas G. Pullar, P. E.
P. O. Box 468
Pipersville, PA 18947

Permit to Construct July 21, 2004
Issued

Operations Permit issued to **Kitchen Kettle Foods Inc.**, Leacock Township, **Lancaster County** on March 26, 2004, for the operation of facilities approved under Construction Permit No. 3603506.

Operations Permit issued to **Antrim Brethern in Christ Church**, Antrim Township, **Franklin County** on July 12, 2004, for the operation of facilities approved under Construction Permit No. 2803505.

Operations Permit issued to **Goldsboro Firemans Club**, 7671145, Goldsboro Borough, **York County** on July 23, 2004, for the operation of facilities approved under Construction Permit No. 6703515.

Operations Permit issued to **East Cocalico Township Authority**, Ephrata, **Lancaster County** on May 12, 2003, for the operation of facilities approved under Construction Permit No. 3601518.

Operations Permit issued to **Western Berks Water Authority**, 3060066, Lower Heidelberg Township, **Berks County** on July 22, 2004, for the operation of facilities approved under Construction Permit No. 0604505.

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

Permit No. 0803502, Public Water Supply.

Applicant **Sherwood Retirement & Personal Care Home, Inc.**

Township or Borough Canton Township

County **Bradford**

Responsible Official James Sherwood, Owner
R. R. 1 Box 35A
Canton, PA 17724

Type of Facility PWS—Construction

Application Issued July 28, 2004
Date

Description of Action Denial of application for public water supply permit.

Permit No. Minor Amendment, Public Water Supply.

Applicant **Troy Borough**

Township or Borough Troy Borough

County **Bradford**

Responsible Official Dan Close, Manager
Troy Borough
110 Elmira Street
Troy, PA 16947-1202

Type of Facility PWS—Operation.

Application Issued July 29, 2004
Date

Description of Action Authorizing operation of a 500,000-gallon water storage tank, replacement lines and new controls for the pump station.

Permit No. Minor Amendment, Public Water Supply.

Applicant **Williamsport Municipal Water Authority**

Township or Borough City of Williamsport

County **Lycoming**

Responsible Official Larue F. Vanzile, Director of Engineering
253 West Fourth Street
Williamsport, PA 17701

Type of Facility PWS—Operation.

Application Issued July 27, 2004
Date

Description of Action Loyalsock water storage tank rehabilitation.

Permit No. Minor Amendment, Public Water Supply.

Applicant **Mifflinburg Borough Water System**

Township or Borough Mifflinburg Borough

County **Union**

Responsible Official Steve B. Benner, Project Manager
333 Chestnut Street
Mifflinburg, PA 17844

Type of Facility PWS—Construction.

Application Issued July 27, 2004
Date

Description of Action Authorizing construction of two replacement covers on the Chambers Spring and finished storage tank no. 1.

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

Permit No. 0404502, **Minor Amendment**. Public Water Supply.

Applicant **Beaver Falls Municipal Authority**
1425 Eighth Avenue
Beaver Falls, PA 15010

Borough or Township New Brighton

County **Beaver**

Type of Facility Water Storage Tank

Consulting Engineer US Engineering, LLC
4 Sunrise Court
Highland, IL 62249

Permit to Construct July 28, 2004
Issued

Permit No. 0404501, Minor Amendment. Public Water Supply.

Applicant **Beaver Falls Municipal Authority**
1425 Eighth Avenue
Beaver Falls, PA 15010

Borough or Township Eastvale

County **Beaver**

Type of Facility Water Storage Tank

Consulting Engineer US Engineering, LLC
4 Sunrise Court
Highland, IL 62249

Permit to Construct Issued July 28, 2004

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

Operations Permit issued to Greenville Borough Municipal Authority, 44 Clinton Street, Greenville, PA 16125, PWS ID 6430037, Greenville Borough, **Mercer County**, on August 2, 2004, for the operation potassium permanganate and ammonia feed systems for chloramination, as approved under Construction Permit No. 4303504.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20a)

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

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Upper Macungie Township	8330 Schantz Road Breinigsville, PA 18031	Lehigh

Plan Description: The approved plan provides for a 15 lot residential subdivision of a 2.52-acre tract. The proposed 6,000 GPD of sewage flows will be collected by a force main to be owned by Upper Macungie Township Authority. Lehigh County Authority will provide conveyance facilities to the Allentown Wastewater Treatment Plant. Public water will be provided by the Lehigh County Authority. The proposed development is at Kemmerer Lane and Memorial Road, Upper Macungie Township, Lehigh County. Any required NPDES permits or WQM permits must be obtained in the name of the municipality or authority as appropriate.

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

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Hamilton Township	272 Mummert's Church Rd. Abbotstown, PA 17301	Adams

Plan Description: The approved plan provides for 83 single-family residential lots on 76 acres. The name of the project is Cedar Ridge (north of the intersection of Carlisle Pike and Cedar Rd.) and the homes will be served by public sewer and private wells. Wastewater flows are estimated at 19,050 gpd and will be tributary to the Berwick Township Wastewater Treatment Plant.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Jackson Township	439 Roth's Church Road Spring Grove, PA 17362	York

Plan Description: Jackson Heights, A3-67931-194-3. The approved plan provides for a 332-lot subdivision on 153.7 acres with 126 single family residential lots, 204 townhouse lots, 1 multifamily residential lot containing 166 condominium units and 1 lot for a community center. Total estimated sewage flows are 139,160 gpd and they will be a tributary to the Jackson Township Wastewater Treatment Plant. The proposed development is on the northwest and southeast sides of Hanover Road (SR 116), approximately 9,000 feet northeast of Spring Grove Borough in Jackson Township, York County. Any required NPDES permits or WQM permits must be obtained in the name of the municipality or authority as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
German Township	c/o Daniel Shimshock, Secretary 2 Long Street McClellandtown, PA 15458	Fayette

Plan Description: The approved plan provides for the construction of a new sewage collection, conveyance and treatment system for the Route 21 area and the Villages of Edenborn, McClellandtown, Leckrone, Ronco and Balsinger in German Township, Fayette County. Treated sewage effluent will be discharged to the Monongahela River near the Village of Ronco. 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.

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

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Cranberry Township	Box 378, SR 257 Seneca, PA 16346	Venango

Plan Description: The approved plan provides for the extension of sanitary sewers to serve the Route 322 corridor west of the Cranberry Mall. Any required NPDES permits or WQM permits must be obtained in the name of the municipality or authority as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Greenfield Township	11184 Rich Hill Road North East, PA 16428	Erie

Plan Description: The approved plan provides for construction and operational oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
North East Township	10300 West Main Road North East, PA 16428	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Elgin Borough	18282 North Main Street P. O. Box 86 Elgin, PA 16413	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Franklin Township	10411 Route 98 Edinboro, PA 16412	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
McKean Township	9231 Edinboro Road McKean, PA 16426	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Summit Township	8900 Old French Road Edinboro, PA 16509-5461	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Concord Township	12677 Ormsbee Road Corry, PA 16407	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Wayne Township	17395 Sciota Road Corry, PA 16407	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Washington Township	11800 Edinboro Road Edinboro, PA 16412	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Amity Township	15030 Casler Road Union City, PA 16438-8118	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Fairview Township	7471 McCray Road Fairview, PA 16415	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Venango Township	9141 Townhall Road Watsburg, PA 16442	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Conneaut Township	12500 Route 6N Albion, PA 16401-9778	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Union Township	16075 Shreve Ridge Road Union City, PA 16438	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Waterford Township	12451 Circuit Road Waterford, PA 16441	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Mill Village Borough	14350 North Main Street P. O. Box 10 Mill Village, PA 16427	Erie

Plan Description: The approved plan provides for construction and operation oversight for small flow treatment facilities in participating municipalities.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of 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 before 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. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Former Sunoco Station No. 0363-0761, Lower Providence Township, **Montgomery County**. Jennifer L. O'Reilly, P. G., Groundwater & Environmental Services, Inc., 410 Eagleview Blvd., Suite 110, Exton, PA 19341, on behalf of Peskin Realty & Construction Co., Joel Peskin, P. O. Box 176, 33 E. Lancaster Ave., Wynnwood, PA 19096, has submitted a combined Remedial Investigation/Risk Assessment/Cleanup Plan/Final Report concerning the remediation of site soil and groundwater contaminated with unleaded gasoline. The combined Remedial Investigation/Risk Assessment/Cleanup Plan/Final Report demonstrated attainment of the Statewide Health and Site-Specific Standards and was approved by the Department on July 14, 2004.

Hull Corporation Site, Upper Moreland Township, **Montgomery County**. Mark J. Irani, P. G., Advantage Environmental Consultants, LLC, 3101 Mt. Carmel Ave., Suite 3, Glenside, PA 19038, on behalf of Hull Corp., 21 Bonair Dr., Warminster, PA 18974, has submitted a Final Report concerning the remediation of site soil contaminated with PCB, BTEX, PAH and solvents and groundwater contaminated with solvents and VOCs. The Final Report demonstrated attainment of the Site Specific Standard and was approved by the Department on July 22, 2004.

Sunroc Corporation Facility, Middletown Township, **Delaware County**. Donald A. Coleman, P. G., Penn Environmental & Remediation, Inc., 2755 Bergey Rd., Hatfield, PA 19440, on behalf of Sunroc Corp., Mark Whitaker, 60 Starlifter Ave., Dover, DE 19903, has submitted a Final Report concerning the remediation of site soil contaminated with chlorinated solvents, inorganics, lead and other organics; and site groundwater contaminated with chlorinated solvents. The Final Report demonstrated attainment of the Statewide Health and Site Specific Standards and was approved by the Department on June 25, 2004.

Macclesfield Park Site, Yardley Borough, **Bucks County**. Ann Logue, Shoor DePalma, Inc., 200 State Highway Nine, P. O. Box 900, Manalapan, NJ 07726-0900, on behalf of Township of Lower Makefield, Terry Fedorchak, 1100 Edgewood Rd., Yardley, PA 19067-1696, has submitted a Remedial Investigation Report concerning the remediation of site soil and groundwater contaminated with inorganics and lead. The Remedial Investigation Report was approved by the Department on June 29, 2004.

Montgomery Commons Shopping Center, Montgomery Township, **Montgomery County**. Jeffrey Goudsward, Penn E & R, Inc., 2755 Bergey Rd., Hatfield, PA 19440 on behalf of Donald Cafiero, Montgomery Commons Associates, LP c/o Pennmark, 1000 E. Germantown Pike, Suite A-2, Plymouth Meeting, PA 19462 has submitted a Remedial Investigation/Final Report concerning the remediation of site soil contaminated with dry cleaning fluid. The Remedial Investigation/Final Report demonstrated attainment of the Site Specific Standard and was approved by the Department on July 20, 2004.

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

Americana, Inc.—Truck Spill, South Centre Township, **Columbia County**. Marshall Miller & Associates, Inc. on behalf of American, Inc., P. O. Box 71, Wolcott, IN 47994, has submitted a Final Report concerning soil contaminated with diesel fuel. This Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on July 30, 2004.

RESIDUAL WASTE GENERAL PERMITS

Permits Issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and residual waste regulations for a general permit to operate residual waste processing facilities and the beneficial use of residual waste other than coal ash.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.

General Permit Application No. WMGR003. Pennsylvania Precision Cast Parts, Inc., 521 N. 3rd Avenue, Lebanon, PA 17042-0400. General Permit No. WMGR003 is for the beneficial use of spent fired colloidal silica waste from a ferrous iron foundry using the lost wax casting process. This general permit was issued as a renewal of Pennsylvania Precision Cast Parts, Inc.'s original General Permit WMGR003 issued on December 7, 1993. The general permit renewal was issued by Central Office on August 2, 2004.

Persons interested in obtaining more information or obtaining copies of the general permit should contact Ronald C. Hassinger, Chief, General Permits and Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users should contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

REGISTRATION FOR GENERAL PERMIT—RESIDUAL WASTE

Registration Approved under the Solid Waste Management Act, the Residual Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and residual waste regulations for a general permit to operate residual waste processing facilities and/or the beneficial use of residual waste other than coal ash.

Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.

Registration under General Permit No. WMGR090R024. Beaver Valley Asphalt Corporation, 6010 Woodlawn Road, Aliquippa, PA 15001-2461. General Permit No. WMGR090 authorizes the processing and beneficial use of reclaimed asphalt pavement materials as a roadway construction material. The Central Office approved this registration for coverage under the general permit on August 2, 2004.

Persons interested in obtaining more information or obtaining copies of the general permit should contact Ronald C. Hassinger, Chief, General Permits and Beneficial Use Section, Division of Municipal and Residual

Waste, Bureau of Land Recycling and Waste Management, Rachel Carson State Office Building, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users should contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Permits application accepted as complete under the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and regulations to operate solid waste processing or disposal area or site.

Northcentral Region: Regional Solid Waste Manager, 208 West Third Street, Williamsport, PA 17701.

Permit No. 301626. White Pines Corporation, 320 Godshall Drive, Harleysville, PA 19438 in Pine Township, **Columbia County**. This permit application was accepted as complete by the Williamsport Regional Office on July 26, 2004.

Comments concerning the application should be directed to John C. Hamilton, P.E., Facilities Manager, Williamsport Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Persons interested in obtaining more information about the general permit application should contact the Williamsport Regional Office, (570) 327-3653. TDD users should 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.

Permits issued under the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permit ID No. 100277. Sanitary Landfill, Westmoreland Waste, LLC, 1428 Delberts Drive, Unit 2, Monongahela, PA 15063. Operation of a municipal waste landfill in Rostraver Township, **Westmoreland County**. Major permit modification authorizing the Northern and Southern Expansion, increase in waste acceptance rates, change in operating hours and related operational revisions issued in the regional office on July 27, 2004.

AIR QUALITY

General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

46-320-036GP: International Business Systems, Inc. (431 Yerkes Road, King of Prussia, PA 19406) on July 28, 2004, to operate two new webfed presses in Upper Merion Township, **Montgomery County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.

40-310-059GP3: Pennsy Supply, Inc. (1001 Paxton Street, Harrisburg, PA 17104) on July 29, 2004, to construct and operate a portable stone crushing plant at their Pittston Quarry, 400 Old Boston Road, Jenkins Township, **Luzerne County**.

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

GP3-67-03127: Reading Materials, Inc. (P. O. Box 79, Skippack, PA 19474) on July 16, 2004, for portable nonmetallic mineral processing plants under GP3 in Fairview Township, **York County**.

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

24-123: Onyx Greentree Landfill, Inc. (635 Toby Road, Kersey, PA 15846) on July 21, 2004, to operate their portable mineral processing plant in Fox Township, **Elk County**.

Plan Approvals Issued under the Air Pollution Control Act and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

09-0082: Quakertown Veterinary Clinic PC (2250 North Old Bethlehem Pike, Quakertown, PA 18951) on July 30, 2004, to operate a cremator in Milford Township, **Bucks County**.

15-0078C: Centocor Inc. (90 Great Valley Parkway, Malvern, PA 19355) on July 27, 2004, to operate two emergency generators in East Whiteland Township, **Chester County**.

46-0198H: Blommer Chocolate Co. (1101 Blommer Drive, East Greenville, PA 18041) on July 30, 2004, to operate a roasting line micronizer in Upper Hanover Township, **Montgomery County**.

46-0005T: Merck and Co., Inc. (770 Sumneytown Pike, West Point, PA 19486) on July 29, 2004, to operate two 1,300 kW emergency generators in Upper Gwynedd Township, **Montgomery County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.

