

# PENNSYLVANIA BULLETIN

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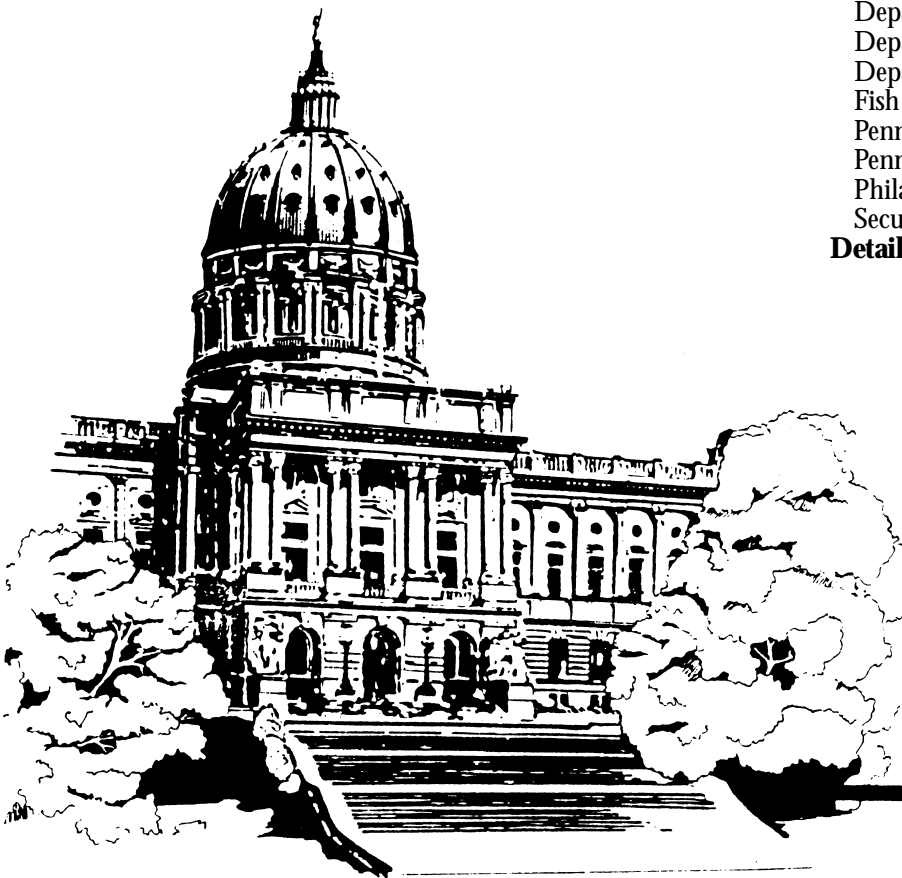
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Pennsylvania Gaming Control Board's  
Draft Temporary Regulations

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Department of Revenue  
Department of Hearing Board  
Fish and Boat Commission  
Pennsylvania Gaming Control Board  
Pennsylvania Public Utility Commission  
Philadelphia Regional Port Authority  
Securities Commission

**Detailed list of contents appears inside.**



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**No. 369, August 2005**

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

## ***Pennsylvania Bulletin***

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

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

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

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

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

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

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

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

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

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

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

## ***Pennsylvania Code***

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

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

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

## **How to Find Documents**

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

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

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

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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 2005.

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# THE COURTS

## Title 237—JUVENILE RULES

### PART I. RULES

[237 PA. CODE CHS. 11—18]

#### Dependency Matters

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the Rules of Juvenile Court Procedure—Dependency Matters be adopted and prescribed to govern dependency procedure and practice in this Commonwealth. The proposed rules will secure uniformity and simplicity in procedure throughout juvenile courts in this Commonwealth. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

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

Christine Riscili, Esq.  
Staff Counsel  
Supreme Court of Pennsylvania  
Juvenile Court Procedural Rules Committee  
5035 Ritter Road, Suite 700  
Mechanicsburg, PA 17055

no later than Thursday, October 13, 2005.

By the Juvenile Court Procedural Rules Committee

FRANCIS BARRY MCCARTHY,  
*Chair*

#### Annex A

### TITLE 237. JUVENILE RULES

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1191.	Master's Findings and Recommendation to the Judge.
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#### Rule 1100. Scope of Rules.

A. These rules shall govern dependency proceedings in all courts. Unless otherwise specifically provided, these rules shall not apply to orphans' court, domestic relations and delinquency proceedings.

B. Each of the courts exercising dependency jurisdiction, as provided in the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, may adopt local rules of procedure in accordance with Rule 1121.

#### Comment

The Pennsylvania Rules of Juvenile Court Procedure are split into two categories: delinquency matters and dependency matters. All delinquency matters are governed by Chapters One through Ten (Rules 100—1099). All dependency matters are governed by Chapters Eleven through Twenty (Rules 1100—2099).

These rules govern proceedings when the Juvenile Act vests jurisdiction in the Court of Common Pleas. *See* 42 Pa.C.S. §§ 6321 and 6302.

Each judicial district may promulgate local rules that follow the requirements of Rule 1121 and Pa.R.J.A. 103.

#### Rule 1101. Purpose and Construction.

A. These rules are intended to provide for the just determination of every dependency proceeding.

B. These rules establish uniform practice and procedure for courts exercising jurisdiction as provided in the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, and shall be construed to secure uniformity and simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

C. These rules shall be interpreted and construed to effectuate the purposes stated in the Juvenile Act, 42 Pa.C.S. § 6301(b).

D. To the extent practicable, these rules shall be construed in consonance with the rules of statutory construction.

**Rule 1102. Citing the Juvenile Court Procedural Rules.**

All juvenile court procedural rules adopted by the Supreme Court of Pennsylvania under the authority of Article V § 10(c) of the Constitution of Pennsylvania, adopted April 23, 1968, shall be known as the Pennsylvania Rules of Juvenile Court Procedure and shall be cited as "Pa.R.J.C.P."

**Comment**

The authority for rule-making is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution, which states in part, "[t]he Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts . . . if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions."

**PART A. BUSINESS OF COURTS**

**Rule 1120. Definitions.**

**AGGRAVATED CIRCUMSTANCES** are those circumstances specifically defined pursuant to the Juvenile Act, 42 Pa.C.S. § 6302.

**CHILD** is a person who is under the age of eighteen, or who was adjudicated dependent before reaching the age of eighteen years and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, but in no event shall remain in a course of instruction or treatment past the age of twenty-one years.

**CLERK OF COURTS** is that official in each judicial district who has the responsibility and function under state law and local practice to maintain the official juvenile court file and docket, without regard to that person's official title.

**COUNTY AGENCY** is the county children and youth social service agency established pursuant to the County Institution District Law, 62 Pa.C.S. § 2305, and supervised by the Department of Public Welfare pursuant to the Public Welfare Code, 62 Pa.C.S. § 901 *et seq.*

**COURT** is the Court of Common Pleas, a court of record, which is assigned to hear dependency matters. Court shall include masters when they are permitted to hear cases under these rules. Juvenile court shall have the same meaning as court.

**FAMILY SERVICE PLAN** is the document in which the county agency sets forth the service objectives for a family and services to be provided to a family by the county agency.

**GUARDIAN** is any parent, custodian, or other person who has legal custody of a child, or person designated by the court to be a temporary guardian for purposes of a proceeding.

**INTAKE STAFF** is any responsible person taking custody of the child on behalf of the court, shelter care facility, or medical facility.

**LAW ENFORCEMENT OFFICER** is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

**MASTER** is an attorney with delegated authority to hear and make recommendations for dependency matters. Master has the same meaning as hearing officer.

**MEDICAL FACILITY** is any hospital, urgent care facility, psychiatric or psychological ward, drug and alcohol detoxification or rehabilitation program, or any other similar facility designed to treat a child medically or psychologically.

**PERMANENCY PLAN** is a comprehensive plan that will result in a permanent home for the child.

**PETITION** is a formal document by which a child is alleged to be dependent.

**PETITIONER** is any person, who signs or verifies, and files a petition.

**PLACEMENT FACILITY** is any non-secure facility, privately or publicly owned and operated, that identifies itself either by charter, articles of incorporation or program description, to receive dependent children as a case disposition. Placement facilities include, but are not limited to, foster care, residential facilities, group homes, after-school programs, and day programs.

**POLICE OFFICER** is any person, who is by law given the power to arrest when acting within the scope of that person's employment.

**PROCEEDING** is any stage in the dependency process occurring once a shelter care application has been submitted or a petition has been filed.

**PROTECTIVE CUSTODY** is when a child is taken into custody for protection as an alleged dependent child pursuant to the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*

**RECORDING** is the means to provide a verbatim account of a proceeding through the use of a court stenographer, audio recording, audio-visual recording, or other appropriate means.

**SHELTER CARE FACILITY** is a physically unrestricted facility that provides temporary care of a child and is approved by the Department of Public Welfare.

**Comment**

Under the term "court," to determine if masters are permitted to hear cases, see Rule 1187.

The definition of "law enforcement officer" does not give the power of arrest to any person who is not otherwise given that power by law.

The term "petitioner" may include any person; however, if the person is not the county agency, an application to file a petition pursuant to Rule 1320 is to be made. If the court, after a hearing, grants the application, the applicant may file a petition.

**Rule 1121. Local Rules.**

A. For the purpose of this rule, the term, "local rule" shall include every rule, regulation, directive, policy, custom, usage, form, or order of general application, however labeled or promulgated, adopted or enforced by a court of common pleas to govern dependency practice and procedure, which requires a party or party's attorney to do or refrain from doing something.

B. All local rules promulgated before the effective date of this rule are hereby vacated on the date this rule becomes effective.

C. Local rules shall not be inconsistent with any rule of the Supreme Court or any Act of Assembly.

1) Each judicial district may promulgate new local rules that do not conflict with the Rules of Juvenile Court Procedure.

2) Local rules shall be given numbers that are keyed to the number of the Rules of Juvenile Court Procedure to which the local rules correspond.

D. A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:

1) A local rule shall be in writing.

2) Seven certified copies of the local rule shall be filed by the court promulgating the rule with the Administrative Office of Pennsylvania Courts.

3) Two certified copies of the local rule shall be distributed by the court promulgating the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4) One certified copy of the local rule shall be filed by the court promulgating the rule with the Juvenile Court Procedural Rules Committee.

5) The local rules shall be kept continuously available for public inspection and copying in the office of the clerk of courts. Upon request and payment of reasonable costs of reproduction and mailing, the clerk shall furnish to any person a copy of any local rule.

E. A local rule shall become effective not less than thirty days after the date of publication of the rule in the *Pennsylvania Bulletin*.

F. No case shall be dismissed nor request for relief granted or denied because of the failure to comply with a local rule. In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the attorney to comply with the local rule.

G. The Juvenile Court Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule and may suspend that local rule pending action by the Court on that recommendation.

#### Comment

The purpose of this rule is to further the policy of the Supreme Court to implement the unified judicial system under the Constitution of 1968, to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of juvenile court procedure normally preempts the subject covered. It is intended that local rules should not repeat general rules or statutory provisions verbatim or substantially verbatim nor should local rules make it difficult for attorneys to practice law in several counties.

The caption or other words used as a label or designation is not to determine whether something is or establishes a local rule; if the definition in paragraph (A) of this rule is satisfied, the matter is a local rule regardless of what it may be called. The provisions of this rule also are intended to apply to any amendments to a "local rule." Nothing in this rule is intended to apply to case-specific orders.

Paragraph (B) vacates all current local rules on the effective date of this rule. The local rules are to be repromulgated to comply with this rule. This includes rekeying pursuant to paragraph (C)(2) and meeting the appropriate filing requirements under paragraph (D).

To simplify the use of local rules, local dependency procedural rules are required to be given numbers that are keyed to the number of the general dependency procedural rules to which the local rules correspond. This requirement is not intended to apply to local rules that govern the general business of the court and which do not correspond to a general dependency procedural rule.

The purpose of paragraph (D) is to emphasize that the adopting authority is to comply with all the provisions of paragraph (D) before any local rule, or any amendment to local rules, will be effective and enforceable.

Paragraph (D)(5) requires that a separate consolidated set of local rules be maintained in the clerk's office.

The Administrative Office of Pennsylvania Courts maintains a web-page containing the texts of local rules. That web-page is located at: <http://www.courts.state.pa.us/judicial-council/local-rules/index.htm>.

Although under paragraph (E) a local rule is not to be effective until at least thirty days after the date of publication in the *Pennsylvania Bulletin*, when a situation arises that requires immediate action, the local court may act by specific orders governing particular cases in the interim before an applicable local rule becomes effective.

The purpose of paragraph (F) is to prevent the dismissal of cases, or the granting or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph (F) requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

After the court has alerted the party to the local rule pursuant to paragraph (F), the court may impose a sanction for subsequent noncompliance either on the attorney or the party if unrepresented, but may not dismiss the case, or grant or deny relief because of non-compliance.

#### Rule 1122. Continuances.

A. *Generally.* In the interests of justice, the court may grant a continuance on its own motion or the motion of any party. On the record, the court shall identify the moving party and state its reasons for granting or denying the continuance.

B. *Notice and rescheduling.* If a continuance is granted, all persons summoned to appear shall be notified of the date, place, and time of the rescheduled hearing.

#### Comment

Whenever possible, continuances should not be granted when they could be deleterious to the safety or well-being of a party. The interests of justice require the court to look at all the circumstances, effectuating the purposes of the Juvenile Act, 42 Pa.C.S. § 6301, in determining whether a continuance is appropriate.

A party seeking a continuance should notify the court and opposing counsel as soon as possible. Whenever possible, given the time constraints, notice should be written.

Under paragraph (B), if a person is summoned to appear and the case is continued, the party is presumed to be under the scope of the original summons and a new summons is not necessary.

See Rules 1344 and 1345 for motion and filing procedures.

See *In re Anita H.*, 505 A.2d 1014 (Pa. Super. Ct. 1986).

**Rule 1123. Subpoenas.**

A. *Contents.* A subpoena in a dependency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
- 2) order the witness to bring any items identified or described;
- 3) state on whose behalf the witness is being ordered to testify; and
- 4) state the identity, address, and phone number of the person who applied for the subpoena.

B. *Service.*

1) *Method of Service.* A subpoena shall be served upon a witness by:

- a) in-person delivery;
- b) registered or certified mail, return receipt requested; or
- c) first class mail.

C. *Duration.* A subpoena shall remain in force until the end of a proceeding.

D. *Bench Warrant.* If any subpoenaed person fails to appear for the hearing and the court finds that sufficient notice was given, the court may issue a bench warrant.

**Comment**

A subpoena *duces tecum* is to set forth with particularity, the documents, records, or other papers to be produced at the hearing. The items sought are to be relevant to the proceedings. See Rule 1340 on discovery, *In re J. C.*, 603 A.2d 627 (Pa. Super. Ct. 1992), and *In re A. H.*, 763 A.2d 873 (Pa. Super. Ct. 2000) for production of documents necessary to prepare for a hearing.

For power to compel attendance, see 42 Pa.C.S. § 6333. Nothing in this rule prohibits the court from holding a contempt hearing. See *In re Crawford*, 519 A.2d 978 (Pa. Super. Ct. 1987) for punishment of contempt (children). See also *In re Griffin*, 690 A.2d 1192 (Pa. Super. Ct. 1997) (foster parents), *Janet D. v. Carros*, 362 A.2d 1060 (Pa. Super. Ct. 1976) (county agency), and *In re Rose*, 54 A.2d 297 (Pa. Super. Ct. 1947) (parents) for additional guidance on contempt for other parties.

**Rule 1124. Summons and Notice.**

A. *Requirements of the summons.* The summons shall:

- 1) be in writing;
- 2) set forth the date, time, and place of the hearing;
- 3) instruct the parties about the right to counsel; and
- 4) give a warning stating that the failure to appear for the hearing may result in arrest.

B. *Method of Service.* Summons or notice shall be served:

- 1) in-person; or
- 2) by certified mail, return receipt and first-class mail.

C. *Bench Warrant.* If any summoned person fails to appear for the hearing and the court finds that sufficient notice was given, the court may issue a bench warrant.

**Comment**

In paragraph (C), this rule provides that a summoned person is to fail to appear and the court is to find that sufficient notice was given before a bench warrant may be issued. The Juvenile Act, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the child may abscond or may not attend or be brought to a hearing, is suspended to the extent that it conflicts with this rule. See Rule 1800 for suspensions.

**Rule 1126. Defects in Form, Content, or Procedure.**

A child shall not be released, nor shall a case be dismissed, because of a defect in the form or content of the pleading or a defect in the procedures of these rules, unless the party raises the defect prior to the commencement of the adjudicatory hearing, and the defect is prejudicial to the rights of a party.

**Comment**

A petition, emergency custody authorization form, shelter care application, or warrant may be amended at any time to remedy any defect in form or content. The court may also issue another remedy as interests of justice require. Nothing in this rule is to prevent the filing of a new emergency custody authorization form, a new or amended petition, or the reissuance of process.

**Rule 1127. Recording and Transcribing Juvenile Court Proceedings.**

A. *Recording.* There shall be a recording of all dependency proceedings, including proceedings conducted by masters, except as provided in Rule 1242(B)(2).

B. *Transcribing.* Upon the motion of any party, upon its own motion, or as required by law, the court shall order the record to be transcribed.

C. *Modifying.* At any time before an appeal is taken, the court may correct or modify the record in the same manner as is provided by Rule 1926 of the Pennsylvania Rules of Appellate Procedure.

**Comment**

Some form of record or transcript is necessary to permit meaningful consideration of claims of error and effective appellate review. *In re J. H.*, 788 A.2d 1006 (Pa. Super. Ct. 2001). See, e.g., Pa.R.A.P. Rules 1922, 1923, 1924; *Commonwealth v. Fields*, 387 A.2d 83 (Pa. 1978); *Commonwealth v. Shields*, 383 A.2d 844 (Pa. 1978). This rule is intended to provide a mechanism to ensure appropriate recording and transcribing of court proceedings. See Rule 1800 for suspension of § 6336(c), only to the extent that the Act does not provide for recordings of all dependency proceedings, except shelter care hearings.

The rule is intended to apply to all dependency proceedings and to ensure all proceedings are recorded, including proceedings before masters.

Paragraph (B) of the rule is intended to authorize courts to require transcription of only such portions of the record, if any, as are needed to review claims of error.

Paragraph (C) provides a method for correcting and modifying transcripts before an appeal is taken by incorporating Pa.R.A.P. 1926, which otherwise applies only after an appeal has been taken. It is intended that the same standards and procedures apply both before and after appeal.