39-304-026: Ransom Industries LP—Tyler Pipe Penn Division (101 North Church Street, Macungie, PA 18062) on July 26, 2004, to construct a thermal sand reclamation system and associated air cleaning devices at their facility in Macungie Borough, **Lehigh County**.

13-399-008B: Horsehead Corp. (900 Delaware Avenue, Palmerton, PA 18071) on July 28, 2004, to modify a calcine kiln receiving bin and associated air cleaning devices at their facility in Palmerton Borough, **Carbon County**.

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

22-05003A: Stroehmann Bakeries, LC (3996 Paxton Street, Harrisburg, PA 17111) on July 27, 2004, to replace

a catalytic oxidizer which controls VOC emissions from the ovens at their Capitol Bakery in Swatara Township, **Dauphin County**.

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

03-00238A: Curran-Shaffer Funeral Home, Inc. (100 Owens View Avenue, Apollo, PA 15613-1614) on July 28, 2004, to construct and install a multiple chambered gas fired crematory incinerator at their Curran-Shaffer Funeral Home in Apollo, **Armstrong County**.

56-00292A: Elk Lick Energy, Inc. (P. O. Box 240, 1576 Stoystown Road, Friedens, PA 15541) on August 2, 2004, to install dry screening processing equipment at their Roytown Deep Mine Facility in Lincoln Township, **Somerset County**. Equipment shall include an Allis Chalmers screen rated at 1,500 tons per hour (or equivalent), various conveyors, stockpiles and front-end loaders.

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

37-243C: International Metals Reclamation Company, Inc. (245 Portersville Road, Ellwood City, PA 16117) on July 22, 2004, to construct the eighth electric cadmium furnace in Ellwood City Borough, **Lawrence County**.

10-027D: Penreco (138 Petrolia Street, Karns City, PA 16041) on July 6, 2004, to modify Plan Approval 10-027C in Karns City, **Butler County**.

42-178A: Glenn O. Hawbaker, Inc.—Turtlepoint Plant (SR 1002, Champlin Hill Road, Turtlepoint, PA 16750) on July 12, 2004, to use alternative fuels in Annin Township, **McKean County**.

61-193D: National Fuel Gas Supply Corp. (TR 300, Stoneboro, PA 16153) on July 21, 2004, to modify existing Plan Approval 61-0193C to allow revision of minimum thermal oxidizer temperature from 1,400°F to 1,300°F at their Henderson Station in Mineral Township, **Venango County**.

16-094A: IA Construction Corp. (Route 66, Shippenville, PA 16254) on July 21, 2004, to modify the existing plan approval for asphalt plant to allow no. 2 oil, liquid propane or natural gas fuels for the rotary dryer burner at their Clarion Plant in Paint Township, **Clarion County**.

20-295A Baillie Lumber Co. (45529 SR 27, Titusville, PA 16354) on July 28, 2004, to install a 600 hp wood-fired boiler at Baillie Lumber Yard in Oil Creek Township, **Crawford County**.

10-037: Crompton Corp. (100 Sonneborn Lane, Petrolia, PA 16050) on July 26, 2004, for Emission Reduction Credits for their reject stripper in Fairview Township, **Butler County**.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.

46-317-005E: Moyer Packing Co. (P. O. Box 395, Souderton, PA 18964) on July 27, 2004, to operate various rendering equipment and scrubber in Franconia Township, **Montgomery County**.

09-0048A: H and K Materials—Division of Haines and Kibblehouse (P. O. Box 196, 2052 Lucon Road, Skippack, PA 19474) on July 27, 2004, to operate a batch asphalt plant in Hilltown Township, **Bucks County**.

09-0143: Naceville Materials (P. O. Box 196, 2052 Lucon Road, Skippack, PA 19474) on July 27, 2004, to operate a primary crusher and conveyor in West Rockhill Township, **Bucks County**.

46-0036G: Visteon Systems LLC (2750 Morris Road, Lansdale, PA 19446) on July 27, 2004, to operate selective solder machine no. 10 in Worcester Township, **Montgomery County**.

46-0112: Palmer International, Inc. (P. O. Box 315, Skippack, PA 19474) on July 27, 2004, to operate a thermal oxidizer in Skippack Township, **Montgomery County**.

46-0112B: Palmer International, Inc. (P. O. Box 315, Skippack, PA 19474) on July 27, 2004, to operate a turbo mixer thermal oxidizer in Skippack Township, **Montgomery County**.

23-0082: Liberty Electric Power, LLC (1000 Industrial Hwy., Route 291, Eddystone, PA 19022) on July 27, 2004, to operate a power plant—500 mW in Eddystone Borough, **Delaware County**.

46-0025C: Lonza, Inc. (900 River Road, Conshohocken, PA 19428) on July 29, 2004, to operate a waste incinerator in Upper Merion Township, **Montgomery County**.

09-0050: Better Materials Corporation (P. O. Box 231, Easton, PA 18044) on August 2, 2004, to operate one crusher and two conveyor belts in Wrightstown Township, **Bucks County**.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.

17-305-049: Energy Link, Inc. (840 Philadelphia Street, Indiana, PA 15701) on July 28, 2004, to operate a coal stockpiling and railcar loading operation on a temporary basis, to November 25, 2002, in Lawrence Township, **Clearfield County**. The plan approval has been extended.

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

03-00197A: Nature's Blend Wood Products, Inc. (P. O. Box 392, 202 First Avenue, Ford City, PA 16226) on July 28, 2004, to install a finishing line and American finishing system in Ford City, **Armstrong County**. This plan approval was extended.

32-00367A: Ridge Energy Company, Inc. (265 Swamp Road, Suite 3000, Clymer, PA 15728) on August 28, 2004, to install a crusher and screener at the Laurel Run Quarry in Cherryhill Township, **Indiana County**. This plan approval was extended.

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

37-013E: Cemex, Inc. (2001 Portland Park, Wampum, PA 16157) on June 30, 2004, to change their slag feeding equipment in Wampum, **Lawrence County**.

Title V Operating Permits Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter G.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

15-00002: Quebecor Printing Atglen, Inc. (4581 Lower Valley Road, P. O. Box 365, Atglen, PA 19310) on July 30, 2004, amended facility Title V Operating Permit in West Sadsbury Township, **Chester County**.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

09-00081: Thermco Products Co. (1409 West Broad Street, Quakertown, PA 18951) on July 28, 2004, to operate a facility natural minor operating permit in Quakertown Borough, **Bucks County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.

63-00899: Pleiger Plastics Co.—Washington Plant (P. O. Box 1271, Crile Road, Washington, PA 15301-1271) for their Washington Plant in South Strabane Township, **Washington County**. The facility's sources of emissions include polyurethane molding operations that primarily emit nonmajor levels of VOC compounds.

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

62-00150: Superior Tire and Rubber Corp. (1818 Pennsylvania Avenue, Warren, PA 16365) on July 22, 2004, for a Synthetic Minor Permit to operate their tires and inner tubes manufacturing facility in the City of Warren, **Warren County**. The significant emitting sources are boilers, space heaters, spray booths, molding process, burn off oven and shot blasting booth. This facility has taken a restriction on emission of single HAP less than 10 tons per year and multiple HAP less than 25 tons per year.

25-00917: Performance Castings, Inc. (242 East 16th Street, Erie, PA 16503) on July 13, 2004, for a Natural Minor Permit to operate their iron and aluminum foundry manufacturing facility in the City of Erie, **Erie County**. The significant emitting sources are induction furnace, annealing operation, inoculation, charge handling, pouring/casting, cooling, shake out, grinding/cleaning, core ovens, shell core machines and binder operation.

20-00266: Electro-Tech, Inc. (100 West Poplar Street, Meadville, PA) on July 23, 2004, for a Natural Minor operating permit for air emissions from a hard chromium electroplating facility in the City of Meadville, **Crawford County**.

25-00883: The Township of Millcreek (3608 West 26th St., Erie, PA) on July 23, 2004, for a Natural Minor operating permit for air emissions from a hot mix asphalt facility in Millcreek Township, **Erie 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.

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

43-00329: White Rock Silica Sand Co., Inc. (331 Methodist Road, Greenville, PA 16125) on July 29, 2004, for an amendment to their Natural Minor operating permit to increase the allowable annual operating hours for a diesel-fueled generator in Hempfield Township, **Mercer County**. The change is authorized by Plan Approval 43-0329B.

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.

32851601 and NPDES Permit No. PA0095966. P & N Coal Company, Inc. (240 Mahoning Street, P. O. Box 332, Punxsutawney, PA 15767), to renew the permit for the Hillman Tipple in Banks Township, **Indiana County** and related NPDES permit. No additional discharges. Permit issued July 28, 2004.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

32000107. Kraynak Coal Company (3124 Firetower Road, Mahaffey, PA 15757), permit revision to add 1.0 acre of mining to the existing permit in Grant Township, **Indiana County**, affecting 39.0 acres. Receiving streams: East Run to Little Mahoning Creek to Mahoning Creek to the Allegheny River (HQ to CWF). There are no potable water supply intakes within 10 miles downstream. Application received April 9, 2004. Permit issued July 21, 2004.

56813050 and NPDES Permit No. PA0605891. Shade Mining Company (P. O. Box 130, 118 Runway Road, Friedens, PA 15541), surface mining permit renewal for reclamation only in Quemahoning, Shade and Stonycreek Townships, **Somerset County**, affecting 150.7 acres. Receiving streams: unnamed tributaries to Oven Run and to unnamed tributary to Lamberts Run. The first downstream potable water supply intake from the point of discharge is the Hooversville Borough Municipal Authority Stonycreek surface water withdrawal. Application received March 30, 2004. Permit issued July 27, 2004.

Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.

03910115 and NPDES Permit No. PA0200174. Allegheny Mineral Corporation (P. O. Box 1022, Kittanning, PA 16201), permit renewal issued for continued operation and reclamation of a bituminous surface/auger mining site in West Franklin Township, **Armstrong County**, affecting 468.8 acres. Receiving streams: Buffalo Creek to the Allegheny River. Application received January 20, 2004. Renewal issued July 27, 2004.

26890103 and NPDES Permit No. PA0591327. Durant Excavating Company (18 North Ross Street, Masontown, PA 15461-1764), permit renewal issued for continued operation and reclamation of a bituminous surface mining site in Nicholson Township, **Fayette County**, affecting 32.0 acres. Receiving streams: unnamed tributaries to Cats Run to Monongahela River. Application received May 4, 2004. Renewal issued July 29, 2004.

Noncoal Permit Actions

Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.

26950401 and NPDES Permit No. PA0201294. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001), transfer of permit formerly issued to Better Materials Corporation for continued operation and reclamation of a noncoal surface mining site (limestone quarry) in Springfield Township, **Fayette County**, affecting 570 acres. Receiving streams: unnamed tributary to Clay Run and Buck Run. Application received March 16, 2004. Transfer permit issued July 28, 2004.

26970401 and NPDES Permit No. PA0202100. Laurel Aggregates, Inc. (P. O. Box 1209, Morgantown, WV 26507), NPDES permit renewal issued for continued operation and reclamation of a noncoal surface mining site in Springhill Township, **Fayette County**, affecting 254.52 acres. Receiving streams: unnamed tributaries to Rubles Run and Rubles Run. Application received March 15, 2004. NPDES renewal issued July 29, 2004.

ACTIONS ON BLASTING ACTIVITY APPLICATIONS

Actions on applications under the Explosives Acts of 1937 and 1957 (73 P. S. §§ 151—161) and 25 Pa. Code § 211.124. Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.

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

52044009. Ed Wean Drilling & Blasting, Inc. (112 Ravine Road, Stewartsville, NJ 08886), construction blasting at Saw Creek Estates in Lehman Township, **Pike County**, with an expiration date of July 23, 2005. Permit issued July 26, 2004.

45044030. Ed Wean Drilling & Blasting, Inc. (112 Ravine Road, Stewartsville, NJ 08886), construction blasting at the intersection of Route 209 and Business Route 209 in Smithfield Township, **Monroe County**, with an expiration date of July 28, 2005. Permit issued July 26, 2004.

48044029. Rich Rufe Drilling & Blasting (R. R. 6, Box 63608, Saylorsburg, PA 18353) and **Austin Powder**

Company (P. O. Box 289, Northampton, PA 18067), construction blasting at Penn Dixie Development in Upper Nazareth Township, **Northampton County**, with an expiration date of July 20, 2005. Permit issued July 26, 2004.

35044011. Hayduk Enterprises (P. O. Box 554, Dalton, PA 18414), construction blasting in Madison Township, **Lackawanna County**, with an expiration date of January 21, 2005. Permit issued July 26, 2004.

09044021. Eastern Blasting Company, Inc. (1292 Street Road, New Hope, PA 18938), construction blasting at BJ's Food Retail Site in Warrington Township, **Bucks County**, with an expiration date of May 31, 2005. Permit issued July 26, 2004.

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 should 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 of 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 should 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 of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).

Permits, Environmental Assessments and 401 Water Quality Certifications Issued

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

E46-926. Stewart and Conti Development Company, 3801 Germantown Pike, Fairview Village, PA 19426, Douglass Township, **Montgomery County**, ACOE Philadelphia District.

To perform the following activities associated with the Cobblestone Crossing Residential Subdivision, Phases II and III:

1. To install an 8-inch water line under Swamp Creek (TSF, MF) and adjacent wetlands by method of directional bore.

2. To construct an 8-inch sanitary sewer line with impacts at three locations: (1) across an unnamed tributary to Swamp Creek; (2) across Swamp Creek; (3) across Swamp Creek and its adjacent wetlands; and (4) across a wetland. The project will have total temporary impacts of 0.11 acre of wetland (PEM) and 57 linear feet of stream channel.

3. To construct and maintain four stormwater outfall structures, three discharging to wetlands (PEM) and one discharging to Swamp Creek.

The site is just north of the intersection of Big Road (SR 0073) and Smith Road (Sassamansville, PA USGS Quadrangle N: 12.5 inches; W: 13.1 inches).

The issuance of this permit also constitutes approval of a Water Quality Certification under section 401 of the Federal Water Pollution Control Act.

E51-209. Isle of Capri Associates, L. P., 242 South 17th Street, Philadelphia, PA 19103, City and County of Philadelphia, ACOE Philadelphia District.

To redevelop and maintain Piers 36—39 North (also known as Waterfront Square) consisting of a high-rise

condominium gated community with several multistory structures, including a parking garage. Work will include:

1. The placement of approximately 18,572 cubic yards of fill within a footprint of the piers currently occupying submerged lands of the Delaware River (WWF-MF).

2. To construct and maintain a new high-deck structure over an existing timber low deck structure at the ends of Piers 37 and 38. This structure will consist of several steel pipe piles, a concrete seawall and concrete deck. Timber piles will be attached to the face of the seawall along with a horizontal timber wale system and a vertical timber planking debris barrier.

3. To install and maintain approximately 924 14-inch diameter steel piles through the fill and underlying submerged lands of the Delaware River to provide structural support for the proposed buildings.

4. To install and maintain approximately 296 10-inch diameter steel piles through the fill and underlying submerged lands of the Delaware River to provide structural support for the proposed parking garage.

5. The placement of approximately 1,015 linear feet of steel sheet piling to provide perimeter bulkhead support.

6. To construct and maintain one 24-inch diameter and one 12-inch diameter RCP stormwater outfall structure along the southern edge of Pier 36 and discharging into the area labeled as Cohocksink Creek. Also, to construct and maintain one 24-inch diameter RCP stormwater outfall structure at the eastern limit of Pier 39 and discharging into the Delaware River.

7. To place and maintain approximately 700 linear feet of riprap bank protection around the perimeter of previously filled submerged lands along with landscaping features.

8. To construct and maintain a facility allowing public access to the Delaware River consisting of an 8-foot wide walkway along the northern edge of Pier 39 North with an observatory platform at its terminus.

The existing site and encroachment on Commonwealth submerged lands was authorized by numerous pre-existing licenses issued by either the Port of Warden's Office, Department of Wharves, Docks and Ferries or the City of Philadelphia—Department of Commerce. Leasehold of the property within Commonwealth submerged lands was further authorized by an act of General Assembly (House Bill No. 629 (Session of 2003)).

This site is approximately 3,500 feet north of the Ben Franklin Bridge at a site along the Delaware River between 877 and 923 Penn Street (Philadelphia, PA-NJ Quadrangle N: 15.7 inches; W: 1.7 inches).

The issuance of this permit also constitutes approval of a Water Quality Certification under section 401 of the Federal Water Pollution Control Act.

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

E45-400. Barbara Kulick, 5257 Milford Road, East Stroudsburg, PA 18301. Middle Smithfield Township, **Monroe County**, Army Corps of Engineers Philadelphia District.

To place fill in approximately 0.09 acre of PFO-EV wetlands for the purpose of constructing an access road to serve two commercial buildings. The work includes the placement of a 54-foot long, 15-inch diameter culvert, a 38-foot long, 15-inch by 21-inch arch culvert and a 1 1/4-inch diameter sanitary sewer force main in two

separate wetland systems along the access road. The permittee is required to provide for 0.09 acre of replacement wetlands by participating in the Pennsylvania Wetland Replacement Project. The project is located on the south side of SR 0209, approximately 0.7 mile east of Township Road T550 (Keystone Road) (Bushkill, PA-NJ Quadrangle N: 11.7 inches; W: 7.6 inches) (Subbasin 1D).

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

E21-354: Rodney and Francine Groff, 7729 Wertzville Road, Carlisle, PA 17013 in Middlesex Township, **Cumberland County**, ACOE Baltimore District.

To install and maintain: (1) an 11-foot span by 5-foot rise arch pipe to cross an unnamed tributary to the Conodoguinet Creek (WWF); and (2) a 3-inch diameter outfall to discharge treated effluent to an unnamed tributary of the Conodoguinet Creek, just south of the SR 944 culvert crossing (Shermans Dale, PA Quadrangle N: 4.29 inches; W: 1.63 inches) in Middlesex Township, Cumberland County.

E50-224: Paradise Stream Family Campground, Inc., R. R. 2 Box 248, Loysville, PA 17047 in Southwest Madison Township, **Perry County**, ACOE Baltimore District.

To: (1) remove an existing deteriorated 22-foot span bridge; and (2) install and maintain a new 35-foot span steel bridge across an unnamed tributary to Sherman Creek (HQ-CWF), locally known as Cisna Run, for the purpose of providing a safe access to existing homes and property, approximately 1,500 feet south of Route 274 on the western side of SR 3008 (Andersonburg, PA Quadrangle N: 18.2 inches; W: 7.0 inches) in Southwest Madison Township, Perry County.

E31-195: R. Scott Shearer, 850 Weldon Street, Latrobe, PA 15650 in Franklin Township, **Huntingdon County**, ACOE Baltimore District.

To rehabilitate and maintain an existing timber plank bridge across Spruce Creek (HQ-CWF) by removing the existing piers and replacing the steel superstructure and timber plank deck at a site (Franklinville, PA Quadrangle N: 3.7 inches; W: 12.7 inches) east of SR 45 approximately 0.8 mile north of SR 4015 and to construct and maintain a 36-foot by 128-foot residential structure with associated fill material at a point (Franklinville, PA Quadrangle N: 3.4 inches; W: 12.7 inches) approximately 600 feet downstream on the left floodway of Spruce Creek in Franklin Township, Huntingdon County.

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

E59-457. Department of Transportation, 715 Jordan Ave., Montoursville, PA 17701. SR 6015 Sections G20 and G22 in Tioga and Lawrence Townships and Lawrenceville Borough, **Tioga County**, ACOE Baltimore District (Jackson Summit (center of project), PA Quadrangle N: 14.75 inches; W: 16.5 inches).

To construct, operate and maintain a four-lane limited access highway with 14 permanent stream impacts totaling 5,137.0 linear feet, 21 temporary stream impacts totaling 1,878.0 linear feet and 84 permanent and temporary wetland impacts for a total of 9.5752 acres of permanent impact and 0.3142 acre of temporary impact. The crossing over the Tioga River, at latitude 41-56-20 longitude 77-6-33, is authorized as a dual 11-span composite prestressed concrete I-beam bridge structure with a total length of 1,690 linear feet for the northbound structure and a total length of 1,680 linear feet for the

southbound structure. The Cowanesque River Bridge, at latitude 42-00-01 and longitude 77-8-5, is similar to the previous structure with the exception of only being eight spans and having a length of 1,088 linear feet of the northbound structure and 847 linear feet of the southbound structure. An unnamed tributary to the Susquehanna River, local name Rick Creek at latitude 41-57-3 and longitude 77-7-1, is another dual bridge structure having a length of 95 linear feet. A stream relocation of 491 linear feet is also authorized at this location. An unnamed tributary to the Susquehanna River, local name Hemlock Creek at latitude 41-57-17 and longitude 77-7-12, is authorized as a 60-inch reinforced concrete pipe culvert with chute blocks on the outlet to dissipate velocities. The remaining stream impacts (at latitudes and longitudes: 41-56-01, 77-6-1; 41-56-40, 77-6-39; 41-56-48, 77-6-44; 41-57-5, 77-7-4; 41-57-24, 77-7-25; 41-58-13, 77-7-16; and 41-58-29, 77-7-25) are all unnamed tributaries to the Tioga River and are authorized to have reinforced concrete pipe culvert or concrete box culvert stream crossings. Authorized fills at locations latitude and longitude 41-57-38, 77-7-13 and 41-57-42, 77-7-13 will eliminate 318 linear feet between two unnamed tributaries to the Tioga River. An authorized cut at location 41-58-14, 77-7-16 will impact 639 linear feet of an unnamed tributary to the Tioga River. This stream will be relocated into a concrete pipe culvert, discharged into a stormwater basin then discharged back into the natural channel. This permit also authorizes a 3,300 linear foot stream revitalization project in Bentley Creek. Within this reach the revitalization efforts will include Boulder Bank packing, bank regarding above the installed boulder toe treatments, bank regarding alone, boulder toe with a constructed bankfull bench and 18 rock cross vane structures (Jackson Summit (center of project), PA Quadrangle N: 14.75; W: 16.5 inches), Tioga and Lawrence Townships, Lawrenceville Borough, Tioga County.

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

E65-835. Manor Development Group II, 109 Gateway Avenue, Suite 202, Wexford, PA 15090. Stream enclosure in the Municipality of Murrysville, **Westmoreland County**, Pittsburgh ACOE District (Murrysville, PA Quadrangle N: 14.1 inches; W: 2.13 inches—Latitude: 40° 27' 15" and Longitude: 78° 38' 33"). To construct and maintain a 124.5-foot long, 60-inch CPP stream enclosure in an unnamed tributary to Steels Run (HQ-CWF) under Sinan Farms Drive as part of a planned 74-lot residential subdivision. The project will include the construction and maintenance of a 132.0-foot long, 66-inch RCP stream enclosure in an unnamed tributary to Steels Run under Parkview Court and a 39.0-foot long, 36-inch CPP culvert in an unnamed tributary to Steels Run both eligible for authorization under the Department's waiver of section 105.12(a)(2). The project as proposed will affect approximately 905 feet of watercourse and 0.1 acre of wetlands. Additional impacts to watercourses and wetlands will result from multiple utility line crossings and eight temporary road crossings in unnamed tributaries to Steels Run (HQ-CWF). The permittee shall also construct 0.25 acre of replacement wetlands onsite. The project is at the intersection of Sinan and Evans Roads.

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

E10-394, Butler County, P. O. Box 1208, Butler, PA 16003-1208. Harrisville Borough Bridge Replacement Project (County Bridge No. 7) in Mercer Township, **Butler County**, ACOE Pittsburgh District (Grove City, PA Quadrangle N: 1.7 inches; W: 0.07 inch).

To remove the existing single lane reinforced concrete bridge having a clear span of 22 feet, a maximum underclearance of 14 feet and an instream length of 19 feet, 5 inches and to construct and maintain a two-lane steel girder bridge with reinforced concrete deck having a clear span of 26 feet, a maximum underclearance of 14 feet and an instream length of 25 feet at a point within McMurray Run (CWF) approximately 2,600 feet southeast of the Borough of Harrisville along Frampton Road.

E10-398, Robert W. Barr, 149 Weston Lane, Sarver, PA 16055. Barr Residence Driveway Crossing in Buffalo Township, **Butler County**, ACOE Pittsburgh District (Curtisville, PA Quadrangle N: 18.21 inches; W: 1.89 inches).

To remove the existing temporary road crossing constructed under General Permit No. 08-10-03-611 and to construct and maintain a single span bridge having an approximate clear span of 20 feet, an instream length of 20 feet and a minimum under clearance of 5 feet at a point across Sarver Run (HQ-TSF) approximately 1,800 feet northwest of the intersection of SR 0228 and SR 0356, 200 feet south of Coal Hollow Road.

E25-682, Department of Transportation, District 1-0, 255 Elm Street, P. O. Box 398, Oil City, PA 16301. SR 0020, Section 11M across tributaries to Turkey Creek in Springfield Township, **Erie County**, ACOE Pittsburgh District (East Springfield, PA Quadrangle N: 13.6 inches; W: 15.8 inches).

To conduct the following activities in tributaries to Turkey Creek on SR 0020, Section 11M just east of its intersection with SR 5:

1. To remove the existing structure and to install and maintain a 124-foot long, 76-inch wide by 48-inch high elliptical reinforced concrete pipe stream enclosure approximately 400 feet east of SR 5.

2. To remove the existing structure and to install and maintain twin 180-foot long, 48-inch diameter reinforced concrete pipe stream enclosure approximately 700 feet east of SR 5.

SPECIAL NOTICES

Certification to Perform Radon-Related Activities in this Commonwealth

During July 2004, the Department of Environmental Protection, under the Radon Certification Act (63 P. S. §§ 2001—2014) and regulations promulgated thereunder in 25 Pa. Code Chapter 240, has certified the following persons to perform radon-related activities in this Commonwealth. The period of certification is 2 years. For a complete list of persons currently certified to perform radon-related activities in this Commonwealth and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P. O. Box 8469, Harrisburg, PA 17105-8469, (800) 23RADON.

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Bruce Atkins	1341 North Delaware Avenue Suite 205 Philadelphia, PA 19125	Testing
Roger Baker	1564 Dry Hollow Road Warriors Mark, PA 16877	Testing
Edward Beers	P. O. Box 733 Tannersville, PA 18372	Mitigation
Brian Cessna	407 West Sample Street Ebensburg, PA 15931	Testing
Ralph D'Angelo	474 Burnley Lane Drexel Hill, PA 19026	Testing
Joseph Donnelly, III	1341 North Delaware Avenue Suite 205 Philadelphia, PA 19125	Testing
Paul Edwards	215 Kelso Circle Collegeville, PA 19426	Testing
Samuel Falcone Falcone Building Inspections, Inc.	4204 Greenridge Road Pittsburgh, PA 15234	Testing
Arnold Fiergang	P. O. Box 54 Pocono Pines, PA 18350	Testing
David Grammer Stoneridge/RAdata, Inc.	27 Ironia Road Unit 2 Flanders, NJ 07836	Mitigation
Michael Lay	2235 Bernays Drive York, PA 17404	Testing
Kenneth Lewis	1341 North Delaware Avenue Suite 205 Philadelphia, PA 19125	Testing
G. Richard Lininger, Jr. Penn-Mar Services	122 Madison Avenue Waynesboro, PA 17268	Mitigation
Paul McGowan	14520 Otis Drive North Huntingdon, PA 15642	Mitigation
Gary Merlo	203 South 8th Street Bangor, PA 18013	Testing
Gary Morrissey	202 President Avenue Rutledge, PA 19070	Testing
Karl Orwig	471 Hemlock Lane Nazareth, PA 18064	Testing
Michael Palmieri	346 Madison Avenue Nazareth, PA 18064	Testing
Pillar To Post	325 West Second Avenue Conshohocken, PA 19428	Testing
Steven Platz	2006 West 51st Street Erie, PA 16509	Testing
Jeffrey Porte	1962 Wager Road Erie, PA 16509	Testing and Laboratory

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Radon Testing Corporation of America	2 Hayes Street Elmsford, NY 10523	Laboratory
Kyle Reuber	191 Kemmerer Road Nazareth, PA 18064	Testing
Herbert Scott	P. O. Box 276 Point Pleasant, PA 18950	Testing
Clarence Sisco Cape Atlantic, Inc.	P. O. Box 954 Blue Bell, PA 19422	Testing
Chris Smith	301 Rte. 940 Mount Pocono, PA 18344	Testing
Robert Wilmoth Radon Management of Erie	3402 Holland Street Erie, PA 16504	Mitigation

Categorical Exclusion

Southwest Regional Office, Water Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Location: Brownsville Municipal Authority, P. O. Box 330, 7 Jackson Street, Brownsville, PA 15417.

Description: The Pennsylvania Infrastructure Investment Authority (Authority), which administers the Commonwealth's State Revolving Fund, is intended to be the funding source for this project. The Authority proposes to refurbish and replace existing pump stations, treatment plant and other sewerage facilities. The Department's review of the project and the information received has not identified any significant, adverse environmental impact resulting from this proposal. The Department hereby categorically excludes this project from the State Environmental Review Process.

Public Meeting and Request for Comment for the Proposed Total Maximum Daily Load (TMDL) for the Hartshorn Run Watershed in Clearfield County

The Department will hold a public meeting to discuss and accept comments on a proposed TMDL for the Hartshorn Run Watershed in Clearfield County. The meeting will be held on September 1, 2004, at 6:30 p.m. at the Clearfield County Multiservice Center, Daisy Street, Clearfield. Individuals who plan to make a presentation at the public meeting should contact, by 4 p.m. on Friday, August 27, 2004, John Mital, Moshannon District Mining Office, (814) 342-8200. The Department will consider all comments in developing the final TMDL for the Hartshorn Run Watershed, which will be submitted to the EPA for approval.

The proposed TMDL for the Hartshorn Run Watershed was established in accordance with the requirements of the Clean Water Act, section 303(d). One stream segment in the Hartshorn Run Watershed has been identified as impaired on the 1996 Pennsylvania Section 303(d) list due to depressed pH and/or high concentrations of metals. The listed segment and miles degraded are shown in the following table:

<i>Stream Code (Segment ID)</i>	<i>Stream Name</i>	<i>Miles Degraded</i>
26652 (7191)	Hartshorn	1.3

The proposed plan provides calculations of the stream's total capacity to accept metals (aluminum, iron, manga-

nese and acidity), pH and maintain levels below water quality criteria. The applicable water quality criteria are as follows:

<i>Parameter</i>	<i>Criterion Value (mg/l)</i>	<i>Total Recoverable/Dissolved</i>
Aluminum	0.75	Total Recoverable
Iron	1.5	Total Recoverable
Manganese	1.00	Total Recoverable
pH	6.0—9.0	N/A

The primary pollutant source for the watershed is abandoned mine workings. This watershed was mined for coal in the 1900s. The effects of this are still present.