**Rule 1128. Presence at Proceedings.**

A. *General rule.* All parties shall be present at any proceeding unless the exceptions of paragraph (B) apply.

B. *Exceptions.*

1) *Absence from proceedings.* The court may proceed in the absence of a party upon good cause shown except that in no case shall a hearing occur in the absence of a child's attorney. If a child has a guardian *ad litem* and legal counsel, both attorneys shall be present.

2) *Exclusion from proceedings.* A party may be excluded from a proceeding only for good cause shown. If a party is so excluded, counsel for the party shall be permitted to be present. In no case shall an unrepresented party be excluded without counsel.

C. *Accompanying child to proceedings.* The court may order any person having the physical custody or control of a child to bring the child to any proceeding.

**Comment**

Under paragraph (B)(1), if a child is an infant, that would qualify as good cause. In no case is a proceeding to occur in the absence of the child's attorney. The court has discretion whether to proceed if the court finds that a party received proper notice of the hearing and has willfully failed to appear.

Under Paragraph (B)(2), no proceeding is to occur in the absence of counsel if a party is excluded from a proceeding, even if the party has waived the right to counsel. *See* Rule 1152 for waiver of counsel.

*See In re Adoption of S. B. B. and E. P. R.*, 539 A.2d 883 (Pa. Super. Ct. 1988).

Nothing in these rules creates a right of a child to have his or her guardian present. *See* 42 Pa.C.S. §§ 6310, 6335(b), 6336.1.

**Rule 1129. Open Proceedings (Reserved).****Rule 1130. Public Discussion by Court Personnel of Pending Matters.**

All court personnel including, among others, county agency caseworkers, court clerks, bailiffs, tipstiffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending dependency case that is not part of the court record otherwise available to the public or not part of the record in an open proceeding. This rule specifically prohibits the divulgence of information concerning arguments and proceedings that are closed proceedings, held in chambers, or otherwise outside the presence of the public.

**Rule 1133. Motion to Intervene.**

A. *Contents.* The motion to intervene shall include:

1) the name and address of the person moving to intervene;

2) the relationship of the intervening person to the child;

3) the contact between the child and the intervening person;

4) the grounds on which intervention is sought; and

5) the request sought.

B. *Action by court.* Upon the filing of a motion to intervene and after a hearing, the court shall enter an

order allowing intervention if the grounds on which intervention are sought is sufficient. A motion may be denied if:

1) the interest of the movant is already adequately represented;

2) the motion for intervention was unduly delayed; or

3) the intervention will unduly delay or prejudice the adjudication of dependency or the rights of the parties.

**Comment**

To move for intervention in a dependency case, a person is to show that the interest is substantial, direct, and immediate. *See e.g.*, *South Whitehall Township Police Serv. v. South Whitehall Township*, 555 A.2d 793 (Pa. 1989).

Standing is conferred upon a person if the person cares for or controls the child or is accused of abusing the child. *In re J. P.*, 832 A.2d 492 (Pa. Super. Ct. 2003); *In re L. J.*, 691 A.2d 520 (Pa. Super. Ct. 1997). *See* 23 Pa.C.S. § 5313 for grandparent intervention. *See also R.T.M. v. Baxter*, 777 A.2d 446 (Pa. 2001) (grandparent standing); *Mitch v. Bucks Co. Children and Youth Social Service Agency*, 556 A.2d 419 (Pa. Super. Ct. 1989) (prospective adoptive parent standing); *In re M. K.*, 636 A.2d 198 (Pa. Super. Ct. 1994) (alleged abuser standing). For distinction between foster parent and prospective adoptive parent standing, *see In re N. S.*, 845 A.2d 884 (Pa. Super. Ct. 2004).

A non-custodial parent may intervene in a dependency petition filed by a third party to protect the child from being adjudicated dependent and placed in the custody of the Commonwealth. *In re Anita H.*, 505 A.2d 1014 (Pa. Super. Ct. 1986).

*See also In re Michael Y.*, 530 A.2d 115 (Pa. Super. Ct. 1987) and *In re R. T. & A. T.*, 592 A.2d 55 (Pa. Super. Ct. 1991) for additional parties to proceedings.

*See* Rule 1344 for motions and Rule 1345 for service.

**Rule 1134. Proceeding in Camera.**

All *in camera* proceedings are to be recorded and each party's attorney shall be present.

**Comment**

*See In re Leslie H.*, 478 A.2d 876 (Pa. Super. Ct. 1984).

If a party is not represented, the court is to make reasonable efforts to protect the due process rights of the party.

**Rule 1135. Captions.**

All court documents and orders shall contain a caption that includes the following:

1) "In the interest of (the child's name)";

2) the child's case docket number; and

3) the name of the court.

**PART B(1). EXAMINATION AND TREATMENT OF CHILD****Rule 1145. Application or Motion for Examination and Treatment of a Child.**

A. *Pre-petition treatment.* Prior to the filing of a dependency petition, an application to the court may be made to treat a child when prompt treatment is necessary.

B. *Post-petition examination and treatment.* After a petition has been filed, a motion for examination and treatment of a child may be filed.

### Comment

The term "application" is used in paragraph (A) of this rule. An application is to be made to the court if there is no formal court action pending. Once a dependency petition is filed, a motion, as provided in paragraph (B), is the proper course of action for seeking examination and treatment of a child. All parties are notified and copied on all motions. The procedures of Rule 1344 are to be followed. *See* Rule 1344.

It should be noted that paragraph (A) only relates to treatment of a child when prompt treatment is necessary.

Pursuant to 42 Pa.C.S. § 6339(b), the court may order the child to be examined at a suitable place by a physician or psychologist and may also order medical or surgical treatment of a child who is suffering from a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, even if the guardian has not been given notice of a hearing, is not available, or without good cause informs the court of his refusal to consent to the treatment. 42 Pa.C.S. § 6339(b). In addition, 42 Pa.C.S. § 6357 provides a custodian to whom legal custody has been given by the court has the right to the physical custody of the child, the right to determine the nature of the care and treatment of the child, including ordinary medical care and the right and duty to provide for the care, protection, training, and education, and the physical, mental, and moral welfare of the child. An award of legal custody shall be subject to the conditions and limitations of the order and to the remaining rights and duties of the parents or guardian of the child as determined by the court. 42 Pa.C.S. § 6357.

If a child has been adjudicated dependent, the court may order that the county agency participate in the treatment plan of the child as necessary to protect the health, safety, or welfare of the child, including discussions with the individual, facility, or program providing treatment and the child or the child's guardian in furtherance of the disposition. 42 Pa.C.S. § 6352.1.

Under paragraph (B), if the legal custodian is the county agency, the county agency is to comply with the regulations of 55 Pa. Code §§ 3130.91 and 3680.52.

### PART B(2). COUNSEL

#### Rule 1150. Attorneys—Appearances and Withdrawals.

##### A. Appearances.

1) Counsel, including guardians *ad litem*, for each party shall file an entry of appearance with the clerk of courts promptly after being retained and serve a copy on all other parties.

a) If a firm name is entered, the name of the individual lawyer who is designated as being responsible for the conduct of the case shall be entered.

b) The entry of appearance shall include the attorney's address, phone number, and attorney ID number.

2) When counsel is appointed pursuant to Rule 1151 (Assignment of Counsel), the filing of the appointment order shall enter the appearance of appointed counsel.

B. *Duration*. Once an appearance is entered or the court assigns counsel for the child, counsel shall represent the child until the closing of the dependency case, including any proceeding upon direct appeal and permanency review, unless permitted to withdraw pursuant to paragraph (C).

##### C. Withdrawals.

1) Upon motion, counsel shall be permitted to withdraw only:

a) by order of the court for good cause shown; or

b) if new counsel has entered an appearance in accordance with paragraph (A).

2) A motion to withdraw shall be:

a) filed with the clerk of courts, and a copy concurrently served on the other parties' attorneys, or the party, if unrepresented; or

b) made orally on the record in open court in the presence of the parties.

### Comment

Under paragraph (C), withdrawal is presumed when a court's jurisdiction is terminated because the child reaches the age of twenty-one. *See* 42 Pa.C.S. § 6302.

Under paragraph (C)(1)(a), a court can terminate an attorney's representation if there is good cause shown. The court should allow an attorney to withdraw from a case for good cause if the standards for termination of representation, as provided for in the Rules of Professional Conduct 1.16, are met.

Under paragraph (C)(1)(b), because the county agency will be on notice of the identity of the new attorney, the agency should comply with the discovery requirements of Rule 1340.

Under paragraph (C)(2), counsel is to file a motion to withdraw in all cases. Counsel's obligation to represent a party, whether as retained or appointed counsel, remains until leave to withdraw is granted by the court. *See e.g., Com. v. Librizzi*, 810 A.2d 692 (Pa. Super. Ct. 2002). The court is to make a determination of the status of the case before permitting counsel to withdraw. Although there are many factors considered by the court in determining whether there is good cause to permit the withdrawal of counsel, when granting leave, the court should determine if new counsel needs to be appointed, and that the change in attorneys will not delay the proceedings or prejudice the party, particularly concerning time limits.

*See also* Rule 1613 for termination of court supervision.

#### Rule 1151. Assignment of Counsel and Guardian *ad litem*.

A. *Guardian ad litem for child*. The court shall assign a guardian *ad litem* to represent the legal interests and the best interests of the child if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:

1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the physical, mental or emotional health, or morals;

2) has been placed for care or adoption in violation of law;

3) has been abandoned by parents, guardian, or other custodian;

4) is without a parent, guardian or legal custodian; or

5) is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. § 2511 (relating to grounds for involuntary termination) within three years immediately

preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety, or welfare of the child.

B. *Counsel for child.* The court shall appoint legal counsel for a child:

1) if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:

a) while subject to compulsory school attendance is habitually and without justification truant from school;

b) has committed a specific act or acts of habitual disobedience of the reasonable and lawful commands of the child's guardian and who is ungovernable and found to be in need of care, treatment or supervision;

c) is under the age of ten years and has committed a delinquent act;

d) has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (B)(2); or

e) has been referred pursuant to section 6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (B)(2).

2) upon order of the court.

C. *Counsel and Guardian ad litem for child.* If a child has legal counsel and a guardian *ad litem*, counsel shall represent the legal interests of the child and the guardian *ad litem* shall represent the best interests of the child.

D. *Time of appointment.*

1) *Child in custody.* Except as provided by paragraph (B)(1), the court shall appoint a guardian *ad litem* or legal counsel immediately after a child is taken into protective custody and prior to any proceeding.

2) *Child not in custody.* Except as provided by paragraph (B)(1), if the child is not in custody, the court shall appoint a guardian *ad litem* or legal counsel for the child when a dependency petition is filed.

E. *Counsel for other parties.* If counsel does not enter an appearance for a party, the court shall inform the party of the right to counsel prior to any proceeding. If counsel is requested by a party in any case, the court shall assign counsel for the party if the party is without financial resources or otherwise unable to employ counsel. Counsel shall be appointed prior to the first court proceeding.

#### Comment

See 42 Pa.C.S. §§ 6302, 6311, and 6337.

If the legal interests and the best interests of the child are in conflict, the guardian *ad litem* for the child may petition the court for assignment of legal counsel. To the extent 42 Pa.C.S. § 6311(b)(9) is inconsistent with this rule, it is suspended. See Rule 1800. See also Pa.R.P.C. 1.7 and 1.8. Under paragraph (C), legal counsel represents the legal interests of the child and the guardian *ad litem* represents the best interests of the child.

#### Rule 1152. Waiver of Counsel.

A. *Children.*

1) *Guardian ad litem.* A child may not waive the right to a guardian *ad litem*.

2) *Legal counsel.* A child may waive legal counsel if:

a) the waiver is knowingly, intelligently, and voluntarily made; and

b) the court conducts a colloquy with the child on the record.

B. *Other parties.* Except as provided in paragraph (A), a party may waive the right to counsel if:

1) the waiver is knowingly, intelligently, and voluntarily made; and

2) the court conducts a colloquy with the party on the record.

C. *Stand-by counsel.* The court may assign stand-by counsel if a party waives counsel at any proceeding or stage of a proceeding.

D. *Notice and revocation of waiver.* If a party waives counsel for any proceeding, the waiver only applies to that proceeding, and the party may revoke the waiver of counsel at any time. At any subsequent proceeding, the party shall be informed of the right to counsel.

#### Comment

Under paragraph (A), a child may not waive the right to a guardian *ad litem*. The right of waiver to legal counsel belongs to the child, not the guardian. See Rule 1800, which suspends 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the child.

It is recommended that, at a minimum, the court ask questions to elicit the following information in determining a knowing, intelligent, and voluntary waiver of counsel:

1) Whether the party understands the right to be represented by counsel;

2) Whether the party understands the nature of the dependency allegations and the elements of each of those allegations;

3) Whether the party is aware of the dispositions and placements that may be imposed by the court, including foster care placement and adoption;

4) Whether the party understands that if he or she waives the right to counsel, he or she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;

5) Whether the party understands that counsel may be better suited to defend the dependency allegations; and

6) Whether the party understands that the party has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or otherwise timely raised by the party, these errors may be lost permanently.

#### Rule 1154. Duties of Guardian *ad litem*.

A guardian *ad litem* shall:

1) Meet with the child as soon as possible following assignment pursuant to Rule 1151 and on a regular basis thereafter in a manner appropriate to the child's age and maturity;

2) On a timely basis, be given access to relevant court and county agency records, reports of examination of the guardians or the child, and medical, psychological, and school records;

3) Participate in all proceedings, including hearings before masters, and administrative hearings and reviews to the degree necessary to adequately represent the child;

4) Conduct such further investigation necessary to ascertain the facts;

5) Interview potential witnesses, including the child's guardians, caretakers, and foster parents, examine and cross-examine witnesses, and present witnesses and evidence necessary to protect the best interests of the child;

6) At the earliest possible date, be advised by the county agency having legal custody of the child of:

a) any plan to relocate the child or modify custody or visitation arrangements, including the reasons, prior to the relocation or change in custody or visitation; and

b) any proceeding, investigation or hearing under the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.* or the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, directly affecting the child;

7) Make any specific recommendations to the court relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety;

8) Explain the proceedings to the child to the extent appropriate given the child's age, mental condition, and emotional condition; and

9) Advise the court of the child's wishes to the extent that they can be ascertained and present to the court whatever evidence exists to support the child's wishes. When appropriate because of the age or mental and emotional condition of the child, determine to the fullest extent possible the wishes of the child and communicate this information to the court.

#### Comment

If there is a conflict of interest between the duties of the guardian *ad litem* pursuant to paragraphs (7) and (9), the guardian *ad litem* may petition the court for appointment of separate legal counsel. *See* Rules 1151 and 1800. *See also* Pa.R.P.C. 1.7 and 1.8.

#### Rule 1158. Assignment of Court-Appointed Special Advocates.

A court-appointed special advocate shall follow the duties as set forth in the Juvenile Act, 42 Pa.C.S. § 6342(d) and in the Juvenile Court Judges' Commission's Juvenile Court Standards, 37 Pa. Code, Chapter 200.

### PART C. RECORDS

#### PART C(1). ACCESS TO JUVENILE COURT RECORDS

##### Rule 1160. Inspection of Juvenile Court File/Records.

All files and records of the court in a proceeding are open to inspection only by:

1) The judges, officers, and professional staff of the court;

2) The parties to the proceeding and their counsel and representatives, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;

3) A public or private agency or institution providing supervision or having custody of the child under order of the court;

4) The Administrative Office of Pennsylvania Courts;

5) The judges, officers and professional staff of courts of other jurisdictions when necessary for the discharge of their official duties; and

6) With leave of court, any other person or agency or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

#### Comment

*See* the Juvenile Act, 42 Pa.C.S. § 6307, for the statutory provisions on inspection of the juvenile court's file.

Persons specified in 23 Pa.C.S. § 6340 as having access to reports may qualify as persons having a legitimate interest in the proceedings under paragraph (6). *See* 23 Pa.C.S. § 6340.

This rule is meant to include the contents of the juvenile court file as described in Rule 1166.

#### PART C(2). MAINTAINING RECORDS

##### Rule 1165. Design of Forms.

The Court Administrator of Pennsylvania, in consultation with the Juvenile Court Procedural Rules Committee, shall design and publish forms necessary to implement these rules.

#### Comment

The purpose of the unified judicial system can be further achieved by creating uniform forms to implement a particular rule.

##### Rule 1166. Maintaining Records in the Clerk of Courts.

A. *Generally.* The juvenile court file shall contain all original records, papers, and orders filed, copies of all court notices, and docket entries. These records shall be maintained by the clerk of courts and shall not be taken from the custody of the clerk of courts without order of the court.

B. *Docket entries.* The clerk of courts shall maintain a list of docket entries: a chronological list, in electronic or written form, of documents and entries in the juvenile court file and of all proceedings in the case. The clerk of courts shall make docket entries at the time the information is made known to the clerk.

C. *Contents of docket entries.* The docket entries shall include, at a minimum, the following information:

1) the child's name, address, date of birth, if known;

2) the guardian's name, address, if known;

3) the names and addresses of all attorneys who have appeared or entered an appearance, the date of the entry of appearance(s), and the date of any withdrawal of appearance(s);

4) notations concerning all papers filed with the clerk, including all court notices, appearances, motions, orders, findings and adjudications, dispositions, permanency reviews and adoptions, briefly showing the nature and title, if any, of each paper filed, writ issued, and motion made, and the substance of each order or disposition of the court and of the returns showing execution of process;

5) notations concerning motions made orally or orders issued orally in the courtroom when directed by the court;

6) a notation of every judicial proceeding, continuance, and disposition;

7) the location of exhibits made part of the record during the proceedings; and

8) a) the date of receipt in the clerk's office of the order or court notice;



- b) the date appearing on the order or court notice; and
- c) the date and manner of service of the order or court notice; and
- 9) all other information required by Rule 1345.

#### Comment

This rule sets forth the mandatory contents of the list of docket entries and the juvenile court file. This is not intended to be an exhaustive list of what is required to be recorded in the docket entries. The judicial districts may require additional information to be recorded in a case or in all cases.

The list of docket entries is a running record of all information related to any action in a dependency case in the court of common pleas of the clerk's county, such as dates of filings, of orders, and of court proceedings, including hearings conducted by masters. Nothing in this rule is intended to preclude the use of automated or other electronic means for time stamping or making docket entries.

This rule applies to all proceedings in the court of common pleas, including hearings conducted by masters, at any stage of the dependency case.

This rule is not intended to include items contained in the county agency records or reports.

The practice in some counties of creating the list of docket entries only if an appeal is taken is inconsistent with this rule.

The requirement of paragraph (C)(3) that all attorneys and their addresses be recorded makes certain there is a record of all attorneys who have appeared for any party in the case. The requirement also ensures that attorneys are served as required by Rules 1167 and 1345. *See also* Rule 1345(C) concerning certificates of service.

In those cases in which the attorney has authorized receiving service by facsimile transmission or electronic means, the docket entry required by paragraph (C)(3) is to include the facsimile number or electronic address.

Paragraph (C)(5) recognizes that occasionally disposition of oral motions presented in open court should be reflected in the docket, such as motions and orders.

#### **Rule 1167. Filings and Service of Court Orders and Notices.**

##### A. *Filings.*

1) All orders and court notices shall be transmitted promptly to the clerk of courts for filing. Upon receipt by the clerk of courts, the order or court notice shall be time stamped promptly with the date of receipt.

2) All orders and court notices shall be filed in the juvenile court file.

##### B. *Service.*

1) A copy of any order or court notice shall be served promptly on each party's attorney, and the party, if unrepresented.

2) The clerk of courts shall serve the order or court notice, unless the president judge has promulgated a local rule designating service to be by the court or court administrator.

3) *Methods of service.* Service shall be:

- a) in writing by:
  - i) personal delivery to the party's attorney, and if unrepresented, the party;

- ii) mailing a copy to the party's attorney or leaving a copy for the attorney at the attorney's office;

- iii) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box;

- iv) sending a copy to an unrepresented party by first class mail addressed to the party's place of business, residence, or detention;

- v) sending a copy by facsimile transmission or other electronic means if the party's attorney, and if unrepresented, the party has filed written request for this method of service or has included a facsimile number or an electronic address on a prior legal paper filed in the case; or

- vi) delivery to the party's attorney, and if unrepresented, the party by carrier service; or

- b) orally in open court on the record.

C. *Unified Practice.* Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a person to file or serve orders or court notices.

#### Comment

Court notices, as used in this rule, are communications that ordinarily are issued by a judge or the court administrator concerning, for example, calendaring or scheduling, including proceedings requiring the party's presence.

A facsimile number or electronic address set forth on the letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(3)(a)(v). The authorization for service by facsimile transmission or other electronic means under this rule is valid only for the duration of the case. A separate authorization is to be filed in each case by the party, if unrepresented, or by the attorney who wants to receive documents by this method of service.

Nothing in this rule is intended to preclude the use of automated or other electronic means for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts, or for time stamping.

#### **PART D. PROCEEDINGS IN CASES BEFORE MASTER**

##### **Rule 1185. Appointment to Cases.**

A. *Appointment.* If necessary to assist the juvenile court judge, the president judge or his or her designee may appoint masters to hear designated dependency matters.

B. *Prohibited practice.* Masters shall not engage in practice before the juvenile court in the same judicial district where they preside over dependency matters.

#### Comment

Under paragraph (A), the president judge of each judicial district may restrict the classes of cases to be heard by the master, in addition to the restrictions of Rule 1187. *See* 42 Pa.C.S. § 6305(b) and Rule 1187.

##### **Rule 1187. Authority of Master.**

A. *No authority.* A master shall not have the authority to:

- 1) preside over:
  - a) termination of parental rights hearings;

- b) adoptions;
  - c) adjudicatory hearings where aggravated circumstances are alleged;
  - d) dispositional hearings where removal from the home is contested; and
  - e) permanency or dispositional review hearings where a goal change is contested by any party;
- 2) enter orders for emergency or protective custody pursuant to Rules 1200 and 1210;
  - 3) issue warrants; and
  - 4) hear requests for writs of *habeas corpus*.

**B. Right to hearing before judge.**

1) Prior to the commencement of any proceeding, the master shall inform all parties of the right to have the matter heard by a judge. If a party objects to having the matter heard by the master, the case shall proceed before the judge.

2) If a party objects to having the matter heard by the master pursuant to paragraph (B)(1), the master or the court's designee for scheduling cases shall immediately schedule a hearing before the judge. The time requirements of these rules shall apply.

**Comment**

A master's authority in limited under this rule. To implement this rule, Rule 1800 suspends 42 Pa.C.S. § 6305(b) only to the extent that masters may not hear all classes of cases.

Under paragraph (A)(3), nothing is intended to limit the master's ability, in a proper case before the master, to recommend to the court that a warrant be issued. This includes arrest, bench, and search warrants.

Concerning the provisions of paragraph (B), see 42 Pa.C.S. § 6305(b).

Under paragraph (B)(2), it should be determined whenever possible before the date of the hearing whether there will be an objection to having the matter heard before a master. If it is anticipated that there will be an objection, the case is to be scheduled in front of the judge, rather than the master to prevent continuances and delays in the case.

See Rule 1127 for recording of proceedings before a master.

**Rule 1190. Stipulations Before Master.**

A. *Types of cases.* Masters may accept stipulations in any classes of cases that they are permitted to hear pursuant to Rule 1187.

B. *Requirements.* The stipulation requirements of Rule 1405 shall be followed.

**Comment**

Under paragraph (A), a master may accept stipulations in those permissible classes of cases pursuant to Rule 1187. In addition, the president judge of each judicial district may further restrict the classes of cases. See Rule 1185.

The court is to receive corroborating evidence, in addition to the stipulated facts, to make an independent determination that a child is dependent. See Rule 1405 and its *Comment*.

**Rule 1191. Master's Findings and Recommendation to the Judge.**

A. *Announcement of Findings and Recommendation.* At the conclusion of the hearing, the master shall announce in open court on the record, the master's findings and recommendation to the judge.

B. *Submission of Papers and Contents of Recommendation.* Within one business day of the hearing, the master shall submit specific findings and a recommendation to the juvenile court judge. If requested, a copy of the findings and recommendation shall be given to any party.

C. *Judicial Action.* The judge shall by order:

- 1) accept the recommendation;
- 2) reject the recommendation and issue an order with a different disposition;
- 3) send the recommendation back to the master for more specific findings; or
- 4) schedule a rehearing under Rule 1192 within seven days.

**Comment**

The juvenile court may promulgate a form for masters to use. The findings and recommendation may take the form of a court order to be adopted by the court.

If a party contests the master's decision, the copy of the finding and recommendation may be used as an attachment in a motion for a rehearing in front of the judge.

The master's decision is subject to approval of the judge. When the judge, in rejecting the master's recommendation, modifies a factual determination, a rehearing is to be conducted. The judge may reject the master's findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations. See *In re Perry*, 459 A.2d 789 (Pa. Super. Ct. 1983). Nothing in this rule prohibits the court from modifying conclusions of law made by the master.

**Rule 1192. Challenge to Master's Recommendation.**

A. *Time limitation.* A party may challenge the master's recommendation by filing a motion with the clerk of courts within three days of receipt of the recommendation. The motion shall request a rehearing by the judge and aver reasons for the challenge.

B. *Rehearing.* The judge shall act on the challenge within seven days of the date of the motion. The status of the child shall remain the same pending the rehearing unless otherwise ordered by the judge.

**Comment**

Under paragraph (A), the petition for a rehearing may be oral or written. For a re-hearing, there must be cause shown. See 42 Pa.C.S. § 6305.

Under paragraph (B), the judge does not have to grant a rehearing. A judge may deny the request based on the motion. If the judge does grant a hearing, it should be held within seven days of the date of the challenge.

**CHAPTER 12. COMMENCEMENT OF  
PROCEEDINGS, EMERGENCY CUSTODY, AND  
PRE-ADJUDICATORY PLACEMENT**

**PART A. COMMENCING PROCEEDINGS**

Rule	
1200.	Commencing Proceedings.
1201.	Procedures for Protective Medical Custody.
1202.	Procedures for Protective Custody by Police and County Agency.

**PART B. EMERGENCY CUSTODY**

1210.	Order for Protective Custody.
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**PART C. EMERGENCY CUSTODY HEARING**

1240.	Shelter Care Application.
1241.	Notification of Shelter Care Hearing.
1242.	General Conduct of Shelter Care Hearing.
1243.	Shelter Care Rehearings.

**PART A. COMMENCING PROCEEDINGS**

**Rule 1200. Commencing Proceedings.**

Dependency proceedings within a judicial district shall be commenced by:

- 1) the filing of a dependency petition;
- 2) the submission of an emergency custody application;
- 3) the taking of the child into protective custody pursuant to a court order or statutory authority;
- 4) the court accepting jurisdiction of a resident child from another state; or
- 5) the court accepting supervision of child pursuant to another state's order.

**Comment**

See 42 Pa.C.S. §§ 6321, 6324, 23 Pa.C.S. §§ 6315, 6369, 62 P. S. § 761.

If a county agency has custody of a child under a voluntary placement agreement and custody has exceeded thirty days, dependency proceedings are to be commenced by the filing of a petition on the thirty-first day. A dependency petition is to be filed if a guardian requests return of the child and the county agency refuses to return the child. A dependency petition is to be filed at the time of refusal of return by the county agency. See 55 Pa. Code § 3130.56 for provisions on voluntary agreements.

For procedures on protective medical custody, see Rule 1201. For procedures on protective custody by police and the county agency, see Rule 1202.

**Rule 1201. Procedures for Protective Medical Custody.**

When a physician examining or treating a child, a director, or a person specifically designated in writing by the director, of any hospital or other medical institution takes a child into custody pursuant to Rule 1200, the following provisions shall apply:

- a) *Notice.*
  - 1) The person taking the child into custody shall notify the guardian and the county agency of:
    - a) the whereabouts of the child, unless disclosure is prohibited by court order; and
    - b) the reasons for taking the child into custody.
  - 2) Notice may be oral. The notice shall be reduced to writing within twenty-four hours.
    - b) *Duration of custody.* No child may be held in protective custody in a hospital or other medical institution for more than twenty-four hours unless the appropri-

ate county agency is immediately notified that the child has been taken into custody and the county agency obtains an order permitting the child to be held in custody for a longer period. Each judicial district shall ensure that a judge is available twenty-four hours a day, every day of the year to accept and decide actions brought by the county agency within the twenty-four hour period.

**Comment**

Notice to the county agency under paragraph (A) is to insure that appropriate proceedings are commenced. Notice may be oral but is to be reduced to writing within twenty-four hours.

A child taken into protective custody is to be placed during the protective custody in an appropriate medical facility, foster home or other appropriate facility approved by the department for this purpose.

A conference between the guardian of the child taken into protective custody and the employee designated by the county agency to be responsible for the child should be held within forty-eight hours of the time that the child is taken into custody for the purpose of 1) explaining to the guardian the reasons for the temporary detention of the child and the whereabouts of the child, unless disclosure is prohibited by court order; 2) expediting, whenever possible, the return of the child to the custody of the guardian where custody is no longer necessary; and 3) explaining to the guardian the rights provided for by 42 Pa.C.S. §§ 6337, 6338.

See *In re J. R. W.*, 631 A.2d 1019 (Pa. Super. Ct. 1993) and 23 Pa.C.S. § 6315.

**Rule 1202. Procedures for Protective Custody by Police and County Agency.**

A. *Protective custody.*

1) *No court order.*

a) A police officer may take a child into protective custody pursuant to Rule 1200 if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from the surroundings and removal is necessary.

b) Without unnecessary delay, but no more than twenty-four hours after a child is taken into custody, the court shall issue an order for protective custody to provide temporary emergency supervision of a child pending a hearing pursuant to Rule 1242.

2) *Court order.*

a) A police officer or county agency may obtain a protective custody order removing a child from the home if the court finds that remaining in the home is contrary to the welfare of the child.

b) Pursuant to 23 Pa.C.S. § 6315 and after a court order, the county agency shall take the child into protective custody for protection from abuse. No county agency may take custody of the child without judicial authorization based on the merits of the situation.

B. *Notice.*

1) The person taking the child into custody shall notify the guardian and the county agency of:

- a) the whereabouts of the child, unless disclosure is prohibited by court order; and
  - b) the reasons for taking the child into custody.
- 2) Notice may be oral. The notice shall be reduced to writing within twenty-four hours.

C. *Placement.* A child shall be placed in an appropriate shelter care facility or receive other appropriate care approved by the county agency pending a shelter care hearing pursuant to Rule 1242.

#### Comment

Under paragraph (A)(1)(a) and (A)(2)(a), the police officer's duty is to protect the child and remove the child safely. A police officer may bring the child to the county agency to supervise the child pending a court order that should be given immediately. The police officer's duty is enforcement and removal, whereas the county agency's duty is to supervise the child and find an appropriate placement for the child. A police officer may take custody of the child. See Rule 1800 for suspension of 42 Pa.C.S. § 6324, which provides law enforcement may take a child into custody.

Paragraph (B) is to ensure that if the guardian is not present when the child is removed, the guardian knows the whereabouts of the child and the reasons the child is taken into custody. If the person removing the child is not a caseworker, the county agency is to be notified to commence proceedings in juvenile court.

Under paragraph (C), a child taken into protective custody is to be placed during the protective custody in an appropriate shelter care facility or receive other appropriate care approved by the county agency for this purpose.

A conference between the guardian of the child taken into protective custody and the employee designated by the county agency to be responsible for the child should be held within forty-eight hours of the time that the child is taken into custody for the purpose of 1) explaining to the guardian the reasons for the temporary detention of the child and the whereabouts of the child, unless disclosure is prohibited by court order; 2) expediting, whenever possible, the return of the child to the custody of the guardian where custody is no longer necessary; and 3) explaining to the guardian the rights provided for by 42 Pa.C.S. §§ 6337, 6338.

See 42 Pa.C.S. §§ 6324 and 6326 and 23 Pa.C.S. § 6369.

### PART B. EMERGENCY CUSTODY

#### Rule 1210. Order for Protective Custody.

A. *Application of order.* The application for a court order of protective custody may be orally made; however, the request shall be reduced to writing within twenty-four hours. The request shall set forth reasons for the need of protective custody.

B. *Finding of court.* A child may be taken into protective custody by court order when the court determines that removal of the child is necessary for the welfare of the child.

C. *Law enforcement.* The court may authorize a search of the premises by law enforcement or the county agency so that the premises may be entered into without authorization of the owner for the purpose of taking a child into protective custody.

D. *Execution of order.* The court shall specify:

- 1) the limitations of the order;
- 2) the manner in which the order is to be executed; and
- 3) who shall execute the order.

E. *Contents of order.* The court order shall include:

- 1) the name of the child sought to be protected;
- 2) the date of birth of the child, if known;
- 3) the whereabouts of the child, if known;
- 4) the names and addresses of the guardians;
- 5) the reasons for taking the child into protective custody;
- 6) a statement that reasonable efforts were made to prevent placement of the child; and
- 7) a statement of the reasons for keeping the child in shelter care and that remaining in the home is contrary to the welfare of the child.

#### Comment

See 42 Pa.C.S. § 6324 for statutory provisions concerning taking into custody.

For a discussion of the due process requirements for taking a child into emergency custody, see *Patterson v. Armstrong County Children and Youth Services*, 141 F. Supp. 2d 512 (W. D. Pa. 2001).

The court is to determine whether reasonable efforts were made to prevent placement or in the case of an emergency placement where services were not offered and could not have prevented the necessity of placement, whether this level of effort was reasonable due to the emergency nature of the situation, safety considerations and circumstances of the family. 42 Pa.C.S. § 6332.

See also *In re Petition to Compel Cooperation with Child Abuse Investigation*, 875 A.2d 365 (Pa. Super. Ct. 2005).

### PART C. EMERGENCY CUSTODY HEARING

#### Rule 1240. Shelter Care Application.

A. *Filings.* A shelter care application may be oral. Within twenty-four hours of exercising protective custody pursuant to Rule 1210, the county agency shall reduce to writing and file a shelter care application with the Juvenile Court.

B. *Application contents.* Every shelter care application shall set forth plainly:

- 1) the name of the applicant;
- 2) the name, date of birth, and address of the child, if known;
- 3) the name and address of the child's guardian, or if unknown, the name and address of the nearest adult relative;
- 4) the date that the child was taken into custody;
- 5) a concise statement of facts in support of the allegation of dependency;
- 6) if a child is in shelter care, a statement that reasonable efforts to prevent placement were made and there are no less restrictive alternatives available;
- 7) a verification by the applicant that the facts set forth in the petition are true and correct to the applicant's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;
- 8) the signature of the applicant and the date of the execution of the application; and
- 9) the whereabouts of the child unless disclosure is prohibited by the court.

**Comment**

In lieu of a shelter care application, the county agency may file a petition as set forth in Rule 1330.

The primary focus of the shelter care application is to assert that protective custody is needed and the child should remain in the custody of the county agency. A shelter care hearing is to be scheduled within seventy-two hours of taking the child into protective custody. *See* Rule 1242(D).

**Rule 1241. Notification of Shelter Care Hearing.**

A. *Generally.* The applicant for the shelter care hearing shall notify the following persons of the date, time, and place of the shelter care hearing:

- 1) the child;
- 2) the guardian(s) of the child;
- 3) the attorney for the child;
- 4) the attorney(s) for the guardian(s);
- 5) the attorney for the county agency;
- 6) the county agency; and
- 7) any other appropriate person.

B. *Counsel.* The guardian of the child shall be notified of the right to counsel immediately after a child is taken into protective custody and before a shelter care hearing.

**Comment**

Notice should be as timely as possible. Because there is a seventy-two hour time restriction, notice may be oral. Every possible attempt to notify all parties is to be made. It is not sufficient to notify only one guardian. All guardians are to be notified. *See In re M. L.*, 757 A.2d 849 (Pa. 2000).

The hearing may go forward if a guardian is not present. However, if a guardian has not been notified, a re-hearing is to be ordered under Rule 1243 upon submission of an affidavit by the guardian.

The court is to direct the county agency to provide the child's foster parent, preadoptive parent or relative providing care for the child with timely notice of the hearing. *See* 42 Pa.C.S. § 6336.1.

**Rule 1242. General Conduct of Shelter Care Hearing.**

A. *Informing of rights.* Upon commencement of the hearing, the court shall ensure that:

- 1) a copy of the shelter care application is provided to the parties; and
- 2) all parties are informed of the right to counsel.

B. *Manner of hearing.*

1) *Conduct.* The hearing shall be conducted in an informal but orderly manner.