The proposed TMDL was developed using Monte Carlo Simulation (MCS) to determine long-term average concentrations that each stream segment could accept and still meet water quality criteria 99% of the time. MCS allows for the expansion of a data set based on its statistical makeup. Since there was no critical flow condition where criteria were exceeded, the Department used the average flow to express the loading values in the proposed TMDL. The proposed TMDL for the Hartshorn Run Watershed sets allowable loading rates for metals and acidity at specified points in the watershed. Field data collected over the past 2 years was used to establish the proposed TMDL for the Hartshorn Run Watershed. The data and all supporting information used to develop the proposed TMDL are available from the Department.

The Department will accept written comments on the proposed TMDL for the Hartshorn Run Watershed. Written comments must be postmarked by October 13, 2004, and sent to John Mital, Geologic Specialist, Department of Environmental Protection, Moshannon District Mining Office, 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200, jmital@state.pa.us.

To request a copy of the proposed TMDL and associated information sheet or to obtain directions to the Clearfield County Multiservice Center, contact John Mital at the previous phone number or e-mail address.

The proposed TMDL for the Hartshorn Run Watershed can be accessed through the Department's website: www.dep.state.pa.us (DEP Keyword: TMDL). Persons with a disability who require accommodations to attend this meeting should contact the Department at (814) 472-1900 or the Pennsylvania AT&T Relay Service at (800) 654-

5984 (TDD users) or (800) 654-5988 (voice users) to discuss how the Department may accommodate their needs.

Public Meeting and Request for Comment for the Proposed Total Maximum Daily Load (TMDL) for the Sanbourn Run Watershed in Clearfield County

The Department will hold a public meeting to discuss and accept comments on a proposed TMDL for the Sanbourn Run Watershed in Clearfield County. The meeting will be held on September 1, 2004, at 6:30 p.m. at the Clearfield County Multiservice Center, Daisy Street, Clearfield. Individuals who plan to make a presentation at the public meeting should contact, by 4 p.m. on Friday, August 27, 2004, John Mital, Moshannon District Mining Office, (814) 342-8200. The Department will consider all comments in developing the final TMDL for the Sanbourn Run Watershed, which will be submitted to the EPA for approval.

The proposed TMDL for the Sanbourn Run Watershed was established in accordance with the requirements of the Clean Water Act, section 303(d). One stream segment in the Sanbourn Run Watershed has been identified as impaired on the 1996 Pennsylvania Section 303(d) list due to depressed pH and/or high concentrations of metals. The listed segment and miles degraded are shown in the following table:

<i>Stream Code (Segment ID)</i>	<i>Stream Name</i>	<i>Miles Degraded</i>
26184 (7173)	Sanbourn	5.2

The proposed plan provides calculations of the stream's total capacity to accept metals (aluminum, iron, manganese and acidity), pH and maintain levels below water quality criteria. The applicable water quality criteria are as follows:

<i>Parameter</i>	<i>Criterion Value (mg/l)</i>	<i>Total Recoverable/ Dissolved</i>
Aluminum	0.75	Total Recoverable
Iron	1.5	Total Recoverable
Manganese	1.00	Total Recoverable
pH	6.0—9.0	N/A

The primary pollutant source for the watershed is abandoned mine workings. This watershed was mined for coal in the 1900s. The effects of this are still present.

The proposed TMDL was developed using MCS to determine long-term average concentrations that each stream segment could accept and still meet water quality criteria 99% of the time. MCS allows for the expansion of a data set based on its statistical makeup. Since there was no critical flow condition where criteria were exceeded, the Department used the average flow to express the loading values in the proposed TMDL. The proposed TMDL for the Sanbourn Run Watershed sets allowable loading rates for metals and acidity at specified points in the watershed. Field data collected over the past 2 years was used to establish the proposed TMDL for the Sanbourn Run Watershed. The data and all supporting information used to develop the proposed TMDL are available from the Department.

The Department will accept written comments on the proposed TMDL for the Sanbourn Run Watershed. Written comments must be postmarked by October 13, 2004, and sent to John Mital, Geologic Specialist, Department of Environmental Protection, Moshannon District Mining

Office, 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200, jmital@state.pa.us.

To request a copy of the proposed TMDL and associated information sheet or to obtain directions to the Clearfield County Multiservice Center, contact John Mital at the previous phone number or e-mail address.

The proposed TMDL for the Sanbourn Run Watershed can be accessed through the Department's website: www.dep.state.pa.us (DEP Keyword: TMDL). Persons with a disability who require accommodations to attend this meeting should contact the Department at (814) 472-1900 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) to discuss how the Department may accommodate their needs.

Public Meeting and Request for Comment for the Proposed Total Maximum Daily Load (TMDL) for Crosskill Creek in Berks and Lebanon Counties

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

The Department will accept comments on the proposed TMDL developed for a portion of the Crosskill Creek watershed in northeast Berks County. The TMDL was established in accordance with the requirements of section 303(d) of the Clean Water Act. The Commonwealth's 1996-303(d) list included stream segments in the watershed. The listings of these segments were due to use impairments caused by turbidity and suspended solids.

The proposed TMDL sets allowable sediment loadings in the watershed. There currently are no State or Federal in-stream numerical water quality criteria for sediment. Therefore, the Department utilized a reference watershed approach to implement the applicable narrative criteria. The sediment loading was allocated among all land use categories present in the watershed. Data used in establishing this TMDL were generated using a water quality analysis model (AVGWLF) designed by the Pennsylvania State University.

The following table shows the estimated current sediment loading for the portion of the Crosskill Creek watershed covered by the TMDL. Overall load reductions necessary to meet the TMDL are also identified.

Summary of TMDL-Based Load Reductions in the Crosskill Creek Watershed

<i>Watershed</i>	<i>Pollutant</i>	<i>Existing Load (lbs/yr)</i>	<i>TMDL (lbs/yr)</i>	<i>Reduction</i>
Crosskill Creek	Sediment	2,133,904	1,790,881	16%

The data and all supporting documentation used to develop the proposed TMDL are available from the Department. The proposed TMDL and information on the TMDL program can be viewed on the Department's website: www.dep.state.pa.us (DEP Keyword: TMDL). To request a copy of this TMDL, contact Travis Stoe, Water Supply and Wastewater Management, P. O. Box 8467, Harrisburg, PA 17105-8467, tstoe@state.pa.us.

The Department will consider all comments in developing the final TMDL, which will be submitted to the EPA for approval. Written comments will be accepted at the previous address and must be postmarked by September 13, 2004. A public meeting to discuss the technical merits

of the TMDL will be held on August 31, 2004, at 7 p.m. in the Bethel Township Community Center, 81 Klahr Road, Bethel, PA.

Public Meeting and Request for Comment for the Proposed Total Maximum Daily Loads (TMDLs) for the Watershed of Unnamed Tributary 44769 to the Conemaugh River in Indiana County

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

The Department will accept comments on the proposed TMDL developed for the watershed of Unnamed Tributary 44769 in Indiana County. The TMDL was established in accordance with the requirements of section 303(d) of the Clean Water Act. The Commonwealth's 1996 and 1998 Section 303(d) lists included stream segments in the watershed. The listings of these segments were due to use impairments caused by sediment and nutrients.

There currently are no State or Federal in-stream numerical water quality criteria for nutrients and sediment. Therefore, the Department utilized a reference watershed approach to implement the applicable narrative criteria. The proposed TMDL sets allowable loadings of phosphorus and sediment in the watershed of Unnamed Tributary 44769. Phosphorus was chosen as the TMDL endpoint for nutrient impairments due to its being the limiting nutrient in the watershed. The phosphorous and sediment loadings were allocated among all land use categories present in the watershed. Data used in establishing these TMDLs were generated using a water quality analysis model (AVGWLF) designed by the Pennsylvania State University.

The data and all supporting documentation used to develop the proposed TMDL are available from the Department. The proposed TMDL and information on the TMDL program can be viewed on the Department's website: www.dep.state.pa.us (DEP Keyword: TMDL). To request a copy of this TMDL, contact Joe Boylan, 400 Waterfront Drive, Pittsburgh, PA 15222, jboylan@state.pa.us.

The Department will consider all comments in developing the final TMDL, which will be submitted to the EPA for approval. Written comments will be accepted at the previous address and must be received by September 14, 2004. A public meeting to discuss the technical merits of the TMDL will be held on August 25, 2004, at 6:30 p.m. at the Burrell Township Municipal Building, Blairsville, PA.

[Pa.B. Doc. No. 04-1500. Filed for public inspection August 13, 2004, 9:00 a.m.]

State Board for Certification of Sewage Enforcement Officers; 2004 Examination Announcement

The Statewide sewage enforcement officer (SEO) examination scheduled for October 30, 2004, has been rescheduled for November 19, 2004, following completion of the Pre-certification Academy in Exton, PA.

Applications must be received by the State Board for Certification of Sewage Enforcement Officers, complete and correct, by the close of business on October 13, 2004.

For information on SEO training, contact the Pennsylvania State Association of Township Supervisors, 4855 Woodland Dr., Enola, PA 17025-1291, (717) 763-0930.

Examination applications may be obtained by contacting the Department of Environmental Protection, Certification and Licensing Section, Rachel Carson State Office Building, 400 Market St., P. O. Box 8454, Harrisburg, PA 17105-8454, (717) 705-8024.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 04-1501. Filed for public inspection August 13, 2004, 9:00 a.m.]

DEPARTMENT OF HEALTH

Application of Adler Institute for Advanced Imaging for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Adler Institute for Advanced Imaging has requested an exception to the requirements of 28 Pa. Code § 51.23 (relating to positron emission tomography).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address previously listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, 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.,
Secretary

[Pa.B. Doc. No. 04-1502. Filed for public inspection August 13, 2004, 9:00 a.m.]

Application of Blake Gastroenterology Ambulatory Surgery Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Blake Gastroenterology Ambulatory Surgery Center has requested an exception to the requirements of 28 Pa. Code § 571.1 (relating to minimum standards), which requires compliance with minimum standards in the *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standard contained in this publication: 9.5.C (relating to public parking).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of

Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address previously listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, 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.,
Secretary

[Pa.B. Doc. No. 04-1503. Filed for public inspection August 13, 2004, 9:00 a.m.]

Application of Gettysburg Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Gettysburg Hospital has requested an exception to the requirements of 28 Pa. Code § 553.31(a) (relating to administrative responsibilities).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address previously listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, 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.,
Secretary

[Pa.B. Doc. No. 04-1504. Filed for public inspection August 13, 2004, 9:00 a.m.]

Application of Jennersville Regional Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives

notice that Jennersville Regional Hospital has requested an exception to the requirements of 28 Pa. Code § 51.23 (relating to positron emission tomography).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address previously listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, 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.,
Secretary

[Pa.B. Doc. No. 04-1505. Filed for public inspection August 13, 2004, 9:00 a.m.]

Application of Mount Nittany Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Mount Nittany Medical Center has requested an exception to the requirements of 28 Pa. Code § 107.26(b) (relating to additional committees).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address previously listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, 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.,
Secretary

[Pa.B. Doc. No. 04-1506. Filed for public inspection August 13, 2004, 9:00 a.m.]

Application of Nason Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Nason Hospital has requested an exception to the requirements of 28 Pa. Code §§ 107.26(b)(2) and 107.32 (relating to additional committees; and meetings and attendance).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address previously listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, 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.,
Secretary

[Pa.B. Doc. No. 04-1507. Filed for public inspection August 13, 2004, 9:00 a.m.]

Application of Philipsburg Area Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Philipsburg Area Hospital has requested an exception to the requirements of 28 Pa. Code § 107.62 (relating to oral orders).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address previously listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, 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.,
Secretary

[Pa.B. Doc. No. 04-1508. Filed for public inspection August 13, 2004, 9:00 a.m.]

Application of UPMC Lee Regional Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that UPMC Lee Regional Hospital has requested an exception to the requirements of 28 Pa. Code § 138.15 (relating to high-risk cardiac catheterizations).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address previously listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, 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.,
Secretary

[Pa.B. Doc. No. 04-1509. Filed for public inspection August 13, 2004, 9:00 a.m.]

Application of UPMC Passavant Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that UPMC Passavant Hospital has requested an exception to the requirements of 28 Pa. Code § 107.62 (relating to oral orders).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address previously listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, 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.,
Secretary

[Pa.B. Doc. No. 04-1510. Filed for public inspection August 13, 2004, 9:00 a.m.]

Application of The Washington Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that The Washington Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards in the *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standards contained in this publication: 7.9.D24 (relating to secured holding room).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address previously listed.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone number, 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.,
Secretary

[Pa.B. Doc. No. 04-1511. Filed for public inspection August 13, 2004, 9:00 a.m.]

Availability of Draft Preventive Health and Health Services Block Grant Application for Federal Fiscal Year 2005; Public Hearing

The Department of Health (Department) is making copies available of the Draft Preventive Health and Health Services Block Grant Application (draft block grant application) for FFY 2005, under 42 U.S.C.A. § 300w-4. This draft block grant application is the Commonwealth's draft request to the United States Department of Health and Human Services for block grant funding to address the Healthy People 2010 Health Status Objectives.

The draft block grant application describing proposed services, program goals and objectives and activities will be available on or after August 20, 2004, and can be obtained by calling the Bureau of Chronic Diseases and Injury Prevention at (717) 787-6214. Persons with a disability who require an alternative format of the draft block grant application (for example, large print, audio tape or Braille) should contact the Bureau of Chronic Diseases and Injury Prevention at (717) 787-6214, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

Written comments on the draft block grant application will be accepted and should be sent by 4 p.m. on September 17, 2004, to the Bureau of Chronic Diseases and Injury Prevention, Room 1000, Health and Welfare Building, P. O. Box 90, Harrisburg, PA 17108.

A public hearing will be also conducted by the Department for the purpose of receiving testimony on the draft block grant application under 42 U.S.C.A. § 300w-4. Comments and suggestions from the public should relate to the priorities and program plans included in the draft block grant application.

The hearing will be held from 10 a.m. until 1 p.m. on September 17, 2004, in Conference Room 1000, Health and Welfare Building, 7th and Forster Streets, Harrisburg, PA. Persons wishing to testify are requested to pre-register by contacting the Bureau of Chronic Diseases and Injury Prevention at (717) 787-6214. Registration will be accepted on the day of the hearing. Persons will be allotted a maximum of 15 minutes to testify. Testifiers should provide the Department with two copies of the testimony they will be presenting at the hearing.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodations to do so should contact Leslie Best, Director, Bureau of Chronic Diseases and Injury Prevention, (717) 787-6214, 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.,
Secretary

[Pa.B. Doc. No. 04-1512. Filed for public inspection August 13, 2004, 9:00 a.m.]

Availability of Title V Funds through Mini-Grants to Support Community Outreach and Peer Support Activities about Breastfeeding

The Bureau of Family Health is accepting mini-grant applications for breastfeeding awareness, community outreach and peer support activities occurring from September 1, 2004, to June 30, 2005. Mini-grants for up to \$3,000 are available to support ongoing or single activities, events or services with the direct objectives to:

- Decrease the negative stereotypes associated with breastfeeding among the general public.
- Raise awareness of exclusive breastfeeding and the timely and adequate complementary feeding with continued breastfeeding as the standard for infant feeding.
- Increase the number of pregnant women, their partners and immediate family members who consider breastfeeding acceptable and desirable.
- Increase the number of mothers who breastfeed their infants in the early postpartum period.
- Increase the number of mothers who breastfeed their infants for 6 months to 1 year or longer.
- Develop social and institutional support resources for breastfeeding to enable breastfeeding continuation at places of work, the community, medical facilities and other public places.