2) *Recording.* If requested, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) *Testimony and evidence.* All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The child's attorney, the guardian, if unrepresented, and the attorney for the guardian shall be afforded an opportunity to examine and controvert written reports so received.

C. *Findings.* The court shall determine whether:

- 1) there are sufficient facts in support of the shelter care application;
- 2) custody of the child is warranted;
- 3) a) reasonable efforts were made by the county agency to prevent the child's placement; or  
b) in the case of an emergency placement where services were not offered, whether the lack of efforts were reasonable; and
- 4) if a shelter care application is submitted by a person other than the county agency, the court shall make a determination if the person is a party to the proceedings.

D. *Prompt hearing.* The court shall conduct a hearing within seventy-two hours of taking the child into protective custody.

E. *Court order.* At the conclusion of the shelter care hearing, the court shall enter a written order as to the following:

- 1) its findings pursuant to paragraph (C);
- 2) any conditions placed upon any party;
- 3) any orders for placement or temporary care of the child; and
- 4) any orders of visitation.

**Comment**

Under paragraph (C)(4), the court is to determine whether or not a person is a proper party to the proceedings. Regardless of the court's findings on the party status, the court is to determine if the application is supported by sufficient evidence.

Under paragraph (D), the court is to ensure a timely hearing.

Under paragraph (E), the court is to include in its order specific findings that: 1) there are sufficient facts in support of the dependency petition; 2) custody of the child is warranted; and 3) reasonable efforts were made by the county agency to prevent the child's placement or in the case of an emergency placement where services were not offered, whether the lack of efforts were reasonable.

*See* 42 Pa.C.S. § 6332.

Nothing in this rule prohibits informal conferences, narrowing of issues, if necessary, and the court making appropriate orders to expedite the case through court. The shelter care hearing may be used as a vehicle to discuss the matters needed, narrow the issues, get evidence to be used at future hearings. The court is to insure a timely adjudicatory hearing is held.

*See* 42 Pa.C.S. § 6339 for orders of physical and mental examinations and treatment.

*See* Rule 1330(A) for filing of a petition.

**Rule 1243. Shelter Care Rehearings.**

A. *Mandatory Rehearing.* If the guardian submits an affidavit to the county agency alleging that the guardian was not notified of the shelter care hearing and that the guardian did not appear or waive appearance at the shelter care hearing, a rehearing shall be held within seventy-two hours of the submission of the affidavit.

B. *Discretionary Rehearing.* The court may grant a rehearing upon request of a party or on its own motion.

C. *Forum.* The judge, who heard the original shelter care hearing or adopted the findings of the master, shall hold the rehearing, unless the judge assigns the case to a master.

#### Comment

See 42 Pa.C.S. § 6332(b).

Under paragraph (A), upon receiving an affidavit, the county agency is to schedule a rehearing, forward the affidavit to the proper person to schedule a rehearing, or submit the affidavit to the court for rescheduling.

Under paragraph (C), only a judge may hold a rehearing, unless the judge orders a master to hear the case.

### CHAPTER 13. PRE-ADJUDICATORY PROCEDURES

#### PART A. VENUE

Rule	
1300.	Venue.
1302.	Inter-County Transfer.

#### PART B. APPLICATION FOR PRIVATE PETITION

1320.	Application to File a Private Petition.
1321.	Preliminary Hearing on Application for Private Petition.

#### PART C. PETITION

1330.	Petition: Filing, Contents, Function, Aggravated Circumstances.
1331.	Service of Petition.
1333.	Separate Petitions and Motion to Consolidate Hearing.
1334.	Amendment of Petition.
1335.	Withdrawal of Petition.
1336.	Re-Filing of the Petition After Withdrawal or Dismissal.

#### PART D. PROCEDURES FOLLOWING FILING OF PETITION

1340.	Discovery and Inspection.
1342.	Pre-Adjudicatory Conference.
	PART D(1). MOTION PROCEDURES
1344.	Motions and Answers.
1345.	Filing and Service.

#### PART D(2). ADJUDICATORY SUMMONS AND NOTICE PROCEDURES

1360.	Adjudicatory Summons.
1361.	Adjudicatory Notice.
1363.	Service of Summons.
1364.	Failure to Appear on the Summons.

#### PART E. PRESERVATION OF TESTIMONY AND EVIDENCE

1380.	Preservation of Testimony After Commencement of Proceedings.
1381.	Preservation of Testimony by Video Recording.

#### PART A. VENUE

##### Rule 1300. Venue.

A. *Generally.* A dependency proceeding shall be commenced in:

- 1) the county in which the child is present; or
- 2) the child's county of residence.

B. *Change of venue.* For the convenience of parties and witnesses, the court, upon its own motion or motion of any party, may transfer an action to the appropriate court of any county where the action could originally have been brought or could be brought at the time of filing the motion to change venue.

C. *Transmission of juvenile court file.* If there is a change of venue pursuant to paragraph (B), the transferring court shall forward certified copies of all documents, reports, and summaries in the child's court file to the receiving court.

#### Comment

See 42 Pa.C.S. § 6321.

For procedures regarding motions and answers, see Rule 1344. In addition to the procedures for service of orders under Rule 1167, an order changing venue is to be served upon the new county agency and the receiving court so they may begin proceedings in the receiving county.

##### Rule 1302. Inter-County Transfer.

A. *Transfer.* A court may transfer a case to another county at any time.

B. *Transmission of juvenile court file.* If the case is transferred under paragraph (A), the transferring court shall transmit certified copies of all documents, reports, and summaries in the child's court file.

#### Comment

See 42 Pa.C.S. § 6321.

#### PART B. APPLICATION FOR PRIVATE PETITION

##### Rule 1320. Application to File a Private Petition.

A. *Application contents.* Any person, other than the county agency, may present an application to file a private petition with the court. The application shall include the following information:

- 1) the name of the person applying for a petition;
- 2) the name of the alleged dependent child;
- 3) the relationship of the person presenting this application to the child and to any other parties;
- 4) if known, the following:
  - a) the date of birth and address of the child;
  - b) the name and address of the child's guardian, or the name and address of the nearest adult relative;
  - c) if a child is Native American, the child's Native American history or affiliation with a tribe;
  - d) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child;
  - e) a concise statement of facts in support of the allegations for which the application for a petition has been filed;

6) a statement that the applying person has reported the circumstances underlying this application to the county agency;

7) a verification by the person making the application that the facts set forth in the application are true and correct to the person's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and

8) the signature of the person and the date of the execution of the application for a petition.

B. *Service.* If a person presents an application for a petition under this rule, the person shall serve the application on the court and all parties to the proceeding.

C. *Preliminary objections.* A party may enter preliminary objections to the application for the petition of dependency by the filing of a motion pursuant to Rule 1344. The court shall rule on the objections at the preliminary hearing pursuant to Rule 1321.

#### Comment

Rule 1330 requires that the county agency file a petition. Any person, other than the county agency, is to file an application to file a petition under this Rule. Rule 1800 suspends 42 Pa.C.S. § 6334, which provides any person may file a petition.

See Rule 1321 for preliminary hearing on application and finding that a petition is to be filed by the county agency.

#### Rule 1321. Preliminary Hearing on Application for Private Petition.

A. *Preliminary hearing.* The court shall conduct a hearing within fourteen days of the presentation of the application for a petition to determine:

1) if there are sufficient facts to support a petition of dependency; and

2) whether the person applying for the petition is a proper party to the proceedings.

#### B. Findings.

1) If the court finds sufficient facts to support a petition of dependency, a petition may be filed pursuant to Rule 1330.

2) If the court finds the person making the application for a petition is a proper party to the proceedings, the person shall be afforded all rights and privileges given to a party pursuant to law.

#### Comment

Under paragraph (A), at a preliminary hearing, the court is to determine if: 1) there are sufficient facts to support a petition of dependency; and 2) the applying person is a proper party to the proceedings. A petition of dependency may go forward whether or not the applying person is determined to be a party to the proceedings.

If a child is in custody, the preliminary hearing under paragraph (A) may be combined with the shelter care hearing pursuant to Rule 1242.

### PART C. PETITION

#### Rule 1330. Petition: Filing, Contents, Function, Aggravated Circumstances.

#### A. Filings.

1) A dependency petition may be filed at any time; however, if a child is taken into custody, the requirements of paragraph (A)(2) shall be met.

2) Within twenty four hours of the shelter care hearing, the county agency shall file a dependency petition with the clerk of courts when:

a) the child remains in protective custody pursuant to Rule 1201, 1202 or 1210; or

b) the child is not in protective custody but it is determined at a shelter care hearing pursuant to Rule 1242 that the filing of a dependency petition is appropriate.

B. *Petition contents.* Every petition shall set forth plainly:

1) the name of the petitioner;

2) the name, date of birth, and address of the child, if known;

3) the name and address of the child's guardian, or if unknown, the name and address of the nearest adult relative;

4) if a child is Native American, the child's Native American history or affiliation with a tribe;

5) a statement that:

a) it is in the best interest of the child and the public that the proceedings be brought;

b) the child is or is not currently under the supervision of the county agency;

6) a concise statement of facts in support of the allegations for which the petition has been filed;

a) facts for each allegation shall be set forth separately;

b) the relevant statute or code section shall be set forth specifically for each allegation;

7) a verification by the petitioner that the facts set forth in the petition are true and correct to the petitioner's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;

8) the signature of the petitioner and the date of the execution of the petition; and

9) the whereabouts of the child unless disclosure is prohibited by court order and if taken into custody, the date and time thereof.

C. *Aggravated circumstances.* A motion for finding of aggravated circumstances may be brought in the petition pursuant to Rule 1701(A).

#### Comment

Petitions should be filed without unreasonable delay.

Under paragraph (A)(2), a petition is to be filed twenty-four hours after the shelter care hearing if the requirements of (A)(2)(a) and (b) are met. Rule 1800 suspends 42 Pa.C.S. § 6331 only as to the time requirement of when a petition is to be filed.

Additionally, paragraph (A)(2) requires that the county agency file a petition. Any other person, other than the county agency, is to file an application to file a petition under Rule 1320. Rule 1800 suspends 42 Pa.C.S. § 6334, which provides any person may file a petition.

For the safety or welfare of a child or a guardian, the court may order that the addresses of the child or a guardian not be disclosed to specified individuals.

A motion for finding of aggravated circumstances may be brought in a dependency petition. See Rule 1701(A). If aggravated circumstances are determined to exist after the filing of a petition, a written motion is to be filed pursuant to Rules 1701 and 1344.

The aggravated circumstances, as defined by 42 Pa.C.S. § 6302, are to be specifically identified in the motion for finding of aggravated circumstances.

#### Rule 1331. Service of Petition.

A. *Copy.* Upon the filing of a petition, a copy of the petition shall be served promptly upon the child, the child's guardian, the child's attorney, the guardian's attorney, the attorney for the county agency, and the county agency.

B. *Method of Service.*

1) *Child and guardian.* The petition shall be served upon the child and all of the child's guardians by:

- a) certified mail, return receipt requested and first-class mail; or
  - b) delivery in-person.
- 2) *Attorneys and the county agency.* The petition shall be served upon the attorneys and county agency by:
- a) first-class mail;
  - b) delivery in-person; or
  - c) another agreed upon alternative method.

C. *Proof of service.* An affidavit of service shall be filed prior to the adjudicatory hearing.

**Comment**

Under paragraph (B)(1), if a parent is not the child's custodial guardian, the parent is to also receive service of the petition. See Rule 1120 for definition of "guardian."

Alternative methods of services that may be utilized under paragraph (B)(3) could be electronic transmission, facsimile, county agency inter-office mail, and other similar methods.

**Rule 1333. Separate Petitions and Motion to Consolidate Hearing.**

A. A separate petition for dependency shall be filed for each child alleged to be dependent.

B. If there are multiple petitions filed alleging the dependency of siblings, there shall be a reference in each petition to the sibling's petition.

C. A motion to consolidate the adjudicatory hearing for separate petitions of siblings may be made by any party.

**Rule 1334. Amendment of Petition.**

A. *Amendment.*

1) *Mandatory.* The court shall allow a petition to be amended when there is a defect in:

- a) form;
- b) the description of the allegations;
- c) the description of any person or property; or
- d) the date alleged.

2) *Discretionary.* Absent prejudice to any party, the court may allow a petition to be amended if the petition alleges a different set of events or allegations, where the elements or matters of proof by any party are materially different from the elements or matters of proof to the allegation originally petitioned.

B. *Continuance.* Upon amendment, the court may:

- 1) grant a continuance of the adjudicatory hearing; or
- 2) order other relief as is necessary in the interests of justice.

**Comment**

If a petition is amended, a continuance may be appropriate to allow a party to prepare adequately.

For continuances, see Rule 1122.

**Rule 1335. Withdrawal of Petition.**

The attorney for the county agency may withdraw the petition. The withdrawal shall be filed with the clerk of courts.

**Comment**

See Rule 1345 for the procedures on filings and service.

**Rule 1336. Re-Filing of the Petition After Withdrawal or Dismissal.**

A. *Re-filing.* A petition may be re-filed after the petition has been withdrawn pursuant to Rule 1335 or dismissed by the court.

B. *Motion for dismissal.* The court may entertain a motion by any party to dismiss the re-filed petition.

**Comment**

If a petition is re-filed, the procedures of Rule 1330 are to be followed. It may be necessary to have a shelter care hearing under the procedures of Rule 1242.

**PART D. PROCEDURES FOLLOWING FILING OF PETITION**

**Rule 1340. Discovery and Inspection.**

A. *Informal.* Before any party can seek any disclosure or discovery under these rules, the parties or their counsel shall make a good faith effort to resolve all questions of discovery, and to provide information required or requested under these rules as to which there is no dispute. When there are items requested by one party that the other party has refused to disclose, the demanding party may make an appropriate motion to the court. Such motion shall be made as soon as possible prior to the hearing. In such motion, the party shall state that a good faith effort to discuss the requested material has taken place and proved unsuccessful. Nothing in this rule shall delay the disclosure of any items agreed upon by the parties pending resolution of any motion for discovery.

B. *Mandatory disclosure.*

1) *By the county agency.* In all cases, on request by a party and subject to any protective order which the county agency might obtain under this rule, the county agency shall disclose to a party, all of the following requested items or information, provided they are material to the instant case. The county agency shall, when applicable, permit a party to inspect and copy or photograph such items:

a) the name and last known address of each witness to the occurrence that forms the basis of allegations of dependency unless disclosure is prohibited by law;

b) the name and last known address of each witness that did not witness the occurrence but is expected to testify;

c) copies of any written statements made by any party or witness unless disclosure is prohibited by law;

d) any results or reports of scientific tests or expert opinions that are within the possession or control of the county agency that the county agency intends to use as evidence at a hearing;

e) any police reports, records of prior county agency involvement, or records of current or prior reports involving the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.*, that the county agency intends to use as evidence at a hearing;

f) if any physical or mental condition of a party is in controversy, any physical or mental examinations, including oral or written reports that a party intends to use as evidence at the adjudicatory hearing;

g) any tangible objects, including documents, photographs, or other tangible evidence;



h) the names, addresses, and curriculum vitae of any expert witness that a party intends to call at a hearing and the subject matter about which each expert witness is expected to testify, and a summary of the grounds for each opinion to be offered; and

i) any other evidence that is material to adjudication, disposition, dispositional review, or permanency unless disclosure is prohibited by law, and is within the possession or control of the county agency;

2) *By all other parties.* All other parties shall provide discovery to the county agency and all other parties and shall disclose, all of the following requested items or information that the party intends to use at a hearing, provided they are material to the instant case unless disclosure is prohibited by law. The party shall, when applicable, permit the county agency to inspect and copy or photograph such items:

a) the names and last known addresses of each witness that is expected to testify;

b) copies of any written statements made by any party or witness;

c) any tangible objects, including documents, photographs, or other tangible evidence;

d) the names, addresses, and curriculum vitae of any expert witness that a party intends to call at a hearing and the subject matter about which each expert witness is expected to testify, and a summary of the grounds for each opinion to be offered; and

e) any other evidence that a party intends to introduce at a hearing.

C. *Discretionary.* Upon motion of any party for discovery, the court may order any discovery upon a showing that the evidence is material to the preparation of the case and that the request is reasonable.

D. *Continuing Duty to Disclose.* If, prior to or during a hearing, either party discovers additional evidence or material previously requested or ordered to be disclosed by it, which is subject to discovery or inspection under this rule, or the identity of an additional witness or witnesses, such party promptly shall notify the opposing party or the court of the additional evidence, material, or witness.

E. *Remedy.* If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing evidence or witnesses not disclosed, or it may enter such other order as it deems just under the circumstances.

F. *Protective orders.* Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate to protect the best interests of the child. Upon motion of any party, the court may permit the showing to be made, in whole or in part, in the form of a written statement to be inspected by the court. If the court enters an order granting relief, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.

G. *Work product.* Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorney for a party, or members of their legal staffs.

#### Comment

Discovery under this rule applies to discovery for the adjudicatory hearing, dispositional hearing, dispositional review hearings, or permanency hearings of dependency proceedings governed by the Juvenile Act. See Rule 1100 for scope of rules. See Rule 1123 for production of documents pursuant to a *subpoena duces tecum*. See also *In re A. H.*, 763 A.2d 873 (Pa. Super. Ct. 2000).

The purpose of paragraph (A) is to encourage an informal discovery process. Only when the informal process fails and there is a general dispute as to discovery, should a motion to compel discovery be made. Motions may be oral or written, see Rule 1344.

The items listed in paragraph (B) are to be disclosed to ensure a party has the ability to prepare adequately for the hearing. See *In re J. C.*, 603 A.2d 627 (Pa. Super. Ct. 1992).

See Rule 1800 for suspension of 23 Pa.C.S. § 6339, which provides for the confidentiality of reports made pursuant to the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.*, which is suspended only insofar as the Law is inconsistent with Rule 1340(B)(1)(e), which provides for the disclosure of such reports if the reports are going to be used as evidence in a hearing to prove dependency of a child. It is important to note that this section is only suspended if the reports are going to be as evidence during a hearing. If the reports are not going to be used, the confidentiality requirements of 23 Pa.C.S. § 6339 still apply. In addition, confidential sources are protected and the name of the source does not have to be disclosed. See 23 Pa.C.S. § 6340 (c) for protection of confidential sources reporting allegations of abuse under the Child Protective Services Law. 23 Pa.C.S. § 6301 *et seq.*

Under paragraph (C), the following are examples of evidence that may be material to the preparation of the case, but the list is not meant to be exhaustive: 1) domestic violence treatment records; 2) drug and alcohol treatment records; 3) mental health records; 4) medical records; 5) any other evidence specifically identified, provided the requesting party can additionally establish that its disclosure would be in the interests of justice, including any information concerning any person involved in the case who has received either valuable consideration, or an oral or written promise or contract for valuable consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the person in connection with his or her involvement in the case. Items listed in this paragraph are subject to rules of confidentiality and this rule is not intended to subrogate those rules.

Under paragraph (C), the court has discretion, upon motion, to order an expert who is expected to testify at a hearing to prepare a report. However, these provisions are not intended to require a prepared report in every case. The court should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular basis. On the other hand, a

report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

It is intended that the remedies provided in paragraph (E) apply equally to all parties, as the interests of justice require.

The provision for a protective order, paragraph (F), does not confer upon any party any right of appeal not presently afforded by law.

In addition to information requested under this rule, an attorney has the right to inspect all court records and files. *See* Rule 1160.

**Rule 1342. Pre-Adjudicatory Conference.**

A. *Scope of conference.* At any time after the filing of a petition, upon motion, or upon its own motion, the court may order the parties to appear before it for a conference.

B. *Objections.* The parties shall have the right to record an objection to rulings of the court during the conference.

C. *Record.* The court shall place on the record the agreements or objections made by the parties and rulings made by the court as to any of the matters considered in the pre-adjudicatory conference. Such order shall control the subsequent proceedings unless modified at the adjudicatory hearing to prevent injustice.

**Comment**

This rule does not prevent other forms of pre-adjudicatory conferences. A judge may order a pre-adjudicatory conference between parties without the judge's presence at the conference to discuss preliminary matters.

Under paragraph (A), the court may consider: 1) the terms and procedures for pre-adjudicatory discovery and inspection; 2) the simplification or stipulation of factual issues, including admissibility of evidence; 3) the qualification of exhibits as evidence to avoid unnecessary delay; 4) the number of witnesses who are to give testimony of a cumulative nature; 5) whether expert witnesses will be called; 6) whether the hearing will be scheduled in front of the master or judge; and 7) such other matters as may aid in the disposition of the proceeding.

**PART D(1). MOTION PROCEDURES**

**Rule 1344. Motions and Answers.**

A. *Generally.* All motions and answers shall be made orally on the record or in writing. An answer to a motion is not required unless ordered by the court or otherwise provided in these rules. Failure to answer shall not constitute an admission of the well-pleaded facts alleged in the motion.

B. *Filings by attorneys.* If a party is represented by an attorney, the attorney shall make or file all motions and answers.

C. *Requirements for motions.* All motions shall comply with the following requirements:

1) The person making the motion shall sign a written motion. The signature shall constitute a certification that the motion is made in good faith. An oral motion shall be made on the record and the oral motion shall constitute a certification that the motion is made in good faith.

2) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the types of relief or order requested.

3) If the motion sets forth facts that do not already appear of record in the case, a verification shall be included or an oral statement shall be given that the facts set forth in the motion are true and correct to the movant's personal knowledge, information, or belief.

4) If the motion is written, a certificate of service as required by Rule 1345(C) shall be included.

D. *Requirements for answers.* All answers, including those that are required either by court order or otherwise required by these rules, shall comply with the following requirements:

1) The person making the answer shall sign the answer or shall reply to the motion on the record. The signature or oral answer on the record shall constitute a certification that the answer is being made in good faith.

2) The answer shall meet the allegations of the motion and shall specify the type of relief, order, or other action sought.

3) If the answer sets forth facts that do not already appear of record in the case, a verification shall be included or an oral answer shall include a statement that the facts set forth in the answer are true and correct to the respondent's personal knowledge, information, or belief.

4) If the answer is written, a certificate of service as required by Rule 1345(C) shall be included.

E. *Alternative relief.* Any motion may request such alternative relief as may be appropriate.

**Comment**

Under paragraph (A), oral motions and answers are permitted because of the emphasis on prompt disposition in juvenile court. Answers to written motions may be made orally if the answer complies with the requirements of this rule.

Under paragraphs (C)(4) and (D)(4), a certificate of service is required for all written motions and answers. *See* Rule 1345(B) for service of documents and Rule 1345(C) for certificates of service.

**Rule 1345. Filing and Service.**

A. *Filings.*

1) *Generally.* Except as otherwise provided in these rules, all written motions, and any notice or document for which filing is required, shall be filed with the clerk of courts.

2) *Clerk of courts' duties.* Except as provided in paragraph (A)(3), the clerk of courts shall docket a written motion, notice, or document when it is received and record the time of filing in the docket. The clerk of courts promptly shall transmit a copy of these papers to such person as may be designated by the court.

3) *Filings by represented parties.* In any case in which a party is represented by an attorney, if the party submits for filing a written motion, notice, or document that has not been signed by the party's attorney, the clerk of courts shall not file the motion, notice, or document in the child's court file or make a docket entry, but shall forward it promptly to the party's attorney.

4) *Method of filing.* Filing may be accomplished by:

a) personal delivery to the clerk of courts; or

b) mail addressed to the clerk of courts, provided, however, that filing by mail shall be timely only when actually received by the clerk within the time fixed for filing.

**B. Service.**

1) *Generally.* The party filing the document shall serve the other party concurrently with the filing.

2) *Method of service to parties.* Service on the parties shall be by:

a) personal delivery of a copy to a party's attorney, or, if unrepresented, the party; or

b) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or

c) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box; or

d) sending a copy to an unrepresented party by first class mail addressed to the party's place of residence.

*C. Proof of service.* All documents that are filed and served pursuant to this rule shall include a certificate of service.

**Comment**

See Rule 1166 for maintaining records in the clerk of courts.

Under paragraph (A)(2), the court is to designate a court official to process motions and other matters for appropriate scheduling and disposition.

Under paragraph (B)(1), the party filing a document is required to serve the other party.

This rule does not affect court orders, which are to be served upon each party's attorney and the guardian, if unrepresented, by the clerk of courts as provided in Rule 1167.

For service of petitions, see Rule 1331.

**PART D(2). ADJUDICATORY SUMMONS AND NOTICE PROCEDURES****Rule 1360. Adjudicatory Summons.**

*A. Summons.* The court shall issue a summons compelling all parties to appear for the adjudicatory hearing.

*B. Order appearance.* The court may order the person having the physical custody or control of the child to bring the child to the hearing.

*C. Requirements.* The summons shall:

- 1) be in writing;
- 2) set forth the date, time, and place of the adjudicatory hearing;
- 3) instruct the child and the guardian about their rights to counsel, and if the child's guardian is without financial resources or otherwise unable to employ counsel, the right to assigned counsel;
- 4) give a warning stating that the failure to appear for the hearing may result in arrest; and
- 5) include a copy of the petition unless the petition has been previously served.

**Comment**

Section 6335 of the Juvenile Act provides that the court is to direct the issuance of a summons to the parent, guardian, or other custodian, a guardian *ad litem*, and any other persons as appear to the court to be proper and necessary parties to the proceedings. It also provides for ordering the person having the physical custody or control of the child to bring the child to the proceeding. 42 Pa.C.S. § 6335. Pursuant to Rule 1361, all parents and

non-custodial guardians are to receive notice of the hearing. Under paragraph (A), the custodial guardian is to receive a summons.

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

Section 6335(a) of the Juvenile Act requires a copy of the petition to accompany the summons. 42 Pa.C.S. § 6335(a). Under paragraph (C)(5), a petition is to be included with the summons and served pursuant to Rule 1363 unless the petition has already been served pursuant to Rule 1331.

See Rule 1128 for presence at proceedings. See Rule 1124 for the general summons and notice procedures.

**Rule 1361. Adjudicatory Notice.**

The court shall give notice of the adjudicatory hearing to:

- 1) the attorney for the county agency;
- 2) the child's attorney;
- 3) the guardian's attorney;
- 4) the parents, child's foster parent, preadoptive parent, relative providing care for the child, and non-custodial guardians of the child that are not parties to the proceedings; and
- 5) the county agency.

**Comment**

All parties are to receive a summons pursuant to Rule 1360.

**Rule 1363. Service of Summons.**

*A. Method of Service.* The summons shall be served:

- 1) in-person; or
- 2) by certified mail, return receipt and first-class mail.

*B. Time of Service.*

1) *Child in custody.* If the child is in protective custody, the summons shall be served no less than seven days prior to the adjudicatory hearing.

2) *Child not in custody.* If the child is not in protective custody, the summons shall be served no less than fourteen days prior to the adjudicatory hearing.

*C. Proof of Service.* Proof of service shall be filed prior to the adjudicatory hearing.

*D. Efforts Made to Serve.* In the absence of an affidavit of service under paragraph (C), the serving party shall advise the court of what efforts were made to notify a person. The court may proceed to a hearing upon a showing of reasonable efforts to locate and notify all persons pursuant to Rule 1360.

**Comment**

Pursuant to Rule 1360, all parties are to be served a summons. Pursuant to Rule 1361, the attorneys, the parents, child's foster parent, preadoptive parent, relative providing care for the child, and non-custodial guardians of the child that are not parties to the proceedings are to receive notice.

A copy of the petition is to be included with the summons unless the petition has already been served pursuant to Rule 1331. See Rule 1360(C)(5).

**Rule 1364. Failure to Appear on the Summons.**

If any summoned person fails to appear for the adjudicatory hearing and the court finds that sufficient notice was given, the court may issue a bench warrant.

**PART E. PRESERVATION OF TESTIMONY AND EVIDENCE****Rule 1380. Preservation of Testimony After Commencement of Proceedings.***A. By court order.*

1) At any time after the commencement of proceedings, upon motion of any party, and after notice and hearing, the court may order the taking and preserving of the testimony of any witness who may be unavailable for the adjudicatory hearing or for any other proceeding, or when due to exceptional circumstances, it is in the interests of justice that the witness' testimony be preserved;

2) The court shall state on the record the grounds on which the order is based;

3) The court's order shall specify the time and place for the taking of the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony;

4) The testimony shall be taken in the presence of the court, all parties and their attorneys, unless otherwise ordered; and

5) The court shall rule on the admissibility of the preserved testimony if it is offered into evidence at the adjudicatory hearing or other judicial proceeding.

*B. By agreement of the parties.*

1) At any time after the commencement of proceedings, the testimony of any witness may be taken and preserved upon the express written agreement of all parties;

2) The agreement shall specify the time and place for taking the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony;

3) The testimony shall be taken in the presence of all parties and their attorneys unless they otherwise agree;

4) The agreement shall be filed with the clerk of courts pursuant to Rule 1345(A); and

5) The court shall rule on the admissibility of the preserved testimony if it is offered into evidence at the adjudicatory hearing or other judicial proceeding.

**Comment**

This rule is intended to provide the means by which testimony may be preserved for use at a current or subsequent stage in the proceedings, which includes the taking of a deposition during the adjudicatory hearing to be used at a later stage of the adjudicatory hearing.

When testimony is to be preserved by video recording, see also Rule 1381.

This rule does not address the admissibility of the preserved testimony. The court is to decide all questions of admissibility. See the Pennsylvania Rules of Evidence.

"May be unavailable," as used in paragraph (A)(1), is intended to include situations in which the court has reason to believe that the witness will be unable to be present or to testify at the adjudicatory hearing or other proceedings, such as when the witness is dying, or will be out of the jurisdiction and therefore cannot be effectively served with a subpoena, or may become incompetent to testify for any legally sufficient reason.

Under paragraph (A)(4), the court should preside over the taking of testimony. The court, however, may order that testimony be taken and preserved without the court's presence when exigent circumstances exist or the location of the witness renders the court's presence impracticable. Furthermore, nothing in this rule is intended to preclude the parties, their attorneys, and the court from agreeing on the record that the court need not be present. Paragraph (B)(3) permits the parties and their attorneys to determine among themselves whether the court should be present during the taking of testimony. That determination should be made a part of the written agreement required by paragraph (B)(1).

Nothing in this rule is intended to preclude the parties from waiving their presence during the taking of testimony.

The means by which the testimony is recorded and preserved are within the discretion of the court under paragraph (A) and the parties under paragraph (B), and may include the use of electronic or photographic techniques such as videotape or digital video diskette. There are, however, additional procedural requirements for preservation of testimony by video recording mandated by Rule 1381.

The party on whose motion testimony is taken should normally have custody of and be responsible for safeguarding the preserved testimony. That party should also promptly provide a copy of the preserved testimony to the other parties. Additionally, this rule is not intended to conflict with the requirements of the Pennsylvania Rules of Judicial Administration. For reporting and transcripts by court-employed reporters, see the Pa.R.J.A. Nos. 5000.1—5000.13.

When testimony is taken under this rule, the proceeding should afford the parties full opportunity to examine and cross-examine the witness. Counsel should not reserve objections at the time of the adjudicatory hearing.

For the definition of "court," see Rule 1120.

**Rule 1381. Preservation of Testimony by Video Recording.**

A. When the testimony of a witness is taken and preserved pursuant to Rule 1380 by means of video recording, the testimony shall be recorded simultaneously by a stenographer.

B. The following technical requirements shall be made part of the court order required by Rule 1380(A) or the written agreement provided in Rule 1380(B):

1) The video recording shall begin with a statement on camera that includes:

- a) the operator's name and business address;
- b) the name and address of the operator's employer;
- c) the date, time, and place of the video recording;
- d) the caption of the case;
- e) the name of the witness;
- f) the party on whose behalf the witness is testifying; and
- g) the nature of the judicial proceedings for which the testimony is intended;

2) The court and the persons shall identify themselves on camera;

3) The witness shall be sworn on camera;

4) If the length of the testimony requires the use of more than one video recording, the end of each video recording and the beginning of each succeeding video recording shall be announced on camera;

5) At the conclusion of the witness' testimony, a statement shall be made on camera that the testimony is concluded. A statement shall also be made concerning the custody of the video recording(s);

6) Statements concerning stipulations, exhibits, or other pertinent matters may be made at any time on camera;

7) The video recording shall be timed by a digital clock on camera that continually shows the hour, minute, and second of the testimony;

8) All objections and the reasons for them shall be made on the record. When the court presides over the video recording of testimony, the court's rulings on objections shall also be made on the record;

9) When the court does not preside over the video recording of testimony, the video recording operator shall keep a log of each objection, referenced to the time each objection is made. All rulings on objections shall be made before the video recording is shown at any judicial proceeding; and

10) The original video recording shall not be altered.

#### Comment

This rule provides the basic technical requirements for taking and preserving testimony by video recording under Rule 1380. The list of requirements is not intended to be exhaustive. Rather, it is recommended that all recording by video be carefully planned and executed, and that in addition to complying with the basic requirements, each court order or written agreement for the video recording of testimony be tailored to the nature of the case and the needs of the persons.

Generally, the camera should focus on the witness to the extent practicable.

Under paragraph (B)(9), the court may rule on objections by either reviewing pertinent sections of the video recording, aided by the video operator's log, or by reviewing the stenographic transcript required by paragraph (A).

Any editing procedure ordered by the court or agreed upon by the persons may be used as long as it comports with current technology and does not alter the original video recording. Paragraph (B)(10) is intended to insure preservation of the original video, thereby providing for those situations in which a dispute arises over editing procedures.

This rule authorizes the use of video recording devices only for the preservation of testimony under Rule 1380. It is not intended to affect other rules governing recording devices.

### CHAPTER 14. ADJUDICATORY HEARING

Rule	
1401.	Introduction to Chapter Fourteen.
1404.	Prompt Adjudicatory Hearing.
1405.	Stipulations.
1406.	Adjudicatory Hearing.
1408.	Findings on Petition.
1409.	Adjudication of Dependency and Court Order.

#### Rule 1401. Introduction to Chapter Fourteen.

Under these rules and the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, a determination for each case requires separate and distinct findings. First, the court is to hold

an adjudicatory hearing, governed by Rule 1406 or accept stipulations, governed by Rule 1405. Second, after hearing the evidence or accepting the stipulations, the court is to make specific findings on the petition as to each allegation pursuant to Rule 1408, stating with particularity the allegations proven by clear and convincing evidence. Third, after entering its findings, the court is to determine if the child is dependent, pursuant to Rule 1409. If aggravated circumstances are alleged, the court is to determine if aggravated circumstances exist, pursuant to Rule 1705. After the court has made these findings and if the court finds that the child is dependent, the court is to hold a dispositional hearing as provided for in Rule 1512 and is to enter a dispositional order under Rule 1515. Nothing in these rules precludes the court from making these determinations at the same proceeding as long as the requirements of each rule are followed.

#### Rule 1404. Prompt Adjudicatory Hearing.

A. *Child in custody.* If a child has been removed from the home, an adjudicatory hearing shall be held within ten days of the filing of the petition.

B. *Child not in custody.* If a child has not been removed from the home, the adjudicatory hearing shall be held as soon as practical but within forty-five days of the filing of the petition.

#### Rule 1405. Stipulations.

A. *Agreements.* At any time after the filing of a petition, any party may present stipulations or agreements by all parties to the court in writing or orally on the record to any or all of the following:

- 1) Findings of fact to be deemed admitted by the parties;
- 2) A statement of the parties' agreement for placement;
- 3) A statement of the parties' agreement for visitation;
- 4) Timeframe within which the stipulation shall be in effect;
- 5) Timeframe within which court shall review compliance; or
- 6) Any other stipulation or agreement found to be appropriate by the court.

B. *Court action.* The court shall decide whether to accept the stipulations.

##### 1) *Court accepts stipulations.*

a) *Stipulation to all allegations.* If the court accepts the stipulations to all the allegations, the court shall:

- i) take additional testimony as necessary to make an independent determination of dependency; and
- ii) enter its findings pursuant to Rule 1408 and an adjudication of dependency pursuant to Rule 1409.

b) *Stipulations to some allegations or agreements for disposition.* If the parties agree to some allegations or placement, visitation, or other disposition resolutions, the court shall hold an adjudicatory hearing as to the remaining contested allegations in the petition pursuant to Rule 1406, followed by its finding on the petition pursuant to Rule 1408 and an adjudication of dependency pursuant to Rule 1409.

2) *Court rejects stipulations.* If the court rejects the stipulations, the court shall proceed with an adjudicatory hearing pursuant to Rule 1406, followed by its findings on the petition pursuant to Rule 1408 and an adjudication of dependency pursuant to Rule 1409.

### Comment

If all parties do not agree to all the allegations in the petition, the court is to hold an adjudicatory hearing as to the remaining allegations pursuant to Rule 1406.