The public health benefits of breastfeeding have been extensively documented. Experts agree that breastfeeding is the optimal way to feed infants. Breastfeeding significantly promotes infant and maternal immediate and long-term health, decreases the frequency of doctor visits, hospitalizations and medication utilization and thereby lowers medical costs. As a result, the decision to breastfeed is of significant importance to the newborn child, the mother and the public health and healthcare system.

Eligible applicants are public and private organizations, foundations or community-based agencies in this Commonwealth as recognized by Federal Tax ID number. Individuals may not apply. Eligible applicants include:

- Medical care facilities
- Educational providers
- Community organizations
- Community groups/civic clubs
- Employers/businesses
- Libraries
- Local governments
- Medical/dental providers
- Youth groups
- Places of worship/congregations
- Entertainment/recreation groups
- Professional associations
- Social/human service agencies
- Schools/colleges/universities

Applicants who may not apply for these funds are:

- Agencies contracting with the Department of Health (Department) to provide Special Supplemental Nutrition Program for Women, Infants and Children (WIC) for the period July 1, 2004, through June 30, 2005.
- Organizations in receipt of, or expecting to apply for, a 2004-05 Bureau of Family Health Building Inclusive Communities and/or Barrier Elimination mini-grant with a request totaling \$3,000. For application information, see the Department's website: www.health.state.pa.us (Search: Inclusive Communities or Barrier Elimination).
- For-profit organizations applying for a Pennsylvania Breastfeeding Awareness and Support Program (PBASP) funds to conduct training. For-profit organizations may apply to conduct other activities; reimbursement for training violates the provisions of the Maternal and Child Health Block Grant.

Completed applications will be accepted between August 1, 2004, and May 15, 2005. Applications received after May 15, 2005, cannot be considered for fiscal year 2004-05 funding. Applications will be considered until the funds allocated for this use have been fully encumbered.

Funding decisions are contingent upon the availability of 2004 fiscal year funds and Department approval. Completed applications will be scored by a review panel using a five factor rating scale. The five rating factors are: soundness of approach (five points), documented need and target population selection (three points), resources leveraged and involvement of key stakeholders in application planning (one point) and evaluation/measurement of results (one point). Commitment from media: one bonus point. Applicants will be notified of approval/disapproval in writing within 30 days of receipt of a completed application. Applicants not selected for funding will be offered one opportunity to be reconsidered after revising their applications to conform to the application guidelines.

Applicants may be awarded any amount up to \$3,000 per State fiscal year. In all cases, Department funds

should be used as payer of last resort. Funds may be used for reimbursement of one time purchases only, after which time the grantee becomes sole owner of the purchased property. The budget section of the application must include a budget narrative detailing by line item how project funds will be used and the degree to which competitive bids were secured for purchases. Funds may be used to support ongoing and/or one-time activities, events or services that directly promote the objectives of the program. Expenses eligible for reimbursement under the PBASP include:

1. Equipment: breast pumps, and the like.
2. Teaching tools: displays, printed materials, audio-visual materials, baby dolls/mannequins, and the like.
3. Staff time for group counseling, community educational and advocacy functions.
4. Advertising.
5. Space rental for special activity.

Application materials can be downloaded from the Department's website (Search: Breastfeeding). Persons can also request application materials or additional information related to this initiative by contacting Wanda Vierthaler, Bureau of Family Health, (717) 783-6536.

Persons with a disability who require an alternative format of this notice (for example, large print, audiotape or Braille) should contact Wanda Vierthaler at (717) 783-6536, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT) for speech and/or hearing impaired persons.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 04-1513. Filed for public inspection August 13, 2004, 9:00 a.m.]

Availability of Title V Funds through Mini-Grants to Support Elimination of Barriers to Community Inclusion for Children/Youth with Special Health Care Needs

The Bureau of Family Health (Bureau) is accepting mini-grant applications up to \$3,000 related to eliminating barriers to inclusion of children and youth with special health care needs in communities in this Commonwealth. Mini-grants are available to support activities which directly address physical, environmental and informational barriers allowing community organizations, businesses, places of worship and schools to be more inclusive of children with special health care needs. This project is an extension of the Bureau's Building Inclusive Communities for Children/Youth With Special Health Care Needs Mini-Grant Initiative (BIC) which offers financial support for educational endeavors addressing community inclusion. Barrier Elimination Project (BE) funds will be used to advance this work by financially supporting the elimination of tangible barriers to inclusion.

For purposes of this funding opportunity, "children with special health care needs" are defined as those birth to 21 years of age who have a chronic physical, developmental, behavioral or emotional condition requiring services of a type or amount beyond that required by children generally.

The degree to which communities are healthy can be partly gauged by the degree to which children/youth with special health care needs are provided a full complement of services, civic engagement and social interaction. The BE is designed to empower communities by providing financial support for activities that either remove or significantly reduce obstacles that children and youth with special health care needs and their families confront as they seek to participate fully and productively in their communities. These include barriers to self-care, activities of daily living, receptive/expressive communication, learning, mobility, access to service, recreation, academics, spiritual practice, volunteerism, hobby exploration, employment, voting and economic self-sufficiency. The ultimate goal of the project is to build social capital by assisting communities to be fully accessible and inclusive and, consequently, allow for the full integration of this Commonwealth's children with special health care needs in all aspects of community life. Project funds must be used to reimburse purchases and activities occurring prior to June 30, 2005.

Eligible applicants are public and private organizations, foundations or community-based agencies in this Commonwealth as recognized by Federal Tax ID number. Individuals may not apply. Informal groups without Federal Tax ID numbers are encouraged to partner with a sponsor organization who may apply on behalf of the group. For-profit organizations may apply. However, no applicant may take a profit from these funds.

Applicants may include:

- Day care centers and child care providers
- Educational providers
- Community planners
- Community groups/civic clubs
- Potential employers/businesses
- Libraries
- Travel/tourism providers
- Bankers/lenders
- Minority groups
- Medical/dental providers
- Youth groups
- Places of worship/congregations
- Entertainment/recreation/play providers
- Professional associations/organizations
- Voting/polling providers
- Park/forest/camp ground staff
- Retailers

Applicants may apply for funding for reimbursement of multiple purchases or activities. However, the maximum cumulative award to any one applicant (as identified by Federal Tax ID number) is \$3,000 per fiscal year when combined with any funding awards received through the BIC or the Pennsylvania Breastfeeding Awareness and Support Program for the current fiscal year. In all cases, Department funds should be used as payer of last resort. Grant funds may not supplant existing funds. Grant funds may be used for reimbursement of one time purchases only, after which time the grantee becomes sole owner of the purchased property. Eligible expenses fall within the following categories: equipment, assistive technology/communication devices, site/facility improvements, environment/curriculum and technology, as described in the application materials.

To apply for funding, a completed application must be received by the Department of Health (Department) by 4:30 p.m. on October 1, 2005. Applications may be mailed or hand delivered. Applications may not be faxed. Late applications will not be accepted regardless of the reason. The Department expects to notify applicants of award status within 8 weeks of the submission due date. It is anticipated that 33 awards of \$3,000 or less will be made. This is a reimbursement program. Grantees must spend

their own funds first and then be reimbursed by the Department.

Funding decisions are contingent upon the availability of 2004-05 fiscal year funds and Department approval by means of a proposal review panel. Approval will be based upon a common set of pre-established criteria, including:

1. The justifiable need for elimination of the proposed barriers to advance the inclusion of young people with disabilities, as justified by the applicant.
2. The number of young people with special needs who will ultimately benefit from elimination of the barrier.
3. The likelihood that the activities proposed will be of ongoing, systemic benefit to the community.
4. The reasonableness of proposed expenditures/purchases.

Applicants proposing activities serving a greater number of young people with special health care needs in nonsegregated environments will be rated higher comparatively.

Application materials can be downloaded from the Department's website: www.health.state.pa.us (Search: Barrier Elimination). Persons can also request application materials or additional information related to this initia-

tive by contacting Candace Johndrow, Bureau of Family Health, (717) 783-6536.

Persons with a disability who require an alternative format of this notice (for example, large print, audiotape or Braille) should contact Candace Johndrow at (717) 783-6536, V/TT (717) 783-6514 or the Pennsylvania AT&T

Relay Services at (800) 654-5984 (TT) for speech and/or hearing impaired persons.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 04-1514. Filed for public inspection August 13, 2004, 9:00 a.m.]

Availability of Title V Funds through Mini-Grants to Support Presentations about Building Inclusive Communities for Children and Youth with Special Health Care Needs

The Bureau of Family Health (Bureau) is accepting mini-grant applications to promote the building of inclusive communities. Mini-grants are available to support innovative, interactive educational events (that is, presentations, conference sessions, skits, trainings, forums, work shops, and the like) that will enhance community resources to promote inclusion of children and youth with special health care needs into everyday activities. For purposes of this funding opportunity, "children and youth with special health care needs" are defined as those birth to 21 years of age who have a chronic physical, developmental, behavioral or emotional condition requiring services of a type or amount beyond that required by children generally.

The degree to which communities are healthy can be partly gauged by the degree to which children and youth with special health care needs are provided supports to contribute and be a part of the community. Children and youth with special health care needs are often segregated and not offered full access to community, recreational, spiritual, social and educational life. The Building Inclusive Communities mini-grant program attempts to address this issue by providing financial support for innovative educational initiatives designed to expand the knowledge and awareness of communities in this Commonwealth as it relates to the needs of this population. The ultimate goal of the program is to build social capital and, consequently, allow for the full integration of this Commonwealth's children and youth with special health care needs into all aspects of community life. The mini-grants provide funding for events occurring prior to June 30, 2005.

Target audiences may include:

- Day care centers and child care providers
- Educational providers
- Community planners
- Community groups/civic clubs
- Employers/businesses
- Professional associations/organizations
- Voting/polling providers
- Park/forest/campground staff
- Retailers
- Policy makers
- Medical/dental providers
- Youth groups
- Places of worship/congregations
- Entertainment/recreation/play potential
- Families/relatives of children with special health care needs
- Travel/tourism providers
- Bankers/lenders
- Minority groups

Eligible applicants are public and private organizations, foundations or community-based agencies in this Commonwealth as recognized by Federal Tax ID number. For-profit entities may not apply. Individuals in informal groups without Federal Tax ID numbers are encouraged to partner with a sponsor organization who may apply on behalf of the group. Conference facilities must meet current Americans With Disabilities Act requirements.

To apply for funding, a completed application must be received by the Department of Health (Department) no fewer than 45 days prior to the date of the proposed educational event. Applications will be accepted until May 15, 2005. Applications may be mailed or faxed.

Funding decisions are contingent upon the availability of 2004/05 fiscal year funds and Department approval. Completed applications will be scored by a proposal review panel against a common set of criteria in the order that they are received. Applications achieving a minimum score of 7.5 on a 10 point rating scale will be awarded as funds remain available. Applicants will be notified of approval/disapproval in writing within 30 days of receipt of a completed application. Applicants not selected for funding will be notified and may revise their applications once to conform to the guidelines for reconsideration. It is anticipated that 17 awards of \$3,000 or less will be made.

This is a reimbursement program. Grantees must spend their own funds first and then be reimbursed by the Department.

Applicants may apply for funding to cover multiple presentations. However, the maximum cumulative award to any one applicant (as identified by Federal Tax ID number) is \$3,000 per fiscal year or for any one event when combined with any funding awards received through the Bureau's Barrier Elimination Project or the Pennsylvania Breastfeeding Awareness and Support Program for the same fiscal year. Department funds should be used as payer of last resort. Grant funds may not be used to supplant existing funds. Applicants requesting partial funding of an event must provide assurances that the balance of funds have been secured. Expenses eligible for reimbursement under this mini-grant include:

1. Speaker fees/honoraria.
2. Speaker travel costs to and from event (that is, airfare, train, automobile mileage, tolls, parking, and the like).
3. Speaker's lodging and subsistence.
4. Handout/resource material development/duplication.
5. Event promotion/media.
6. Audio-visual equipment rental/supplies.

7. Room rental costs.
8. Training supplies.

Application materials can be downloaded from the Department website: www.health.state.pa.us (Search: Inclusive Communities). Persons may also request application materials or additional information related to this initiative by contacting Candace Johndrow, Bureau of Family Health, (717) 783-6536.

Persons with a disability who require an alternative format of this notice (for example, large print, audio tape or Braille) should contact Candace Johndrow, (717) 783-6536, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT) for speech and/or hearing impaired persons.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 04-1515. Filed for public inspection August 13, 2004, 9:00 a.m.]

Organ Donation Advisory Committee Meeting

The Organ Donation Advisory Committee, established under 20 Pa.C.S. § 8622 (relating to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund), will hold a public meeting on September 8, 2004, from 10 a.m. to 2 p.m. in the Conference Room, Center for Organ Recovery and Education, 204 Sigma Drive, RIDC Park, Pittsburgh, PA 15238.

For additional information, contact William J. Neil, Manager, Health Education and Information Program, Bureau of Chronic Diseases and Injury Prevention, Room 1000 Health and Welfare Building, Harrisburg, PA 17120, (717) 787-5900.

Persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so should contact William J. Neil at (717) 787-5900, for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

This meeting is subject to cancellation without notice.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 04-1516. Filed for public inspection August 13, 2004, 9:00 a.m.]

Requests for Exception; Long-Term Care Nursing Facilities

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 201.3 (relating to definitions):

Deer Meadows
8301 Roosevelt Boulevard
Philadelphia, PA 19152
FAC ID 020202

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.6(a) (relating to function of building):

Rouse-Warren County Home
701 Rouse Avenue
Youngsville, PA 16371

The following long-term care nursing facility is seeking an exception to 28 Pa. Code § 205.36 (relating to bathing facilities):

Colonial Manor Nursing Home
970 Colonial Manor
York, PA 17403

These requests are on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from the Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the division and address previously listed.

Comments received by the Department within 15 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who require an alternative format of this document or who wish to comment in an alternative format (for example, large print, audiotape or Braille) should contact the Division of Nursing Care Facilities at the address or phone number previously listed, 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.,
Secretary

[Pa.B. Doc. No. 04-1517. Filed for public inspection August 13, 2004, 9:00 a.m.]

Tobacco Use Prevention and Cessation Advisory Committee Public Hearing and Public Meeting

The Tobacco Use Prevention and Cessation Advisory Committee (Committee) of the Department of Health (Department) will hold a public hearing and a public meeting on August 24, 2004, in Room E-100, Labor and Industry Building, Seventh and Forster Streets, Harrisburg, PA.

The public hearing will be held from 10:30 a.m. to 12 p.m. Comments must be submitted in writing by 2:30 p.m. on August 20, 2004, to the Department of Health, Bureau of Chronic Diseases and Injury Prevention, Division of Tobacco Prevention and Control, Room 1006, Health and Welfare Building, Seventh and Forster Streets, Harrisburg, PA 17120, fax (717) 214-6690. Written comments must be limited to three typewritten pages. Persons wishing to present written statements orally at the public hearing must contact Brenda Reichert at (717) 783-6600 by 2:30 p.m. on August 20, 2004, to make a reservation for testifying at the hearing. Oral testimony will be limited to 5 minutes. Persons will be scheduled on a first come, first served basis, as time permits.

The public meeting of the Committee will be held from 1 p.m. to 3:30 p.m. The purpose of the meeting is to discuss the tobacco use prevention and cessation priorities for the State fiscal year 2003-04.

This meeting is open to the public. No reservations are required to attend the public meeting.