Under paragraph (B)(2), the court may reject the stipulations and proceed to an adjudication of dependency pursuant to Rule 1406.

The court is to make an independent determination that a child is dependent. Before accepting the stipulation the judge is to be satisfied that the facts are credible and solidly based and not the product of speculation as to what the child may do in the future. *In re Mark T.*, 442 A.2d 1179 (Pa. Super. Ct. 1982). Furthermore, to be accepted by the court, such stipulation is to be joined by all the parties. If accepted by the court, the stipulation has evidentiary value and may be considered alone or in conjunction with other evidence. The judge is to consider all of the evidence presented as well as the relevant law to arrive at a reasoned decision regarding dependency. *In re Michael Y.*, 530 A.2d 115, 119 (Pa. Super. Ct. 1987). *See In re A. S.*, 594 A.2d 714 (Pa. Super. Ct. 1991) and 42 Pa.C.S. § 6341.

### Rule 1406. Adjudicatory Hearing.

A. *Manner of hearing.* The court shall conduct the adjudicatory hearing in an informal but orderly manner. Prior to commencing the proceedings, the court shall ascertain:

1) whether notice requirements pursuant to Rule 1360 have been met; and

2) whether unrepresented parties have been informed of the right to counsel pursuant to 42 Pa.C.S. § 6337.

B. *Recording.* The adjudicatory hearing shall be recorded. The recording shall be transcribed:

- 1) pursuant to a court order; or
- 2) when there is an appeal.

C. *Evidence.* Each party shall be given the opportunity to:

- 1) introduce evidence;
- 2) present testimony; and
- 3) to cross-examine any witness.

D. *Ex parte communication.*

1) Except as provided by these rules, no person shall communicate with the court in any way.

2) If the court receives any *ex parte* communication, the court shall inform all parties of the communication and its content.

### Comment

Due process requires that the litigants receive notice of the issues before the court and an opportunity to present their case in relation to those issues. *In re M. B.*, 514 A.2d 599 (Pa. Super. Ct. 1986) *aff'd* 538 A.2d 495 (Pa. 1988).

A full record of the hearing is to be kept. *In re J. H.*, 788 A.2d 1006 (Pa. Super. Ct. 2001). *See also* 42 Pa.C.S. § 6336.

Under paragraph (B), notes of testimony should be provided to counsel for a party upon good cause shown. The court may place conditions of release on the notes of testimony. Under paragraph (B)(2), when an appeal is taken, the record is to be transcribed pursuant to Pa.R.A.P. 1922. *See* Pa.R.A.P. 1911 for request of transcript.

Under paragraph (C), the court is to receive evidence from all interested parties and from objective, disinterested witnesses. The judges' findings should be supported by a full discussion of the evidence. *See In Re Clouse*, 368 A.2d 780 (Pa. Super. Ct. 1976).

For application of the Rules of Evidence, see Pa.R.E. 101.

Under paragraph (D), no *ex parte* communications regarding the facts and merits of the case with the court are to occur. Attorneys and judges understand the impropriety of *ex parte* communications but many participants are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented. Normal methods of practice and procedure such as motions, scheduling, communications with court personnel, are not considered *ex parte* communications. *See* Pa.R.P.C. Rules 3.5, 3.3(d), and 8.3(a) and the Code of Judicial Conduct, Canons 1, 2, and 3.

### Rule 1408. Findings on Petition.

A. *Specific Findings.* After hearing the evidence on the petition or accepting stipulated facts by the parties but no later than seven days, the court shall enter a finding by specifying which, if any, allegations in the petition were proved by clear and convincing evidence and that the child is without proper parental care and control.

B. *Clear and Convincing Evidence.* If the court finds allegations in the petition to be supported by clear and convincing evidence and the child is without proper parental care and control, the court shall make and file its findings and proceed to the adjudication of dependency pursuant to Rule 1409.

C. *No Clear and Convincing Evidence.* If the court does not find allegations in the petition to be supported by clear and convincing evidence or the child to be without proper parental care and control, the court shall:

- 1) dismiss the petition;
- 2) order the child to be discharged from custody and any restrictions ordered in the proceedings;
- 3) enter an order identifying individual(s) who will have the legal and physical custody until such order is modified by further order of the court.

### Comment

Before the court can find a child to be dependent, there must be clear and convincing evidence in support of the petition and the child is without proper parental care and control. The burden of proof is on the petitioner. The court's inquiry is to be comprehensive and its findings are to be supported by specific findings of fact and a full discussion of the evidence. *In re LaRue*, 366 A.2d 1271 (Pa. Super. Ct. 1976). *See also In re Frank W. D., Jr.*, 462 A.2d 708 (Pa. Super. Ct. 1983) *In re Clouse*, 368 A.2d 780 (Pa. Super. Ct. 1976). The evidence must support that the child is without proper parental care and control. *In the Matter of DeSavage*, 360 A.2d 237 (Pa. Super. Ct. 1976). The court is not free to apply the best interest of the child standard but the requirements of the Juvenile Act, 42 Pa.C.S. § 6341(c), clear and convincing evidence that the child is dependent is the proper standard. *In re Haynes*, 473 A.2d 1365 (Pa. Super. Ct. 1983). A child, whose non-custodial parent is ready, willing, and able to provide adequate care for the child, cannot be found dependent. *In re M. L.*, 757 A.2d 849 (Pa. 2000). A trial court has the authority to transfer custody or modify custody to the child's non-custodial parent without a finding of depen-

dependency if sufficient evidence of dependency would have existed but for the availability of the non-custodial parent. *In re Justin S.*, 543 A.2d 1192 (Pa. Super. Ct. 1988).

The court is to specify which allegations in the petition are the bases for the finding of dependency under paragraph (A). The court is to make an adjudication of dependency based upon the allegations in the petition, not on alternative grounds. Due process and fundamental fairness require adequate notice of the allegations to afford a reasonable opportunity to prepare a defense. *In re R. M.*, 790 A.2d 300 (Pa. 2002).

See also 42 Pa.C.S. §§ 6341 and 6302.

**Rule 1409. Adjudication of Dependency and Court Order.**

A. *Adjudicating the child dependent.* Once the court has made its findings under Rule 1408, the court shall enter an order whether the child is dependent.

1) *Dependency.* If the court finds from clear and convincing evidence that the child is dependent, the court shall proceed to a dispositional hearing under Rule 1512.

2) *No dependency.* If the court finds the child not to be dependent or the court finds a parent ready, willing, and able to provide proper parental care and control, the court shall dismiss the petition and order the child to be discharged from custody and any restrictions ordered in the proceedings.

B. *Timing.*

1) *Child in custody.* If a child is removed from the home, the court shall enter an adjudication of dependency within seven days of the adjudicatory hearing and entering its findings pursuant to Rule 1408.

2) *Child not in custody.* If a child is not removed from the home and if the court fails to enter an order of dependency, the court shall hold a status hearing every thirty days.

C. *Court order.* The court shall include the following in its court order:

- 1) A statement pursuant to paragraph (A):
  - a) as to whether the court finds the child to be dependent from clear and convincing evidence;
  - b) including the specific factual findings that form the bases of the court's decision;
  - c) including any legal determinations made;
  - d) finding the child to be without proper parental care and control; and
- 2) Any orders directing the removal of a child from the home or change in the current residential status; including:
  - a) orders as to placement; or
  - b) visitation; or
  - c) change in custody; and
- 3) Any orders as to any aids in disposition that may assist in the preparation of the dispositional hearing.

**Comment**

Under paragraph (B), if a child is removed from the home, a finding of dependency is to be made within seven days.

Under paragraph (C)(3), aids in disposition may include, but are not limited to, any services, investigations, evaluations, studies, treatment plans, and any other

appropriate reports that may aid the court in making its determination at the dispositional hearing. See 42 Pa.C.S. § 6339 for orders of a social study or physical and mental examinations and treatment.

See also 42 Pa.C.S. §§ 6341 and 6302.

**CHAPTER 15. DISPOSITIONAL HEARING**

**PART A. SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING**

Rule 1500.	Summons for the Dispositional Hearing.
1501.	Dispositional Notice.

**PART B. DISPOSITIONAL HEARING AND AIDS**

1509.	Aids in Disposition.
1510.	Prompt Dispositional Hearing.
1511.	Pre-Dispositional Statement.
1512.	Dispositional Hearing.
1514.	Dispositional Finding Before Removal From Home.
1515.	Dispositional Order.
1516.	Service of the Dispositional Order.

**PART A. SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING**

**Rule 1500. Summons for the Dispositional Hearing.**

A. *Summons.* The court or its designee shall issue a summons compelling the parties to appear for the dispositional hearing.

B. *Order appearance.* The court may order the person having the physical custody or control of the child to bring the child to the hearing.

C. *Requirements.* The general summons and notice procedures of Rule 1124 shall be followed.

**Comment**

Section 6335 of the Juvenile Act provides that the court is to direct the issuance of a summons to the parent, guardian, or other custodian, a guardian *ad litem*, and any other persons as appear to the court to be proper and necessary parties to the proceedings. 42 Pa.C.S. § 6335(a).

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

**Rule 1501. Dispositional Notice.**

The court or its designee shall give notice of the dispositional hearing to:

- 1) the attorney for the county agency;
- 2) the child's attorney
- 3) the guardian's attorney;
- 4) the parents, child's foster parent, preadoptive parent, relative providing care for the child, and non-custodial guardians of the child that are not parties to the proceedings; and
- 5) the court appointed special advocate, if assigned.

**Comment**

All parties, including custodial guardians, are to receive a summons pursuant to Rule 1500.

**PART B. DISPOSITIONAL HEARING AND AIDS**

**Rule 1509. Aids in Disposition.**

A. *Examinations.* The court may order the child, parent, guardian, or other person being considered as a dispositional placement resource to undergo any examination permitted by law, as it deems appropriate to aid in the decision for disposition.

B. *Experts.* Experts may be utilized during the dispositional hearing. Discovery pursuant to Rule 1340 shall occur prior to the dispositional hearing.

C. *Family Service Plan.* If the county agency has completed a family service plan, it shall be given to all parties immediately and submitted to the court upon request.

#### Comment

Section 6341(e) of the Juvenile Act requires the court to receive reports and other evidence bearing on the disposition. *In re McDonough*, 430 A.2d 308 (Pa. Super. Ct. 1981).

For discovery rules for the dispositional hearing, see Rule 1340 and its *Comments*.

Because of time constraints, a family service plan may not be prepared prior to the original dispositional hearing. If the family service plan has been prepared, all parties are to receive the plan to prepare for the dispositional hearing. In all cases, the family service plan is to be completed by the county agency within sixty days of accepting a family for service. See 55 Pa. Code § 3130.61.

#### Rule 1510. Prompt Dispositional Hearing.

If the child has been removed from the home, the dispositional hearing shall be held no later than twenty days after the findings on the petition under Rule 1408.

#### Comment

For continuances, see 42 Pa.C.S. § 6341(e).

#### Rule 1511. Pre-Dispositional Statement.

The petitioner shall state its recommended disposition in a pre-dispositional statement. The statement shall be filed with the court at least three days prior to the dispositional hearing.

#### Comment

This statement may be included in other court documents, such as, the family service plan or an amended petition.

#### Rule 1512. Dispositional Hearing.

A. *Manner of hearing.* The court shall conduct the dispositional hearing in an informal but orderly manner.

1) *Evidence.* The court shall receive any oral or written evidence which is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.

2) *Opportunity to be heard.* Before deciding disposition, the court shall give the parent, child's foster parent, preadoptive parent, relative providing care for the child and non-custodial guardians an opportunity to make a statement.

B. *Recording.* The dispositional hearing shall be recorded. The recording shall be transcribed:

- 1) pursuant to a court order; or
- 2) when there is an appeal.

C. *Ex parte Communication.*

1) Except as provided by these rules, no person shall communicate with the court in any way.

2) If the court receives any *ex parte* communication, the court shall inform all parties of the communication and its content.

#### Comment

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a child should preside over the dispositional hearing for the same child.

Paragraph (A)(2) does not infringe on the right to call witnesses to testify, in addition, to those specified individuals. See Rule 1123 for subpoenaing a witness.

For transcription of the record under paragraph (B), see also Rule 1127.

Under paragraph (C), no *ex parte* communications with the court are to occur. Attorneys and judges understand the impropriety of *ex parte* communications but many participants are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented. Normal methods of practice and procedure such as motions, scheduling, communications with court personnel, are not considered *ex parte* communications.

#### Rule 1514. Dispositional Finding Before Removal From Home.

A. *Required findings.* Prior to entering a dispositional order removing a child from the home, the court shall enter into the record the following findings:

- 1) Continuation of the child in the home would be contrary to the welfare, safety, or health of the child; and
- 2) One of the following:

a) Reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from the home, if the child has remained in the home pending such disposition; or

b) If preventive services were not offered due to the necessity for emergency placement, whether such lack of services was reasonable under the circumstances; or

c) If the court previously determined that reasonable efforts were not made to prevent the initial removal of the child from the home, whether reasonable efforts are under way to make it possible for the child to return home.

B. *Aggravated circumstances.* If the court has previously found aggravated circumstances to exist, a finding under paragraphs (A)(2)(a) through (c) is not necessary.

#### Comment

See 42 Pa.C.S. § 6351(b).

#### Rule 1515. Dispositional Order.

A. *Generally.* When the court enters a disposition, the court shall issue a written order, which provides that the disposition is best suited to the safety, protection, and physical, mental, and moral welfare of the child. The order shall include:

- 1) the terms, conditions, and limitations of the disposition;
- 2) the name of any person, agency, licensed organization, or institution that is to provide care, shelter, and supervision of the child;
- 3) any findings pursuant to Rule 1514 if a child is being removed from the home;
- 4) any ordered evaluations, tests, counseling, or treatments;
- 5) any ordered family service plan if not already prepared;



- 6) any visitations, including any limitations;
- 7) the date of the order; and
- 8) the signature and printed name of the judge entering the order.

B. *Transfer of legal custody.* If the court decides to transfer legal custody of the child to a person or agency found to be qualified to provide care, shelter, and supervision of the child, the dispositional order shall include:

- 1) the name and address of such person or agency, unless the court determines disclosure is inappropriate;
- 2) the limitations of the order; and
- 3) any visitation rights.

C. *Orders concerning guardian.* The court shall include any conditions, limitations, restrictions, and obligations in its dispositional order imposed upon the guardian.

**Comment**

See 42 Pa.C.S. §§ 6310, 6351.

Dispositional orders should comport in substantial form and content to the Juvenile Court Judges' Commission model orders to receive funding under the federal Adoption and Safe Families Act (ASFA) of 1997 (P. L. 105-89). The model forms are also in compliance with Title IV-B and Title IV-E of the Social Security Act. For model orders, see <http://www.jcjc.state.pa.us> or <http://www.dpw.state.pa.us> or request a copy on diskette directly from the Juvenile Court Judges' Commission, Room 401, Finance Building, Harrisburg, PA 17120.

**Rule 1516. Service of the Dispositional Order.**

Upon entry of the disposition, the court shall issue a dispositional order and the order shall be served promptly upon all parties, their attorneys, and any other person as directed by the court.

**CHAPTER 16. POST-DISPOSITIONAL PROCEDURES**

**PART A. SUMMONS AND NOTICE**

- Rule 1600. Summons for the Permanency Hearing.
- 1601. Permanency Hearing Notice.

**PART B. PERMANENCY HEARING**

- 1607. Regular Scheduling of Permanency Hearings.
- 1608. Permanency Hearing.
- 1609. Court Order of Permanency Hearing Determinations.
- 1613. Termination of Court Supervision.
- 1616. Post-Dispositional Procedures; Appeals (Reserved).

**PART A. SUMMONS AND NOTICE**

**Rule 1600. Summons for the Permanency Hearing.**

A. *Summons.* The court or its designee shall issue a summons compelling the parties to appear for the permanency hearing at least fifteen days prior to the hearing.

B. *Order appearance.* The court may order the person having the physical custody or control of the child to bring the child to the hearing.

C. *Requirements.* The general summons and notice procedures of Rule 1124 shall be followed.

**Comment**

Section 6335 of the Juvenile Act provides that the court is to direct the issuance of a summons to the parent, guardian, or other custodian, a guardian *ad litem*, and any other persons as appear to the court to be proper and necessary parties to the proceedings. 42 Pa.C.S. § 6335(a).

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

**Rule 1601. Permanency Hearing Notice.**

The court or its designee shall give notice of the permanency hearing at least fifteen days prior to the hearing to:

- 1) the attorney for the county agency;
- 2) the child's attorney
- 3) the guardian's attorney;
- 4) the parents, child's foster parent, preadoptive parent, relative providing care for the child, and non-custodial guardians of the child that are not parties to the proceedings; and
- 5) the court appointed special advocate, if assigned.

**Comment**

All parties, including custodial guardians, are to receive a summons pursuant to Rule 1600.

**PART B. PERMANENCY HEARING**

**Rule 1607. Regular Scheduling of Permanency Hearings.**

A. *Thirty days.* The court shall conduct permanency hearings within thirty days of:

1) an adjudication of dependency at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made;

2) a permanency hearing at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made and the permanency plan for the child is incomplete or inconsistent with the court's determination;

3) an allegation that aggravated circumstances exist regarding a child who has been adjudicated dependent; or

4) a petition alleging that the hearing is necessary to protect the safety or physical, mental, or moral welfare of a dependent child.

B. *Six months.* The court shall conduct a permanency hearing within six months of:

1) the date of the child's removal from the child's guardian for placement pursuant to 42 Pa.C.S. §§ 6324 or 6332, or pursuant to a transfer of legal custody or other disposition pursuant to Rule 1515; or

2) each previous permanency hearing until the child is returned to the child's guardian or removed from the jurisdiction of the court pursuant to Rule 1613.

**Comment**

See 42 Pa.C.S. § 6351(e)(3).

**Rule 1608. Permanency Hearing.**

A. *Purpose of hearing.* For every case, the court shall conduct a permanency hearing for purposes of determining or reviewing:

- 1) the permanency plan of the child;
- 2) the date by which the goal of permanency for the child might be achieved; and

3) whether placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. *Court's findings.* At the permanency hearing, the court shall making findings consistent with 42 Pa.C.S. § 6351(f).

C. *Recording.* The dispositional review hearing shall be recorded. The recording shall be transcribed:

- 1) pursuant to a court order; or
- 2) when there is an appeal.

D. *Evidence.* Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court.

E. *Family Service Plan.* The county agency shall review the family service plan at least every six months. If the family service plan is modified, the county agency shall provide all parties and when requested, the court, with the modified family service plan at least fifteen days prior to the permanency hearing.