For additional information, contact Judy Ochs, Director, or Brenda Reichert, Administrative Assistant, Division of

Tobacco Prevention and Control, 1006 Health and Welfare Building, Seventh and Forster Streets, Harrisburg, PA, (717) 783-6600.

Persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so should contact Judy Ochs or Brenda Reichert, (717) 783-6600, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT) for speech and/or hearing impaired persons.

This hearing and meeting is subject to cancellation without notice.

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 04-1518. Filed for public inspection August 13, 2004, 9:00 a.m.]

DEPARTMENT OF REVENUE

Pennsylvania Lifetime Riches '04 Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Lifetime Riches '04.

2. *Price:* The price of a Pennsylvania Lifetime Riches '04 instant lottery game ticket is \$10.

3. *Play Symbols:* Each Pennsylvania Lifetime Riches '04 instant lottery game ticket will contain one play area featuring a "WINNING NUMBERS" area and a "YOUR NUMBERS" area. The play symbols and their captions located in the "WINNING NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTEN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN) and 30 (THIRTY). The play symbols and their captions located in the "YOUR NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTEN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY) and a Moneybag Symbol (MNYBAG).

4. *Prize Symbols:* The prize symbols and their captions located in the "YOUR NUMBERS" area are: \$5⁰⁰ (FIV DOL), \$10⁰⁰ (TEN DOL), \$15\$ (FIFTN), \$20\$ (TWENTY), \$25\$ (TWY FIV), \$50\$ (FIFTY), \$100 (ONE HUN), \$250 (TWOHUNFTY), \$500 (FIV HUN), \$1,000 (ONE THO), \$10,000 (TEN THO) and \$RICHES\$ (\$100K/YR/LIFE).

5. *Prizes:* The prizes that can be won in this game are \$5, \$10, \$15, \$20, \$25, \$50, \$100, \$250, \$500, \$1,000, \$10,000 and \$100,000 a year for life. A player can win up to 15 times on a ticket.

6. *Approximate Number of Tickets Printed for the Game:* Approximately 8,280,000 tickets will be printed for the Pennsylvania Lifetime Riches '04 instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$RICHES\$ (\$100K/YR/LIFE) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100,000 a year for life (\$2 million lifetime minimum) which will be paid by an initial cash payment of \$100,000 plus equal annual payments of \$100,000 over the lifetime of the winner and continuing under the provisions of 61 Pa. Code § 811.16 (relating to prizes payable after death of prize winner) until the \$2 million minimum has been paid to the estate of the deceased. If the winner of the Pennsylvania Lifetime Riches '04 prize is younger than 18 years of age, the winner will not begin to receive the prize until the winner reaches 18 years of age. Only one claimant per ticket allowed.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$10,000 (TEN THO) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10,000.

(c) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$1,000 (ONE THO) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag Symbol (MNYBAG), and a prize symbol of \$500 (FIV HUN) appears under the Moneybag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$500.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$500 (FIV HUN) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$500.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag Symbol (MNYBAG), and a prize symbol of \$250 (TWOHUNFTY) appears under the Moneybag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$250.

(g) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$250 (TWOHUNFTY) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$250.

(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag Symbol (MNYBAG), and a prize symbol of \$100 (ONE HUN) appears under the Moneybag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$100.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$100 (ONE HUN) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag Symbol (MNYBAG), and a prize symbol of \$50\$ (FIFTY) appears under the Moneybag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$50.

(k) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$50\$ (FIFTY) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$50.

(l) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag Symbol (MNYBAG), and a prize symbol of \$25\$ (TWY FIV) appears under the Moneybag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$25.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$25\$ (TWY FIV) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$25.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$20\$ (TWENTY) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$20.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag Symbol

(MNYBAG), and a prize symbol of \$15\$ (FIFTN) appears under the Moneybag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$15.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$15\$ (FIFTN) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$15.

(q) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Moneybag Symbol (MNYBAG), and a prize symbol of \$10^{.00} (TEN DOL) appears under the Moneybag Symbol (MNYBAG) on a single ticket, shall be entitled to a prize of \$10.

(r) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$10^{.00} (TEN DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10.

(s) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$5^{.00} (FIV DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

When Any of Your Numbers Match Any of The Winning Numbers, Win With Prize(s) of:

<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 8,280,000 Tickets</i>
\$10	1:50	165,600
\$10 w/MB	1:25	331,200
\$5 x 2	1:60	138,000
\$5 x 3	1:100	82,800
\$15	1:60	138,000
\$15 w/MB	1:75	110,400
\$5 x 4	1:150	55,200
\$10 x 2	1:30	276,000
\$20	1:20	414,000
\$25	1:75	110,400
\$25 w/MB	1:100	82,800
\$15 + \$10	1:300	27,600
\$5 x 3 + \$10	1:300	27,600
\$5 x 5	1:300	27,600
\$50	1:300	27,600
\$50 w/MB	1:600	13,800
\$5 x 10	1:600	13,800
\$10 x 5	1:600	13,800
\$10 x 4 + \$5 x 2	1:600	13,800
\$25 x 2	1:600	13,800
\$10 x 3 + \$20	1:600	13,800
\$15 x 2 + \$5 x 4	1:600	13,800
\$5 x 7 + \$15	1:600	13,800
\$100	1:120	69,000
\$100 w/MB	1:600	13,800
\$10 x 10	1:600	13,800
\$25 x 4	1:600	13,800
\$50 x 2	1:600	13,800
\$20 x 5	1:600	13,800
\$250	1:6,000	1,380
\$250 w/MB	1:12,000	690

When Any of Your Numbers Match Any of The Winning Numbers, Win With Prize(s) of:

	<i>Win</i>	<i>Approximate Odds</i>	<i>Approximate No. of Winners Per 8,280,000 Tickets</i>
\$15 × 10 + \$20 × 5	\$250	1:12,000	690
\$20 × 10 + \$10 × 5	\$250	1:12,000	690
\$25 × 10	\$250	1:12,000	690
\$50 × 5	\$250	1:13,333	621
\$500	\$500	1:15,000	552
\$500 w/MB	\$500	1:30,000	276
\$50 × 10	\$500	1:30,000	276
\$100 × 5	\$500	1:30,000	276
\$100 × 10	\$1,000	1:60,000	138
\$250 × 4	\$1,000	1:60,000	138
\$1,000	\$1,000	1:30,000	276
\$1,000 × 10	\$10,000	1:394,286	21
\$10,000	\$10,000	1:394,286	21
RICHES	\$100K/YR/LIFE	1:2,760,000	3

MB = Moneybag win prize automatically

9. *Claiming of Prizes:* For purposes of claiming the \$100,000 a year for life prize under the Pennsylvania Lifetime Riches '04 game, "lifetime" for legal entities shall be defined as 20 years beginning the date the prize is claimed. Only one claimant per ticket is allowed for the \$100,000 a year for life prize. There is no cash equivalent for the \$100,000 a year for life prize.

10. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Lifetime Riches '04 instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

11. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Lifetime Riches '04, prize money from winning Pennsylvania Lifetime Riches '04 instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Lifetime Riches '04 instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

12. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

13. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Lifetime Riches '04 or through normal communications methods.

GREGORY C. FAJT,
Secretary

[Pa.B. Doc. No. 04-1519. Filed for public inspection August 13, 2004, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Finding Clinton County

Under section 2002(b) of The Administrative Code of 1929 (71 P. S. § 512(b)), the Deputy Secretary for Highway Administration makes the following written finding:

The Department of Transportation (Department) plans to replace the existing bridge carrying S. R. 1010 over Chatham Run in Pine Creek Township, Clinton County. The bridge is within the Woolrich Historic District and has been determined to be a contributing resource to the Woolrich Historic District. This project will require small strip takes of contributing element properties along with the demolition of the contributing Chatham Run Bridge.

Information describing the project together with the associated environmental analysis is contained in the Categorical Exclusion Evaluation/Section 2002 Evaluation that was prepared for this project.

Based upon studies, there is no prudent and feasible alternative to the removal of the bridge over Chatham Run and the taking of strip takes from contributing properties within the Woolrich Historic District.

The Deputy Secretary for Highway Administration 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 effects.

No adverse environmental effect is likely to result from the reconstruction of this section of highway.

GARY L. HOFFMAN, P. E.,
Deputy Secretary for Highway Administration

[Pa.B. Doc. No. 04-1520. Filed for public inspection August 13, 2004, 9:00 a.m.]

Finding Potter County

Under section 2002(b) of The Administrative Code of 1929 (71 P. S. § 512(b)), the Deputy Secretary for Highway Administration makes the following written finding:

The Department of Transportation (Department) plans to remove the Fourth Street Bridge and the Seventh Street Bridge over the concrete lined channel of the Allegheny River in the Borough of Coudersport, Potter County. Both the Fourth Street Bridge and the Seventh Street Bridge have been determined eligible for the National Register of Historic Places. The existing historic Seventh Street Bridge superstructure will be moved and reused at the Fourth Street location as a pedestrian bridge. A new structure meeting current design criteria will be constructed at the Seventh Street location.

Information describing the project, together with the associated environmental analysis, is contained in the Categorical Exclusion Evaluation/Section 2002 Evaluation that was prepared for this project.

Based upon studies, there is no prudent and feasible alternative to the removal of the National Register-eligible bridges over the Allegheny River.

The Deputy Secretary for Highway Administration 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 effects.

No adverse environmental effect is likely to result from the reconstruction of this section of highway.

GARY L. HOFFMAN, P. E.,
Deputy Secretary for Highway Administration

[Pa.B. Doc. No. 04-1521. Filed for public inspection August 13, 2004, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Actions Taken by the Commission

The Independent Regulatory Review Commission met publicly at 10:30 a.m., Thursday, July 29, 2004, and announced the following:

Regulations Deemed Approved under section 5(g) of the Regulatory Review Act—Effective July 28, 2004

State Real Estate Commission # 16A-569: Deletion of Examination Fees (deletes 49 Pa. Code Chapter 35)

Pennsylvania State Police # 17-66: Designation of Emergency Vehicles (amends 37 Pa. Code Chapter 41)

Actions Taken—Regulations Approved

State Board of Dentistry # 16A-4612: Expanded Function Dental Assistants (amends 49 Pa. Code § 33.103(c))

State Board of Physical Therapy # 16A-659: General Provisions (amends 49 Pa. Code Chapter 40)

State Board of Medicine # 16A-4914: Continuing Medical Education (amends 49 Pa. Code Chapter 16)

State Board of Education # 6-279: Pupil Attendance (amends 22 Pa. Code Chapter 11)

Environmental Quality Board # 7-376: Coal Mining (adds 25 Pa. Code § 86.6)

Pennsylvania Public Utility Commission # 57-228: Electric Service Reliability (amends 52 Pa. Code Chapter 57)

Approval Order

Public Meeting held
July 29, 2004

Commissioners Voting: Alvin C. Bush, Vice Chairperson; Daniel F. Clark, Esq.; Arthur Coccodrilli; Murray Ufberg, Esq., by phone

State Board of Dentistry—Expanded Function Dental Assistants; Regulation No. 16A-4612

On October 10, 2002, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Dentistry (Board). This rulemaking amends 49 Pa. Code § 33.103(c). The proposed regulation was published in the October 26, 2002, *Pennsylvania Bulletin* with a 30-day public comment period. The Board resubmitted the proposed regulation on January 29, 2003, under section 5(e) of the Regulatory Review Act, which was in effect at the time the regulation was proposed. The final-form regulation was submitted to the Commission on June 22, 2004.

This regulation removes the clinical component of the examination required for certification as an expanded function dental assistant. It retains the written examination requirement. This change will significantly reduce the cost of the examination.

We have determined this regulation is consistent with the statutory authority of the Board (63 P. S. § 122(d.1)(1), (e) and (o)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Approval Order

Public Meeting held
July 29, 2004

Commissioners Voting: Alvin C. Bush, Vice Chairperson; Daniel F. Clark, Esq.; Arthur Coccodrilli; Murray Ufberg, Esq., by phone

State Board of Physical Therapy—General Provisions; Regulation No. 16A-659

On February 12, 2003, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Physical Therapy (Board). This rulemaking amends 49 Pa. Code Chapter 40. The proposed regulation was published in the April 5, 2003, *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on June 17, 2004.

This regulation amends the Board's existing regulations relating to physical therapists and physical therapist assistants. The amendments relate to: education and

licensure requirements; scope of practice, nondelegable activities and functions; and editorial revisions.

We have determined this regulation is consistent with the statutory authority of the Board (63 P. S. § 1303(a)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Approval Order

Public Meeting held
July 29, 2004

Commissioners Voting: Alvin C. Bush, Vice Chairperson; Daniel F. Clark, Esq.; Arthur Coccodrilli; Murray Ufberg, Esq., by phone

State Board of Medicine—Continuing Medical Education; Regulation No. 16A-4914

On December 16, 2003, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Medicine (Board). This rulemaking amends 49 Pa. Code Chapter 16. The proposed regulation was published in the January 3, 2004, *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on June 22, 2004.

This regulation implements the continuing medical education mandate of The Medical Care Availability and Reduction of Error (MCARE) Act (act). Under the act, medical doctors are required to obtain 100 hours of continuing medical education as a condition of license renewal. The Board has changed the implementation date for full compliance with the continuing education requirements from January 1, 2005, until January 1, 2007, in the final-form regulation. For current licensure renewal, physicians must demonstrate they have completed 25 hours in either Category I or Category II credits.

We have determined this regulation is consistent with the statutory authority of the Board (40 P. S. § 1303.910(a)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Approval Order

Public Meeting held
July 29, 2004

Commissioners Voting: Alvin C. Bush, Vice Chairperson; Daniel F. Clark, Esq.; Arthur Coccodrilli; Murray Ufberg, Esq., by phone

State Board of Education—Pupil Attendance; Regulation No. 6-279

On August 18, 2003, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Education (Board). This rulemaking amends 22 Pa. Code Chapter 11. The proposed regulation was published in the August 30, 2003, *Pennsylvania Bulletin* with a 30-day public com-

ment period. The final-form regulation was submitted to the Commission on June 24, 2004.

The Board is amending its existing regulations related to student attendance. The final-form regulation addresses: admission to school; absences from school; rules for counting daily attendance; private tutoring; minimum hours of instruction; enrollment standards for children of divorced or separated parents, foster children and children living with adults that are not their parents; and immunization requirements. The amendments also bring the Board's regulations into conformity with State and Federal statutes, regulations and judicial decisions.

We have determined this regulation is consistent with the statutory authority of the Board (24 P. S. § 26-2603-B(k)) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Approval Order

Public Meeting held
July 29, 2004

Commissioners Voting: Alvin C. Bush, Vice Chairperson; Daniel F. Clark, Esq.; Arthur Coccodrilli; Murray Ufberg, Esq., by phone

Environmental Quality Board—Coal Mining; Regulation No. 7-376

On April 23, 2002, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Environmental Quality Board (Board). This rulemaking adds 25 Pa. Code § 86.6. The proposed regulation was published in the May 4, 2002, *Pennsylvania Bulletin* with a 45-day public comment period. The final-form regulation was submitted to the Commission on June 18, 2004.

This regulation implements two exclusions in the definition of "surface mining activities" in section 3 of the Surface Mining Conservation and Reclamation Act (52 P. S. § 1396.3). It creates a limited exemption from the coal mining regulations for government-financed construction and reclamation projects.