#### Comment

See 42 Pa.C.S. § 6351.

Permanency planning is a concept whereby children are not relegated to the limbo of spending their childhood in foster homes, but instead, dedicated effort is made by the court and the county agency to rehabilitate and unite the family in a reasonable time, and failing in this, to free the child for adoption. *In re M. B.*, 674 A.2d 702 (Pa. Super. Ct. 1996) quoting *In re Quick*, 559 A.2d 42 (Pa. Super. Ct. 1989).

To the extent practicable, the judge or master that presided over the adjudicatory and original dispositional hearing for a child should preside over the permanency hearing for the same child.

Under paragraph (B), the court is to make a finding consistent with 42 Pa.C.S. § 6351(f), in that the court is to determine all of the following: 1) the continuing necessity for and appropriateness of the placement; 2) the appropriateness, feasibility, and extent of compliance with the permanency plan developed for the child; 3) the extent of progress made toward alleviating the circumstances which necessitated the original placement; 4) the appropriateness and feasibility of the current placement goal for the child; 5) the likely date by which the placement goal for the child might be achieved; 6) whether reasonable efforts were made to finalize the permanency plan in effect; 7) whether the child is safe; 8) if the child has been placed outside the Commonwealth, whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child; 9) the services needed to assist a child who is sixteen years of age or older to make the transition to independent living; and 10) if the child has been in placement for at least fifteen of the last twenty-two months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made, whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process, and approve a qualified family to adopt the child unless: a) the child is being cared for by a relative best suited to the physical, mental, and moral welfare of the child; b) the county agency has documented a compelling reason for

determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or c) the child's family has not been provided with necessary services to achieve the safe return to the child's guardian within the time frames set forth in the permanency plan.

For family service plan requirements, see 55 Pa. Code §§ 3130.61 and 3130.63.

#### Rule 1609. Court Order of Permanency Hearing Determinations.

A. *Findings.* After every permanency hearing, the court shall issue a written order, which provides whether the return of the child is best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. *Determination made.* The court's order shall reflect a determination made consistent with 42 Pa.C.S. § 6351(f.1).

C. *Transfer of legal custody.* If the court decides to transfer permanent legal custody of the child to a person found to be qualified to provide care, shelter, and supervision of the child, the permanency order shall include:

- 1) the name and address of such person unless disclosure is prohibited by court order;
- 2) the limitations of the order; and
- 3) any temporary visitation rights of parents.

D. *Orders concerning guardian.* The court shall include any conditions, limitations, restrictions, and obligations in its permanency order imposed upon the guardian.

#### Comment

Under paragraph (B), the court's order is to reflect whether: 1) If the court finds that return of the child is best suited to the safety, protection, and physical, mental, and moral welfare of the child, the court shall specify: a) the conditions of the return of the child; and b) the projected date of the return of the child; or 2) If the court finds that the return of the child is not best suited to the safety, protection, and physical, mental, and moral welfare of the child, the court shall determine if and when the child will be placed: a) for adoption and the county agency will file for termination of parental rights pursuant to Pa.O.C.R.; b) with a legal custodian; c) with a fit and willing relative; or d) in another living arrangement intended to be permanent in nature which is approved by the court and where the county agency has documented a compelling reason explaining why options under (a) through (c) are not feasible.

#### Rule 1613. Termination of Court Supervision.

A. *Concluding supervision.* Any party, or the court on its own motion, may move for the termination of supervision when court-ordered services from the county agency are no longer needed and:

- 1) a) the family has completed the terms of the family service plan; and
- b) the child is returned to the guardian;
- 2) a ready, willing, and able parent has come forward;
- 3) the child has been adopted;
- 4) the court has transferred jurisdiction to another court;
- 5) the child is eighteen years old; or
- 6) the court has found other reasons for termination of court supervision.

B. *Ready, willing, and able parent.* When services from the county agency are no longer necessary because the court has determined that the child is not dependent pursuant to paragraph (A)(2) because a non-custodial parent has been found by the court to be able and available, the court shall enter an order awarding custody to that parent and the court order shall have the effect and docketed as a decision entered pursuant to Pa.R.C.P.

C. *Objection.* Any party may object to a motion under paragraphs (A) and request a hearing.

D. *Hearing.* If objections have been made under paragraph (C), the court shall hold a hearing and give each party an opportunity to be heard before the court enters its final order.

E. *Cessation of services.* When all of the above listed requirements have been met, the court may discharge the child from its supervision and close the case.

#### Comment

For procedures on motions, see Rule 1344. For procedures on the dispositional order, see Rule 1515. *See also*, 42 Pa.C.S. § 6351.

Pursuant to 42 Pa.C.S. § 6351(a)(2.1), a court may transfer permanent legal custody to a person found by the court to be qualified to receive and care for the child. 42 Pa.C.S. § 6351(a)(2.1). *See also Justin S.*, 543 A.2d 1192 (Pa. Super. Ct. 1988).

#### Rule 1616. Post-Dispositional Procedures; Appeals (Reserved).

### CHAPTER 17. AGGRAVATED CIRCUMSTANCES

Rule 1701.	Motion for Finding of Aggravated Circumstances.
1702.	Filing of Motion for Finding of Aggravated Circumstances.
1705.	Adjudication of Aggravated Circumstances.

#### Rule 1701. Motion for Finding of Aggravated Circumstances.

A. *Dependency Petitions.* A motion for finding of aggravated circumstances may be included in a dependency petition pursuant to Rule 1330.

B. *Motion for Aggravated Circumstances.* If it is determined that aggravated circumstances exist after the filing of the petition, a request for a finding of aggravated circumstances shall be made by motion pursuant to Rule 1344. The motion shall be written.

#### Comment

*See* 42 Pa.C.S. §§ 6302, 6334(b).

Under paragraph (B), all motions for a finding of aggravated circumstances are to be written. Oral motions under Rule 1344 do not apply to motions for finding of aggravated circumstances.

The aggravated circumstances, as defined by 42 Pa.C.S. § 6302, are to be specifically identified in the motion for finding of aggravated circumstances.

#### Rule 1702. Filing of Motion for Finding of Aggravated Circumstances.

A motion for finding of aggravated circumstances shall be filed with the clerk of courts by the county agency as soon as possible but no later than twenty-one days from the determination by the county agency that aggravated circumstances exist.

#### Comment

*See* 42 Pa.C.S. § 6334(b).

#### Rule 1705. Adjudication of Aggravated Circumstances.

A. *Finding after adjudication of dependency.* After a finding of dependency pursuant to Rule 1409, the court shall determine if aggravated circumstances exist.

B. *Reasonable efforts.* If the court finds aggravated circumstances exist, the court shall determine whether reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve and reunify the family shall be made or continue to be made and the court shall proceed to a dispositional hearing under Rule 1512.

C. *Court order.* If the court finds that reasonable efforts pursuant to paragraph (B) were made, the court shall include a statement in its order to that effect.

#### Comment

Under paragraph (A), the court is to find a child dependent before determining if aggravated circumstances exist. *See* 42 Pa.C.S. § 6341(c.1). The petition may be amended to include aggravated circumstances pursuant to Rule 1330(C).

A statement as to whether reasonable efforts were made under paragraph (B) are to be included in the court order under Rule 1409(C).

### CHAPTER 18. SUSPENSIONS

Rule 1800.	Suspensions of Acts of Assembly.
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#### Rule 1800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to dependency proceedings only:

1) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the child may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rule 1124, which requires a summoned person to fail to appear and the court to find that sufficient notice was given.

2) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rules 1127(A) and 1242(B)(2), which requires all proceedings to be recorded, except for shelter care hearings.

3) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6311(b)(9), which provide that there is not a conflict of interest for the guardian *ad litem* in communicating the child's wishes and the recommendation relating to the appropriateness and safety of the child's placement and services necessary to address the child's needs and safety, is suspended only insofar as the Act is inconsistent with Rule 1151, which allows for appointment of separate legal counsel and a guardian *ad litem* when the guardian *ad litem* determines there is a conflict of interest between the child's legal interest and best interest.

4) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the child, is suspended only insofar as the Act is inconsistent with Rule 1152, which does not allow a guardian to waive the child's right to counsel and a child may not waive the right to a guardian *ad litem*.

5) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or classes of cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 1187, which allows masters to hear only specific classes of cases.

6) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6324, which authorizes law enforcement officers to take a child into custody, is suspended only insofar as the Act is inconsistent with Rule 1202, which provides for police officers taking a child into custody.

7) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty four hours or the next business day of the admission of the child to shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the shelter care hearing if the child is in protective custody under Rules 1242 and 1330(A).

8) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 1320, 1321, and 1330, which provide that the county agency may file a petition and any other person shall file an application to file a petition.

9) The Act of December 19, 1990, P. L. 1240, No. 206, § 2, 23 Pa.C.S. § 6339, which provides for the confidentiality of reports made pursuant to the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.*, is suspended only insofar as the Law is inconsistent with Rule 1340(B)(1)(e), which provides for the disclosure of such reports if the reports are going to be used as evidence in a hearing to prove dependency of a child.

#### Comment

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. *See also* Rule 1102.

#### COMMITTEE'S RECOMMENDATION

The Juvenile Court Procedural Rules Committee (hereinafter "Committee") is recommending to the Supreme Court that the following rules of Juvenile Court Procedure, dealing with the dependency jurisdiction of the juvenile court, be adopted and promulgated.

In preparing this recommendation, the Committee surveyed local practices across this Commonwealth by speaking with county agency directors, supervisors, and caseworkers, attorneys for the county agencies, local police departments, and parent advocate attorneys in every judicial district. The Committee also examined case law, the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, the Child Protective Services Law, 23 Pa.C.S. § 6301 *et seq.*, the Pennsylvania Rules of Juvenile Court Procedure—delinquency matters, case law, and many other sources.

After examining these sources and local practices, the Committee debated and discussed every issue with great detail and thought. As a result of our discussions, the

Committee has established a set of procedural rules that: 1) simplifies practice and procedure, 2) provides uniformity, and 3) reflects current practices of the majority of the judicial districts. These uniform rules will enable the statewide practice of law and create fairness in administration and efficiency in the management of dependency cases.

The Committee has also incorporated several provisions of the Juvenile Act that cover procedural areas to unify the procedural process in one area, the Rules of Juvenile Court Procedure. This will simplify procedure in each courtroom across this Commonwealth.

#### History of the Committee

The amendments to the Juvenile Act, 42 Pa.C.S. § 6301, *et seq.*, passed during the 1995 Special Session on Crime and subsequent legislation changed the purpose of the juvenile court. There was an imperative need for the creation and ongoing review of statewide rules of delinquency procedure to establish uniformity throughout the Commonwealth.

In response to these statutory changes and specifically the resulting need for procedural rules, the Supreme Court initiated the Juvenile Court Procedural Rules Project (hereinafter "Project") in 1998 to undertake a close analysis of national standards, statutory and case law, and local practice for delinquents.

On the basis of the work completed by the Project and the need to begin the detailed and specialized work of drafting the necessary procedural rules in the juvenile court for delinquency matters, the Supreme Court of Pennsylvania established the Juvenile Court Procedural Rules Committee on January 22, 2001.

In March of 2003, the Committee published its Rules on delinquency matters for public Comment. The Committee then met in June of 2003 to consider and discuss the public Comments received. The Committee then made some modifications to the Rules based on public Comments and committee discussion. Then in September of 2003, the Committee sent a final recommendation to the Court on delinquency matters. After making some modifications at the Court's direction, the Court adopted the Rules of Juvenile Court Procedure on April 1, 2005. The Rules are effective October 1, 2005, with the exception of the masters' rules, which are effective April 1, 2006.

In October of 2003, the Committee met with several leaders in the dependency field to begin discussions on Rules for dependency matters of the juvenile court. After this initial meeting, it was determined that procedural rules in the juvenile court for dependency matters were imperative. The Committee began surveying judicial districts on all aspects of the dependency court. The Committee has held many meetings over the past two years and thoroughly discussed the local practices, statutory and case law, the Rules of Juvenile Court Procedures—delinquency matters, and other sources. The Committee has drafted rules of procedure for dependency matters and is now publishing the recommended dependency rules for your Comment.

#### The Rules Generally

The Committee has presented the rules in an order that tracks the dependency system from beginning to end. The Committee used its delinquency rules as a starting point in tracking the dependency system. Chapter Eleven sets forth the general provisions and the provisions related to the business of the courts that apply throughout the juvenile court process. Chapter Twelve deals with

the commencement of proceedings, orders for protective custody, and the procedures after a child is taken into protective custody, including the shelter care hearing. Chapter Thirteen provides for the procedures on venue and transfer, the filing of a petition, discovery, motions, summons and notice, and preservation of testimony and evidence. Chapter Fourteen sets forth the adjudicatory hearing procedures. Chapter Fifteen provides for the procedures for the dispositional hearing. Chapter Sixteen provides for the post-dispositional procedures, including permanency hearings. Chapter Seventeen provides for aggravated circumstances procedures. Finally, Chapter Eighteen, provides for suspensions of Acts of Assembly.

The new rules also will create uniformity in terminology, which will additionally facilitate the statewide practice of law. For example, we have used the term "emergency custody application" to describe the document that is completed by a person asking the court to review the case and to place a child into protective custody. Throughout the rules, the term "application" will be used to describe a document that is submitted to court prior to any formal court action. Once proceedings have been commenced, a motion is the appropriate course of action for further requests.

The Committee begins the dependency rules in Chapter Eleven. Chapters One through Ten pertain to delinquency matters. In many instances, the dependency rule corresponds to a delinquency rule by adding a 1000 to the delinquency rule. For example, Rule 1100 corresponds to Rule 100, and Rule 1401 corresponds to Rule 401, with respect to the same subject matter.

The Committee used the corresponding delinquency rule as a beginning point for discussion when applicable. In many instances, the rules are similar in text.

#### CHAPTER ELEVEN

The general provisions are Rules 1100—1102. Business of courts is covered in Part A, Rules 1120—1135. Part B(1) addresses examination and treatment of a child in Rule 1145. Part B(2) addresses counsel, Rules 1150—1158. Records are covered in Part C, Rules 1160—1167. Part D addresses masters in Rules 1185—1192.

#### GENERAL PROVISIONS

##### *Rule 1100—Scope of Rules*

Rules in Chapters Eleven through Twenty (Rules 1100—2099) govern dependency matters.

##### *Rule 1101—Purpose and Construction*

The Committee wanted to emphasize that the rules are to secure uniformity and simplicity in procedure, fairness in administration, just determination and to be construed to effectuate the purposes of the Juvenile Act.

##### *Rule 1102—Citing the Juvenile Court Procedural Rules*

The citation, Pa.R.J.C.P. was the citation chosen by the Committee for delinquency matters. Dependency matters will have the same citation but as stated in the scope of rules, dependency matters are covered in Chapters Eleven through Twenty; whereas, delinquency matters are in Chapters One through Ten.

#### PART A—BUSINESS OF COURTS

##### *Rule 1120—Definitions*

This rule clarifies terminology used throughout the Rules of Juvenile Court Procedure.

##### *Rule 1121—Local Rules*

This rule is very similar in text to the Pa.R.J.C.P.—Delinquency Matters, Rule 121, Pa.R.Crim.P. 105 and the

Pa.R.C.P. 239. The Committee decided to follow the same procedures as these other rules to help the practitioner.

To enable the Supreme Court and the Committee to regulate and monitor local rules and to ensure the local rules are in compliance with the Pennsylvania Rules of Juvenile Court Procedure, and to ensure that local practices do not inhibit the statewide practice of law, this rule requires all local rules be vacated at the time these rules become effective. This does not mean all local rules have to be redrafted in their entirety. After reviewing their local rules for consistency and conformity with the new statewide rules, each judicial district may only need to repromulgate their rules after rekeying the rule numbers.

##### *Rule 1122—Continuances*

The Committee felt that a general rule on continuances was necessary. The court must look at all the circumstances when determining if a continuance is appropriate.

The Committee also discussed what happens with a summons when a case is continued, and concluded the summons does not have to be reissued if the party is notified of the date, place, and time of the rescheduled hearing. This will save time and expense for each judicial district.

##### *Rule 1123—Subpoenas*

The Committee wanted to ensure that subpoenas were uniform throughout the Commonwealth. This rule addresses the minimal contents of a subpoena, service, duration, and the allowance of bench warrants.

A subpoena must remain in force until the end of the proceedings; therefore, there only needs to be one subpoena for a three-day hearing. The person is considered subpoenaed until the proceedings have concluded.

See Rule 1124 for clarification of what individuals are to receive subpoenas.

##### *Rule 1124—Summons and Notice*

The Committee wanted to ensure that summons and notice were uniform throughout the Commonwealth. This rule addresses the requirements of the summons, method of service, and the allowance of bench warrants.

Summonses are issued to bring parties to the proceedings. Notices go to all other persons who need to be present, such as, attorneys, caseworkers, foster parents and other interested individuals. Subpoenas governed by Rule 1124 are issued to bring all witnesses and individuals who will be testifying.

##### *Rule 1126—Defects in Form, Content, or Procedure*

The Committee wanted to ensure that cases were not being dismissed because of a typographical error or non-prejudicial error.

##### *Rule 1127—Recording and Transcribing Juvenile Court Proceedings*

The Committee debated which hearings should be recorded. After extensive discussions, the Committee strongly believed that all hearings, except shelter care hearings, should be recorded for proper review, including appellate review.

Some form of record or transcript is necessary to permit meaningful consideration of claims of error and effective appellate review. See, e.g., Pa.R.A.P. 1922, 1923, 1924: *Commonwealth v. Fields*, 387 A.2d 83 (Pa. 1978); *Commonwealth v. Shields*, 383 A.2d 844 (Pa. 1978).

*Rule 1128—Presence at Proceedings*

All parties are to be present at any proceeding; however, the court may proceed in the absence of a party if good cause is shown or the court has excluded a party for good cause. If a party is absent or excluded, counsel must be present. In no case may the court proceed without the child's attorney.

There are several instances when the court has good cause to proceed without a party. For example, if the child is one year old and could not offer any testimony or assist his or her attorney, or when a party has received notice and willfully fails to attend, and many other reasons deemed appropriate by the court for good cause.

*Rule 1130—Public Discussion by Court Personnel of Pending Matters*

The Committee felt it was important to include prohibitions on divulgence of information concerning a child on matters that are closed proceedings, held in chambers, or otherwise outside of the presence of the public.