We have determined this regulation is consistent with the statutory authority of the Board (52 P. S. §§ 1396.3 and 1396.4b(a) and 71 P. S. § 510-20) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

Approval Order

Public Meeting held
July 29, 2004

Commissioners Voting: Alvin C. Bush, Vice Chairperson; Daniel F. Clark, Esq.; Arthur Coccodrilli; Murray Ufberg, Esq., by phone

Pennsylvania Public Utility Commission—Electric Service Reliability; Regulation No. 57-228

On September 19, 2003, the Independent Regulatory Review Commission (Commission) received this proposed

regulation from the Pennsylvania Public Utility Commission (PUC). This rulemaking amends 52 Pa. Code Chapter 57. The proposed regulation was published in the October 4, 2003, *Pennsylvania Bulletin* with a 79-day public comment period. The final-form regulation was submitted to the Commission on June 16, 2004.

This regulation updates the PUC's existing regulations on electric service reliability. The amendments add data requirements to the existing annual reliability reports and add a new quarterly reporting requirement.

We have determined this regulation is consistent with the statutory authority of the PUC (66 Pa.C.S. § 501) and the intention of the General Assembly. Having considered all of the other criteria of the Regulatory Review Act, we find promulgation of this regulation is in the public interest.

By Order of the Commission:

This regulation is approved.

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 04-1522. Filed for public inspection August 13, 2004, 9:00 a.m.]

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulation on the date indicated. To obtain the date and time of the meeting at which the Commission will consider this regulation, contact the Commission at (717) 783-5417 or visit its website: www.irrc.state.pa.us. To obtain a copy of the regulation, contact the promulgating agency.

Final-Form

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
18-387	Department of Transportation Vehicles Required to Stop at Railroad Grade Crossings	8/2/04

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 04-1523. Filed for public inspection August 13, 2004, 9:00 a.m.]

INSURANCE DEPARTMENT

Hamot Medical Center; Hearing

Appeal of Hamot Medical Center under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM04-07-021

On or before August 25, 2004, the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with MCARE's May 27, 2004, 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 September 15, 2004, at 2 p.m. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before August 17, 2004. A hearing shall occur on September 29, 2004, at 1:30 p.m.

in Room 200, Administrative Hearings Office, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA.

On or before September 1, 2004, each party shall file with the Administrative Hearings Office a prehearing statement which shall contain: (1) a comprehensive statement of undisputed facts to be stipulated between the parties; (2) a statement of additional contended facts; (3) names and address of witnesses along with the specialties of experts to be called; (4) a list of documents to be used at the hearing; (5) special evidentiary or other legal issues; and (6) the estimated time for that party's case. Contemporaneously with service of the prehearing statement on the opposing party, each party shall supply the other with a copy of any report generated by an expert witness designated on the prehearing statement. Any report subsequently received from a party's expert witness prior to hearing shall be supplied to the other party within 2 business days. Copies of expert reports need not be filed with the Administrative Hearings Office.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before September 22, 2004, 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 September 27, 2004.

Persons with a disability who wish to attend the administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Jeffrey Wallace, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 04-1524. Filed for public inspection August 13, 2004, 9:00 a.m.]

Highmark Inc. d/b/a Highmark Blue Shield; New Direct Pay Medically Underwritten PPO High Deductible Health Plans (Rates are Based on Age, Gender, Smoker or Nonsmoker); Rate Filing

By filing no. 1-HDHP/INGPPO-04-HBCBS (western region only), Highmark Inc. d/b/a Highmark Blue Shield requests approval of rates for new medically underwritten direct pay PPO High Deductible Health Plans. The requested rates are based on age, gender, smoker or nonsmoker categories.

The requested effective date for the plans is January 1, 2005.

Unless formal administrative action is taken prior to October 27, 2004, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website: www.ins.state.pa.us. To access the filing, select "Consumer Information" on the left side. Under "General Information," click on "Notices." The pdf copy is at the "Filing.pdf" link following the name of the filing.

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's regional office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to Bharat Patel, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, bhpatel@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 04-1525. Filed for public inspection August 13, 2004, 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 Clara Murphy; file no. 04-182-06546; State Farm Mutual Automobile Insurance Company; doc. no. P04-07-037; September 16, 2004, 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 Ashwani Kumar; file no. 04-265-02655; Birmingham Fire of PA; doc. no. PH04-07-038; September 13, 2004, 1:30 p.m.

Appeal of Samuel Burton; file no. 04-267-02459; American Independent Insurance Company; doc. no. PH04-07-017; September 13, 2004, 2:30 p.m.

Appeal of Dennis Abbott; file no. 03-265-06368; Progressive Insurance Companies; doc. no. PH04-07-018; September 13, 2004, 3:30 p.m.

Appeal of Jamie Pryor; file no. 04-265-02315; AAA Mid-Atlantic Insurance Company; doc. no. PH04-07-019; September 14, 2004, 9 a.m.

Parties may appear with or without counsel and offer relevant testimony or evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of

replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend an administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Jeffrey Wallace, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 04-1526. Filed for public inspection August 13, 2004, 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 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 Darlene M. and Mark J. Delessio; file no. 04-182-06816; The Hartford Mutual Insurance Company; doc. no. P04-07-039; September 16, 2004, 10 a.m.

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 Ann Kerns; file no. 04-193-04338; Keystone Insurance Company; doc. no. PH04-07-036; September 14, 2004, 10 a.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 Jeffrey Wallace, Agency Coordinator, (717) 787-4298.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 04-1527. Filed for public inspection August 13, 2004, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

The following Liquor Control Board leases will expire:

Lehigh County, Wine & Spirits Shoppe #3902, Kings Plaza, 5020 Route 873, Schnecksville, PA 18078.

Lease Expiration Date: July 31, 2005

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 4,500 to 5,500 net useable square feet of new or existing retail commercial space within the proximity of the intersections of State Routes 873 and 309 in North Whitehall Township.

Proposals due: September 3, 2004, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Charles D. Mooney, (717) 657-4228

Lehigh County, Wine & Spirits Shoppe #3909, 906 Club Avenue, Allentown, PA 18109.

Lease Expiration Date: July 31, 2005

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 6,000 to 10,000 net useable square feet of new or existing retail commercial space within 1 mile of the intersection of Club Avenue and Union Boulevard, Allentown.

Proposals due: September 3, 2004, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Charles D. Mooney, (717) 657-4228

Monroe County, Wine & Spirits Shoppe #4505, Ames Plaza, Weir Lake Road, Route 209, Brodheadsville, PA 18322.

Lease Expiration Date: July 31, 2005

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 3,000 to 7,000 net useable square feet of new or existing retail commercial space within the proximity of the intersections of Route 209 and Weir Lake Road, Chestnut Hill Township.

Proposals due: September 3, 2004, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661

Contact: Charles D. Mooney, (717) 657-4228
JONATHAN H. NEWMAN,
Chairperson

[Pa.B. Doc. No. 04-1528. Filed for public inspection August 13, 2004, 9:00 a.m.]

MILK MARKETING BOARD

Hearing and Presubmission Schedule for Milk Marketing Area No. 1; Cost Replacement

Under the Milk Marketing Law (31 P. S. §§ 700j-101—700j-1302), the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Area No. 1 on October 6, 2004, at 9 a.m. in Room 202, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing will be to receive testimony and exhibits concerning cost replacement in Milk Marketing Area No. 1. In accordance with Section G of Official General Order A-890A, as amended by Official General Order A-890A (CRO 4), evidence will be limited to the following: annualized processing, packaging and delivery costs; updated costs for containers, ingredients and Class II products; updated labor, utility and insurance costs based on comparisons between costs per point for the second quarters of calendar years 2003 and 2004; adjustments to announced Class II prices; adjustment for shrinkage, sales of bulk products and cream processing costs; and a reasonable rate of return to milk dealers. Evidence shall be based on the audited costs of a cross section of milk dealers doing business in Milk Marketing Area No. 1. Cost information for containers, ingredients and Class II products shall be based on April 2004 data. In accordance with OGO A-927, evidence and testimony will also be considered regarding the fuel cost adjuster.

The staff of the Board is deemed to be a party to this hearing, and the attorney representing staff is deemed to have entered his appearance. Other persons who may be affected by the Board order fixing prices in Milk Marketing Area No. 1 may be included on the Board's list of parties by:

1. Having their counsel file with the Board, by 4 p.m. on September 10, 2004, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance), which shall identify by name and address the party on whose behalf the appearance is made. Thereafter, documents and other written communications required to be served upon or furnished to that party shall be sent to the attorney of record.

2. If unrepresented by counsel and wishing to appear on their own behalf under 1 Pa. Code § 31.21 (relating to appearance in person), filing with the Board, by 4 p.m. on September 10, 2004, an address to which documents and other written communications required to be served upon them or furnished to them may be sent.

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 copies of each document for the use of nonparties attending the hearing.

1. By 4 p.m. on September 17, 2004, each party shall file with the Board six copies and serve on all other parties one copy of:

a. A list of witnesses who will testify for the party, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 3 p.m. on October 1, 2004, each party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

Parties that wish to offer in evidence documents on file with the Board, public documents or records in other proceedings before the Board or wish the Board to take official notice of facts shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties. In addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 4 p.m. on September 10, 2004.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons who require this information in an alternate format should call (717) 787-4194 or (800) 654-5984 (Pennsylvania Relay Service for TDD users).

KEITH BIERLY,
Secretary

[Pa.B. Doc. No. 04-1529. Filed for public inspection August 13, 2004, 9:00 a.m.]

Hearing and Presubmission Schedule for Milk Marketing Area No. 5; Cost Replacement

Under the Milk Marketing Law (31 P. S. §§ 700j-101—700j-1302), the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Area No. 5 on October 6, 2004, at 11 a.m. in Room 202, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and exhibits concerning cost replacement in Milk Marketing Area No. 5. Evidence will be limited to the following: annualized processing, packaging and delivery costs; updated costs for containers, ingredients and Class II products; updated labor, utility and insurance costs based on comparisons between costs per point for the second quarters of calendar years 2003 and 2004; consideration of skim and butterfat contents of products regulated by the Board; adjustment for shrinkage, sales of bulk products and cream processing costs; in-store handling costs; and a reasonable rate of return to milk dealers and stores. Evidence shall be based on the audited costs of a cross section of milk dealers and stores doing business in Milk Marketing Area No. 5. Cost information for containers, ingredients and Class II products shall be based on April 2004 data. In accordance with OGO A-927, evidence and testimony will also be considered regarding the fuel cost adjuster.

The staff of the Board is deemed to be a party to this hearing, and the attorney representing staff is deemed to have entered his appearance. Other persons who may be affected by the Board order fixing prices in Milk Marketing Area No. 5 may be included on the Board's list of parties by:

1. Having their counsel file with the Board, by 4 p.m. on September 10, 2004, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance), which shall identify by name and address the party on whose behalf the appearance is made. Thereafter, documents and other written communications required to be served upon or furnished to that party shall be sent to the attorney of record.

2. If unrepresented by counsel and wishing to appear on their own behalf under 1 Pa. Code § 31.21 (relating to appearance in person), filing with the Board, by 4 p.m. on September 10, 2004, an address to which documents and other written communications required to be served upon them or furnished to them may be sent.

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 copies of each document for the use of nonparties attending the hearing.

1. By 4 p.m. on September 17, 2004, each party shall file with the Board six copies and serve on all other parties one copy of:

a. A list of witnesses who will testify for the party, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 3 p.m. on October 1, 2004, each party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

Parties that wish to offer in evidence documents on file with the Board, public documents or records in other proceedings before the Board or wish the Board to take official notice of facts shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties. In addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 4 p.m. on September 10, 2004.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons who require this information in an alternate format should call (717) 787-4194 or (800) 654-5984 (Pennsylvania Relay Service for TDD users).

KEITH BIERLY,
Secretary

[Pa.B. Doc. No. 04-1530. Filed for public inspection August 13, 2004, 9:00 a.m.]

Hearing and Presubmission Schedule for Milk Marketing Area No. 6; Cost Replacement

Under the Milk Marketing Law (31 P. S. §§ 700j-101—700j-1302), the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Area No. 6 on October 6, 2004, at 1:30 p.m. in Room 202, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and exhibits concerning cost replacement in Milk Marketing Area No. 6. Evidence will be limited to the following: annualized processing, packaging and delivery costs; updated costs for containers, ingredients and Class II products; updated labor, utility and insurance costs based on comparisons between costs per point for the second quarters of calendar years 2003 and 2004; consideration of skim and butterfat contents of products regulated by the Board; adjustment for shrinkage, sales of bulk products and cream processing costs; in-store handling costs; and a reasonable rate of return to milk dealers and stores. Evidence shall be based on the audited costs of a cross-section of milk dealers and stores doing business in Milk Marketing Area No. 6. Cost information for containers, ingredients, and Class II products shall be based on April 2004 data. In accordance with OGO A-927, evidence and testimony will also be considered regarding the fuel cost adjuster.

The staff of the Board is deemed to be a party to this hearing, and the attorney representing staff is deemed to have entered his appearance. Other persons who may be affected by the Board order fixing prices in Milk Marketing Area No. 6 may be included on the Board's list of parties by:

1. Having their counsel file with the Board, by 4 p.m. on September 10, 2004, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance), which shall identify by name and address the party on whose behalf the appearance is made. Thereafter, documents and other written communications required to be served upon or furnished to that party shall be sent to the attorney of record.

2. If unrepresented by counsel and wishing to appear on their own behalf under 1 Pa. Code § 31.21 (relating to appearance in person), filing with the Board, by 4 p.m. on September 10, 2004, an address to which documents and other written communications required to be served upon them or furnished to them may be sent.

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 copies of each document for the use of nonparties attending the hearing.

1. By 4 p.m. on September 17, 2004, each party shall file with the Board seven copies and serve on all other parties one copy of:

- a. A list of witnesses who will testify for the party, along with a statement of the subjects concerning which each witness will testify. A witness being offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise.

- b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 3 p.m. on October 1, 2004, each party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

Parties that wish to offer into evidence documents on file with the Board, public documents or records in other proceedings before the Board or wish the Board to take official notice of facts shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties. In addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 4 p.m. on September 10, 2004.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

Persons who require this information in an alternate format should call (717) 787-4194 or (800) 654-5984 (Pennsylvania Relay Service for TDD users).

KEITH BIERLY,
Secretary

[Pa.B. Doc. No. 04-1531. Filed for public inspection August 13, 2004, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall 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 by September 7, 2004. 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.

Application of the following for approval to begin operating as common carriers for transportation of persons as described under the application.

A-00120968. James Kirch (1110 Jenkins Street, Uniontown, Fayette County, PA 15401)—persons, upon call or demand, in the County of Fayette.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 04-1532. Filed for public inspection August 13, 2004, 9:00 a.m.]

STATE BOARD OF NURSING

Bureau of Professional and Occupational Affairs v. Mercedes Bogi, L.P.N., R.N.; Doc. No. 0146-51-04

On June 1, 2004, Mercedes Bogi, license nos. PN-258870-L and RN-525843-L, of Phoenix, AZ, was issued a public reprimand based on disciplinary action taken by the Arizona Board of Nursing on her registered nursing license.

Persons may obtain a copy of the adjudication by writing to Martha H. Brown, Board Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

This adjudication and order represents the final State Board of Nursing (Board) decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania 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.

JANET HUNTER SHIELDS, MSN, CRNP, CS,
Chairperson

[Pa.B. Doc. No. 04-1533. Filed for public inspection August 13, 2004, 9:00 a.m.]

STATE ETHICS COMMISSION

Public Meeting

Under 65 Pa.C.S. §§ 1101—1113 (relating to the Public Official and Employee Ethics Act) (act), the State Ethics Commission (Commission) is required to hold at least two public hearings each year to seek input from persons and organizations who represent individual subjects to the provisions of the act and from other interested parties.

The Commission will conduct a public meeting at the Bel-Aire Hotel, 2800 West 8th Street, Erie, PA 16505-4084 on September 21, 2004, at 8:30 a.m. for purposes of receiving said input and for the conduct of other Commission business. Public officials, public employees, organizations and members of the general public may attend.

Persons seeking to testify or present statements, information or other comments in relation to the act, the regulations of the Commission or Commission operations should contact Claire J. Hershberger at (717) 783-1610 or (800) 932-0936. Written copies of statements should be provided at the time of the meeting.

JOHN J. CONTINO,
Executive Director

[Pa.B. Doc. No. 04-1534. Filed for public inspection August 13, 2004, 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.

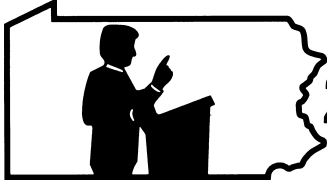
Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) 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

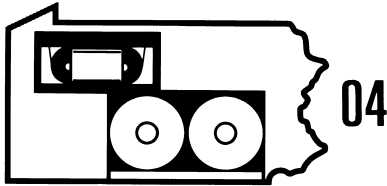
PA TREASURY BUSINESS OUTLET—PLUG INTO IT!

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. Services are free except for the cost of photocopying contracts (15 cents per page); postage; redaction, and certified copies. The bureau may assess reasonable fees for labor and other expenses necessary to comply with the request. A free brochure explains how to take advantage of available services.

Contact: **Bureau of Contracts and Public Records**
 Pennsylvania State Treasury
 Room 201 Finance Building
 Harrisburg, PA 17120
 717-787-4586
 1-800-252-4700
 BizOutlet@patreasury.org

BARBARA HAFER,
State Treasurer

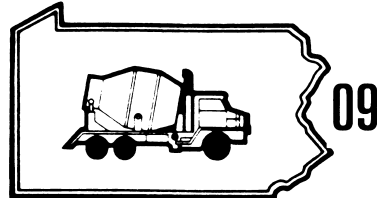
SERVICES



Audio/Video

08232004 Cheyney University of PA intends to solicit bids for a campus voice mail system-24 port, Centrex compatible, 10,000 mailbox, auto attendant features. Installation-interested bidders are asked to send a letter expressing their interest to the following: J. Gregory Hollman, Office of Contract Administration, Cheyney University of PA, 1837 University Circle, Cheyney, PA 19319, jhollman@cheyney.edu, 610-399-2128 (fax). Please include your company's name, mailing address, phone and fax numbers, Federal ID No. of Social Security No., E-mail and/or web site address, salesperson and President/Owner.

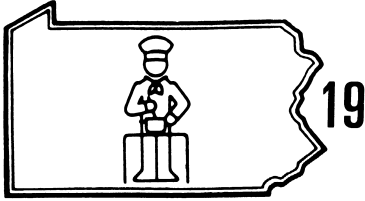
Department: State System of Higher Education
Location: Cheyney University of PA, 1837 University Circle, Cheyney, PA 19013
Duration: 3 years renewable options 2 years
Contact: J. Gregory Hollman, (610) 399-2343



Construction & Construction Maintenance

63-0267 Interior alterations to the first floor of the Graduate Business Center, for a large meeting space, classrooms and offices. Separate prime contracts. General Construction - demolition of existing wall partitions, ceiling tile and carpeting. The existing space that will become the large meeting room is currently unfinished. Both spaces require new partitions, doors, hardware, carpet, paint and ceiling tile. Fire Protection Construction - renovation of existing NFPA 13 sprinkler system. Relocate existing piping and sprinkler heads to new space plan and finished ceiling heights. Electrical Construction - relocating existing fixtures and providing new light fixtures and electrical devices.

Department: State System of Higher Education
Location: West Chester University, Graduate Business Center, 1160 McDermott Drive, West Chester, PA 19382
Duration: Completion time - 60 calendar days after the "Notice to Proceed" is issued.
Contact: Barb Cooper, (610) 436-2706



Food

CN00010130 Vendor to provide misc. frozen foods to Warren State Hospital for the period Oct. - Dec. 2004. Bid specifications may be obtained by contacting the hospital.

Department: Public Welfare
Location: Warren State Hospital, 33 Main Dr., N. Warren, PA 16365-5099
Duration: 10/01/2004 - 12/31/2004
Contact: John Sample, 814-726-4448

SU-04-04 Food Service: The Head Start Program based at Shippensburg University is seeking vendors interested in providing food service for five (5) Head Start centers located in Shippensburg, PA; Newville, PA; and Carlisle, PA. Meals will be prepared in accordance with USDA regulations and delivered on a daily basis in accordance with the menu cycle. Contract award will be made for the period October 1, 2004 to September 30, 2005. Vendors interested in receiving a bid package must request in writing to Karen Smith, Purchasing & Contracting Office, Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257 either by fax at (717) 477-1350 or email to kmsmit@wharf.ship.edu. Bids must be received at the address above no later than 4:00 PM Wednesday, August 25, 2004 and will be opened at 2:00 PM Thursday, August 26, 2004.

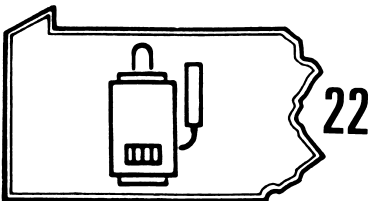
Department: State System of Higher Education
Location: Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257
Duration: October 1, 2004 to September 30, 2005
Contact: Karen M. Smith, (717) 477-1386

CN00010121 Vendor to provide frozen fruits and vegetables and juice drinks (portion packed) frozen, to Warren State Hospital for the period Oct. - Dec. 2004. Bid specifications may be obtained by contacting the hospital.

Department: Public Welfare
Location: Warren State Hospital, 33 Main Dr., N. Warren, PA 16365-5099
Duration: 10/1/2004 - 12/31/2004
Contact: Bobbie Muntz, (814) 726-4496

CN00010129 Vendor to provide meat and meat products to Warren State Hospital for the period Oct. - Dec. 2004. Bid specifications may be obtained by contacting the hospital.

Department: Public Welfare
Location: Warren State Hospital, 33 Main Dr., N. Warren, PA 16365-5099
Duration: 10/1/2004 - 12/31/2004
Contact: John Sample, (814) 726-4448



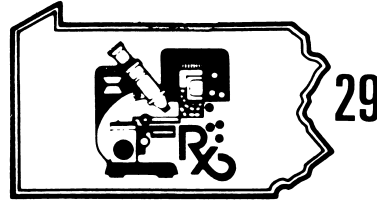
HVAC Services

FM 8829 Provide emergency and routine repair work for the heating, air-conditioning, electrical and plumbing systems. Contractor to respond to call within four (4) hours of receipt, either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty of parts, where applicable, and further agree to guarantee workmanship and replacement parts provided by their firm for ninety (90) days. Materials and parts are to be billed at cost. Remarks: Bidding to be done on labor rate per hour for mechanic and helper plus travel.

Department: State Police
Location: Troop M, Dublin Station, 3218 Rickert Road, Dublin, PA 18944
Duration: September 1, 2004, through June 30, 2007
Contact: Helen Fuhrman, (717) 705-5952

FM 8830 Provide emergency and routine repair work for the heating, air-conditioning, electrical and plumbing systems. Contractor to respond to call within four (4) hours of receipt, either directly or via a recording device. Replacement parts must be as originally installed or of equal quality and function. The contractor must agree to redeem manufacturer's warranty of parts, where applicable, and further agree to guarantee workmanship and replacement parts provided by their firm for ninety (90) days. Materials and parts are to be billed at cost. Remarks: Bidding to be done on labor rate per hour for mechanic and helper plus travel.

Department: State Police
Location: Troop M, Bethlehem Headquarters, Garage & Lab, 2930 Airport Road, Bethlehem, PA 18017
Duration: September 1, 2004, through June 30, 2007
Contact: Helen Fuhrman, (717) 705-5952



Medical Services

CN00009999 To provide Psychology Services to the residents of the Hollidaysburg Veterans Home. Must be licensed by the Commonwealth of Pennsylvania, at the independent practice level of Psychology to furnish diagnostic, assessment, preventive, and therapeutic services directly to individuals. Services will be provided under the supervision of a Psychiatrist. A Master's Degree is preferred but we will accept a Bachelor's Degree in Psychology. We will not accept a social worker but we will accept a Licensed Clinical Social Worker. The bid opening is tentatively scheduled for 08/27/04. Contractor must be registered with the Commonwealth. In order to do so, please visit www.vendorregistration.state.pa.us/. If you would like a bid packet, please either e-mail to blclapper@state.pa.us or fax your request, along with your Vendor Registration Number, to the information below.

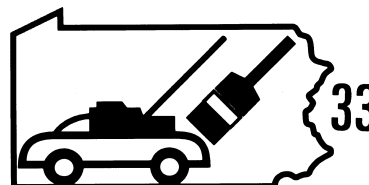
Department: Military Affairs
Location: Hollidaysburg Veterans Home, P. O. Box 319, Rt. 220 and Meadows Intersection, Hollidaysburg, PA 16648-0319
Duration: Approximately 01 September 2004 through 30 June 2005 with renewal options.
Contact: Becky J. Clapper, fax: 814-696-5395



Personnel, Temporary

CN00010144 Vendor shall provide temporary Registered and Licensed Practical Nurses for inmate care at the State Correctional Institution at Pittsburgh.

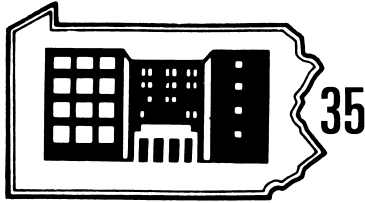
Department: Corrections
Location: State Correctional Institution at Pittsburgh, 3001 Beaver Avenue, P. O. Box 99901, Pittsburgh, PA 15233
Duration: Date bid is awarded till June 30, 2005 unless closure of institution occurs during that time period.
Contact: Carol Schaeffer/Purchasing Agent, (412) 732-2115



Property Maintenance

CL-609 Open-End Asphalt Repair Clarion University of Pennsylvania is soliciting bids for asphalt repair services for its Clarion and Oil City campuses under an open-end, renewable contract. Work will be scheduled on an as-needed basis by individual work-order. To receive a bid package, contractors may mail or deliver a check payable to Clarion University, in the amount of \$20 (non-refundable), to the attention of Judy McAninch, Contract Specialist, 218 Carrier Hall, Clarion University, Clarion, PA 16214. Pre-Bid Meeting: 10:00 A.M., August 18, 2004. Bids Due: 2:00 P.M., August 26, 2004.

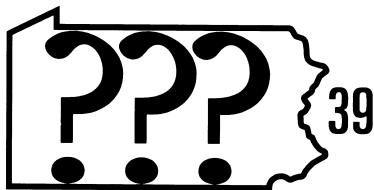
Department: State System of Higher Education
Location: Clarion University, Clarion, PA and Oil City, PA
Duration: 1 year with option for renewal
Contact: Judy McAninch, (814) 393-2240



Real Estate Services

93736 State-owned real estate for sale: Lycoming County Job Center, Loyalsock Township, Lycoming County, PA. The Department of General Services will accept bids for the purchase of a 0.8485 acre parcel with a one story 97' by 120' brick building located at 1300 Sheridan Street, Loyalsock Township, Lycoming County. Bids are due September 30, 2004. Interested parties wishing to receive a copy of solicitation #93736 should view the Department of General Services' website at www.dgs.state.pa.us and click on "Real Estate" or call Ms. Lisa Kettering at (717) 787-1321.

Department: General Services
Location: 505 North Office Building, Harrisburg, PA 17125
Contact: Ms. Lisa Kettering, (717) 787-1321



Miscellaneous

2005-RSSE The Pennsylvania Department of Education will release the Request for Proposals for the 2005 Regional Summer Schools of Excellence (RSSE) program on Wednesday, September 1, 2004. The RSSE programs must target gifted and/or talented youth in elementary, middle and/or secondary levels. They must be enrichment programs offering curriculum activities not ordinarily available in local schools during the year. The programs may concentrate on a single discipline, an integration of discipline, or be multidisciplinary in scope. Eligible RSSE grant applicants are: intermediate units, school districts (serving students in more than one district, except in large cities); colleges and universities; not for profit regional chapters or councils for the arts; culture and/or educational organizations; or consortia of two or more of the above. Applicants may apply for grants to launch new programs or expand or update existing programs. This grant is highly competitive.

Department: Education
Location: Various locations throughout the Commonwealth
Duration: July - August 2005
Contact: Monica Washington, (717) 783-5670

CN000010123 Cremation Services - contractor shall provide cremation services for the disposition of human remains as needed for SCI-Chester. More detailed information can be obtained from the Institution.

Department: Corrections
Location: SCI-Chester, 500 E. 4th Street, Chester, PA 19013
Duration: October 1, 2004 to June 30, 2007
Contact: Jacqueline Newson, Purchasing Agent, (610) 490-4370

RFP#2004-01 The Pennsylvania State System of Higher Education, Office of the Chancellor, is soliciting proposals for Staff Training Consultation Services and Information Technology Placement Consultation Services. For a copy of RFP #2004-01, please contact Scott Bailey, Procurement Manager at sbailey@passhe.edu or 717-720-4155, or go to: <http://www.keystoneu.net/departments/Finance/Procurement/bidsopen1.html>.

Department: State System of Higher Education
Location: Harrisburg, PA
Contact: Scott Bailey, (717) 720-4155

[Pa.B. Doc. No. 04-1535. Filed for public inspection August 13, 2004, 9:00 a.m.]

DESCRIPTION OF LEGEND

- | | |
|--|---|
| <p>1 Advertising, Public Relations, Promotional Materials</p> <p>2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.</p> <p>3 Auctioneer Services</p> <p>4 Audio/Video, Telecommunications Services, Equipment Rental & Repair</p> <p>5 Barber/Cosmetology Services & Equipment</p> <p>6 Cartography Services</p> <p>7 Child Care</p> <p>8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p>9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p>10 Court Reporting & Stenography Services</p> <p>11 Demolition—Structural Only</p> <p>12 Drafting & Design Services</p> <p>13 Elevator Maintenance</p> <p>14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying</p> <p>15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p>16 Extermination Services</p> <p>17 Financial & Insurance Consulting & Services</p> <p>18 Firefighting Services</p> <p>19 Food</p> <p>20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks</p> <p>21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation</p> | <p>22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair</p> <p>23 Janitorial Services & Supply Rental: Interior</p> <p>24 Laboratory Services, Maintenance & Consulting</p> <p>25 Laundry/Dry Cleaning & Linen/Uniform Rental</p> <p>26 Legal Services & Consultation</p> <p>27 Lodging/Meeting Facilities</p> <p>28 Mailing Services</p> <p>29 Medical Services, Equipment Rental and Repairs & Consultation</p> <p>30 Moving Services</p> <p>31 Personnel, Temporary</p> <p>32 Photography Services (includes aerial)</p> <p>33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)</p> <p>34 Railroad/Airline Related Services, Equipment & Repair</p> <p>35 Real Estate Services—Appraisals & Rentals</p> <p>36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)</p> <p>37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems</p> <p>38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)</p> <p>39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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DONALD T. CUNNINGHAM, Jr.
Secretary