*Rule 1133—Motion to Intervene*

This rule provides an avenue for non-parties to move the court for intervention. A person must show a substantial, direct, and immediate interest in the case.

A motion may be denied if the interest of the movant is already adequately represented, the motion for intervention was unduly delayed, or the intervention will unduly delay or prejudice the adjudication of dependency or the rights of the parties.

*PART B(1)—EXAMINATION AND TREATMENT OF CHILD**Rule 1145—Application or Motion for Examination and Treatment of a Child*

This rule provides a mechanism for asking the court for examination and treatment of a child. Paragraph (A) is meant to address emergency situations when a dependency petition has not been filed yet. Paragraph (B) provides for a motion for examination and treatment after the filing of a dependency petition. When filing the motion, all parties must be served and be apprised of the request. For motion procedures, see Rule 1344.

The legal custodian of the child, including the county agency, has statutory authority to treat a child for routine medical care and no motions are necessary. See 42 Pa.C.S. § 6357. For non-routine treatment, the county agency must comply with the provisions of 55 Pa. Code §§ 3130.91 and 3680.52.

*PART B(2)—COUNSEL**Rule 1150—Attorney—Appearances and Withdrawals*

The Committee discussed at length the issue of duration of counsel's representation. The Committee decided to follow its recommendation in the delinquency rules (Rule 150) in that counsel must stay in the case until the closing of the case, including direct appeals and permanency reviews. The Committee noted that it was important that the child have one attorney, whenever possible, through the process of the dependency system for stability and security.

If counsel has good cause for withdrawing from the case, this rule allows withdrawals in those cases. The court should look at all the circumstances when allowing withdrawal, especially if a party will be prejudiced or the proceedings will be delayed.

*Rule 1151—Assignment of Counsel*

This rule provides when a child must receive a guardian *ad litem* and when a child must receive legal counsel. In some instances, a child may need both a guardian *ad litem* and legal counsel when there is a conflict of interest. Section 6311(b)(9) was suspended to the extent that the attorney decides if there is a conflict of interest after evaluating his or her interpretation of the Rules of Professional Conduct with each case and its circumstances. The attorney may petition the court for another attorney. The attorney is subject to the Rules of Professional Conduct and discipline by the Disciplinary Board of the Supreme Court of Pennsylvania; so it is crucial that the attorney evaluate each case separately.

*Rule 1152—Waiver of Counsel*

The Committee agreed, as in the delinquency rules, that a child may waive legal counsel. The waiver must be knowingly, intelligently, and voluntarily made and the court must be assured that the child understands the benefits of counsel. If the court finds that the child has made an intelligent and voluntary choice, the court may appoint stand-by counsel to assist the child. It is understood that some children are too young to make this decision but the court is in the best position to consider all the factors of each case.

The Committee has also decided to recommend that a child may not waive the right to a guardian *ad litem*. The Committee felt in all these cases that there was a need for someone to represent the child's best interest.

*PART C—RECORDS**PART (C)(1)—ACCESS TO JUVENILE COURT RECORDS**Rule 1160—Inspection of Juvenile File/Records*

The provisions of this rule are taken from the Juvenile Act. Because this is a procedural area, the Committee believed it was necessary to include this provision in the rules. Certain sections of the Juvenile Act were not incorporated into the dependency rules because they deal strictly with delinquent juveniles.

*PART (C)(2)—MAINTAINING RECORDS**Rule 1165—Design of Forms*

This rule provides for the designing and publishing of forms that may be helpful in implementing these rules.

*Rule 1166—Maintaining Records in the Clerk of Courts*

In our surveys, the Committee found problems in record maintenance by the clerk of courts. This rule establishes how entries are to be made, the content of docket entries, and the custody of record. This will enable a proper record for appellate review.

It was also noted in the surveys that the county agency acts as the clerk of courts in some counties. Rule 1120 allows the agency or other designated person to act and perform the duties of the clerk of courts if this is an established local practice.

*Rule 1167—Filings and Service of Court Orders and Notices*

This rule provides for the filings and service of court orders and notices. The Committee tried to anticipate the advances in technology by providing, as methods of service, service by facsimile transmission or other electronic means, if requested.

*PART D—MASTERS**Rule 1185—Appointment to Cases*

The Committee expressed concern about allowing masters to practice in the same judicial district where they preside, noting the practice creates a conflict of interest; therefore, this was made a prohibited practice. This prohibition is consistent with what we learned from our surveys; in the majority of the judicial districts, masters are not practicing in juvenile courts.

*Rule 1187—Authority of Master*

A major issue for the Committee concerned whether masters should be limited in the types of cases they should hear. After several discussions, the Committee tentatively felt that masters should hear the less serious cases. The Committee thought that a judge should always hear termination of parental rights, adoptions, adjudicatory hearings where aggravated circumstances are alleged, dispositional hearing where removal of the home is contested, and permanency or dispositional review hearings where a goal change is contested by any party. It is understood that in most instances, termination of parental rights and adoptions are heard in Orphans' Court; however, under 42 Pa.C.S. § 6351(g), a judge may switch hats and serve as the judge to decide those issues. The Committee wanted to ensure that the judge did not assign these important decisions to a master.

This rule also provides that at every hearing before the master, the parties should be informed of the right to a hearing before the judge. This provision is taken from the Juvenile Act.

The Committee wanted to stress the importance of dependency cases and their serious consequences, quite often, removal of child from his or her parent for some specified time, or termination of parental rights. Because of the seriousness of these cases, the Committee is tentatively recommending that judges should be hearing the evidence and making the difficult decisions. The Committee is very desirous to hear Comments from all individuals on the proper scope of the master's authority.

*Rule 1190—Stipulations Before Master*

This rule allows masters to hear any stipulation in any classes of cases that they are permitted to hear under Rule 1187.

*Rule 1191—Master's Findings and Recommendation to the Judge*

This rule requires the master to submit a recommendation to the juvenile court judge within one business day, which reflects the local practices across the Commonwealth. Masters' decisions are subject to approval of the judge. The one-day requirement will expedite judicial action to resolve a matter as soon as possible.

The *Comment* to this rule provides that the court may promulgate a form for the master to utilize. The form may take the form of a court order.

*Rule 1192—Challenge to Master's Recommendation*

A master's recommendation is subject to the approval of the judge. Parties may object to the recommendation and ask for a rehearing under the Juvenile Act. This rule sets forth the procedures on how to challenge a recommendation.

The master's decision is subject to approval of the judge. When the judge in rejecting the master's recommendation, modifies a factual determination, a rehearing must be conducted. The judge may reject the master's

findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations. See *In re Perry*, 459 A.2d 789 (Pa. Super. Ct. 1983).

*CHAPTER TWELVE*

Part A, Rule 1200—1202 provides for commencement of proceedings, procedures for protective medical custody, and protective custody by police and the county agency. Part B, Rule 1210 provides for the court order for protective custody. Part C provides for the shelter care application and hearing in Rules 1240—1243.

*PART A—COMMENCING PROCEEDINGS**Rule 1200—Commencing Proceedings*

This rule provides the methods of commencing proceedings in a dependency case. In addition to the filing of a dependency petition, proceedings are commenced if a child is taken into protective custody, unless the child is promptly returned home, and an emergency custody application is submitted. The Committee chose the emergency custody application procedure to ensure notice is given to the proper parties, a petition is filed, a child receives the necessary support from the county agency, and several other procedures occur.

*Rule 1201—Procedures for Protective Medical Custody*

This rule ensures that a child is not held in protective custody by a hospital or other medical institution for more than twenty-four hours. The county agency must be notified to obtain a court order for the child to be held for longer than twenty-four hours.

*Rule 1202—Procedures for Protective Custody by Police and County Agency*

This rule provides for whether a court order is necessary when a child is taken into protective custody. If a child is taken into custody without a court order, a court order must be obtained within twenty-four hours. Additionally, the guardian must be notified of such custody, the reasons for the custody, and the whereabouts of the child, unless the court has prohibited disclosure of the child's whereabouts for the protection and safety of the child.

*PART B—EMERGENCY CUSTODY**Rule 1210—Order for Protective Custody*

This rule provides for oral applications for protective custody; however, the request must be reduced to writing within twenty-four hours. This allows for requests and orders after normal business hours that may be reduced to writing by the next day within twenty-four hours.

*PART C—EMERGENCY CUSTODY HEARING**Rule 1240—Shelter Care Application*

A shelter care application must be filed within twenty-four hours of taking a child into protective custody. A dependency petition may be filed in lieu of the shelter care application.

*Rule 1241—Notice of Shelter Care Hearing*

Notice of the shelter care hearing, including date, time, place, and purpose, is provided for by this rule.

*Rule 1242—General Conduct of Shelter Care Hearing*

This rule provides for the requirements at the shelter care hearing, including informing parties of their rights, the manner of the hearing, the findings of the court, the prompt hearing requirement, and the contents of the court order.

*Rule 1243—Shelter Care Rehearings*

The Juvenile Act provides for rehearings if a guardian was not notified of the hearing. The Committee has built into this rule the requirement that a guardian submit an affidavit alleging he or she was not notified of the hearing and would like the opportunity to be heard. This requirement is designed to limit the number of rehearings by the court but allow the guardian to be heard if requested. There may be instances in which the guardian agrees with the decision of the hearing although the guardian was not present, and no rehearing is necessary.

*CHAPTER THIRTEEN*

Chapter Thirteen addresses the pre-adjudicatory procedures. Part A encompasses venue and inter-county transfer in Rules 1300—1302. Part B addresses an application for a private petition and a preliminary hearing in Rules 1320—1321. The filing of a petition and pertinent procedures surrounding the petition are included in Part C, Rules 1330—1336. For procedures following the filing of a petition, see Part D, Rules 1340—1364, including discovery, motions, service, summons, and notice. Part E, Rules 1380—1381 includes provisions on preservation of testimony and evidence.

*PART A—VENUE**Rule 1300—Venue*

A proceeding may be commenced in the county in which the child is present or the child's county of residence. The Committee thought of several scenarios when a transfer to another county may be beneficial so added a procedure that allows a motion for change of venue for convenience of the parties and witnesses.

*Rule 1302—Inter-County Transfer*

Several counties transfer cases before, during, and at the conclusion of the case. This rule provides for transmission of the juvenile court file, including all pertinent information, to the court accepting the case or disposition.

*PART B—APPLICATION FOR PRIVATE PETITION**Rule 1320—Application to File a Private Petition*

Any person, other than the county agency, must present an application to file a private petition to the court. In addition to the petition requirements, the person must explain the relationship to the child and to other parties. Preliminary objections may be made by any party.

*Rule 1321—Preliminary Hearing on Application for Private Petition*

This rule requires the court to conduct a preliminary hearing within fourteen days of the presentation of an application for a private petition. If the court finds that there are sufficient facts to support a dependency petition, and the court determines that the applicant is a proper party to the proceeding, the court is to authorize the filing of a dependency petition pursuant to Rule 1330.

*PART C—PETITION**Rule 1330—Petition: Filing, Contents, Function, Aggravated Circumstances*

Section 6334 of the Juvenile Act was suspended to the extent that any person, other than the county agency, must first file an application pursuant to Rule 1320 to file a petition. This allows the court to screen those cases in which dependency is not the motivation for the filing, the private person is not the proper person to bring the petition, or there is insufficient evidence to proceed with the case.

*Rule 1331—Service of Petition*

The requirements for service of the petition are set forth in this rule.

*Rule 1333—Separate Petitions and Motion to Consolidate Hearing*

This rule provides that separate petitions must be filed for every child. If there are siblings, a reference must be made in each petition, and adjudicatory hearings for siblings may be consolidated into one hearing when beneficial to the court.

*Rule 1334—Amendment of Petition*

This rule allows for amendments of the petition when there is a defect. It is in the court's discretion, if an amendment is for different sets of events or allegations. It also allows the court to continue the case because of an amendment.

*Rule 1335—Withdrawal of Petition*

All withdrawals of petitions by the county agency must be filed with the clerk of courts.

*Rule 1336—Re-Filing of the Petition After Withdrawal or Dismissal*

This rule provides for re-filings of petitions and motions for dismissal of the petition.

*PART D—PROCEDURES FOLLOWING FILING OF PETITION**Rule 1340—Discovery and Inspection*

This rule emphasizes that the discovery process should be informal. Each party should disclose the necessary information, when requested, to the other parties without the need of filing a formal motion. Only when there is a general dispute as to discovery, should a motion to compel discovery be made. The uncontested matters should be disclosed informally even when a motion to compel has been filed.

The Committee had extensive debates over which items were to be mandatory or discretionary. The Committee concluded that a party should have all the necessary information to obtain a fair hearing and to create the best presentation of all the evidence to the court so the court could decide the issue of dependency. Taking a child from a parent is one of the most invasive roles of the court and the court must carefully consider all the evidence.

This rule provides for discovery from the county agency and reciprocal discovery from other parties. All parties are to provide witness lists, witness statements, tangible objects or evidence that a party intends to use at a hearing, expert witness information and opinion to be offered at a hearing, or any other evidence a party intends to use at the hearing. In addition, if the county agency is going to use the following during a hearing, the county agency has a further obligation to provide: scientific reports or test, police reports, records of prior county agency involvement, records of current or prior reports involving the CPSL, and physical or mental examinations if any physical or mental condition of a party is in controversy.

Rule 1800 suspends § 6339 of the Child Protective Services Law only to the extent that if the reports are going to be introduced as evidence at a hearing, they must be disclosed.

It is important to note that in the Committee's surveys, the Committee found that approximately one-third of the judicial districts do not separate their files as to depen-



dependency cases or cases under the Child Protective Services Law. It may be important for discovery purposes that these files be maintained separately but the Committee decided to leave this decision to the judicial district.

*Rule 1342—Pre-Adjudicatory Conference*

This rule allows the court to order pre-adjudicatory conferences.

*Rules 1344—Motions and Answers*

This rule provides for motions and answers to be made either orally or in writing. Because of the time constraints in juvenile court, several motions may be oral. However, if time allows, written motions are preferable.

*Rule 1345—Filing and Service*

This rule provides for a uniform procedure on filing and serving.

**PART D(2)—ADJUDICATORY SUMMONS AND NOTICE**

*Rule 1360—Adjudicatory Summons*

This rule provides for the requirements of a summons for the adjudicatory hearing and that all parties are to receive a summons.

*Rule 1361—Adjudicatory Notice*

This rule provides for the persons who are to receive notice of the adjudicatory hearing.

*Rule 1363—Service of Summons*

This rule provides the method, time, and proof of service for the summons.

*Rule 1364—Failure to Appear on the Summons*

This rule provides for bench warrants when a summoned person fails to appear for the hearing.

**PART E—PRESERVATION OF TESTIMONY AND EVIDENCE**

*Rule 1380—Preservation of Testimony After Commencement of Proceedings*

This rule provides for the preserving of testimony by court order or agreement between the parties.

*Rule 1381—Preservation of Testimony by Video Recording*

This rule provides for further requirements of preserving of testimony if the testimony is taken by video recording.

**CHAPTER FOURTEEN**

Chapter Fourteen addresses the procedures related to the adjudicatory hearing.

*Rule 1401—Introduction to Chapter Fourteen*

This is an explanatory rule that describes how cases are to proceed. The Committee wanted to ensure these procedures were followed and that proceedings could be combined so this explanatory clause was made into a rule that could be referenced in a court proceeding.

*Rule 1404—Prompt Adjudicatory Hearing*

The Committee discussed whether there should be a time limitation for having a hearing for children who have not been removed from their homes. The Committee believes an outstanding dependency petition is highly important and should be resolved as soon as practical but no later than forty-five days after the filing of a petition.

*Rule 1405—Stipulations*

This rule governs any agreements by the parties. The court must accept or reject the stipulations before proceeding with the case.

*Rule 1406—Adjudicatory Hearing*

This rule governs the manner of the adjudicatory hearing, its recordings, evidence, and *ex parte* communications.

*Rule 1408—Findings on Petition*

Although in most cases the court will make its findings on the petition at the conclusion of the adjudicatory hearing, this rule provides that if the judge takes the matter under advisement, the court's decision must be made within seven days. The Committee was concerned with delays in cases when the court did not immediately make its findings on the petition. This restriction will alleviate this concern.

The burden of proof for finding of dependency is that the court finds the allegations in the petition to be supported by clear and convincing evidence.

When entering its findings on the record, the court may transfer custody to the child's non-custodial parent without a finding of dependency if sufficient evidence of dependency would have existed but for the availability of the non-custodial parent. See *In re Justin S.*, 543 A.2d 1192 (Pa. Super. Ct. 1988).

*Rule 1409—Adjudication of Dependency and Court Order*

The adjudication of dependency is usually made at either the adjudicatory or the dispositional hearing. The Committee wanted to ensure that the court makes a specific finding. Rule 1401 specifies that this finding may be made at the same time as other hearings.

This rule also provides for the contents of the court's order.

**CHAPTER FIFTEEN**

This chapter provides for the procedures of the dispositional proceedings in juvenile court, including the final order of the court. Part A provides for summons and notice in Rule 1500. Rules 1509—1516 are covered in Part B addressing the dispositional hearing and aids in the disposition.

**PART A—SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING**

*Rule 1500—Summons for the Dispositional Hearing*

This rule provides for the summons procedures for the dispositional hearing.

*Rule 1501—Dispositional Notice*

This rule provides for persons who are to receive notice of the dispositional hearing.

**PART B—DISPOSITIONAL HEARING AND AIDS**

*Rule 1509—Aids in Disposition*

The court may utilize examinations and experts at the dispositional hearing. This rule allows the court to authorize such examinations and order discovery on the expert's testimony. In addition, if a family service plan has been completed, the parties are to receive a copy.

*Rule 1510—Prompt Dispositional Hearing*

This rule provides that the dispositional hearing should be held no later than twenty days from the findings on the petition when the child has been removed from the home. When the child has not been removed from the

home, there are many factors that the court must take into consideration but those hearings have no specific time requirement.

*Rule 1511—Pre-Dispositional Statement*

This rule provides that the petitioner must file a pre-dispositional statement with the court stating its recommendation. If a family service plan has been completed, the county agency may submit its recommendation in the family service plan.

*Rule 1512—Dispositional Hearing*

The “one judge-one family” philosophy that has swept our country was discussed by the Committee. The Committee agreed that this is the best-case scenario for all juvenile courts; however, on the practical side of this issue, we felt that this may not be feasible in all the judicial districts. In view of this, this rule’s *Comment* points out that, if and when practicable, the same judge and master should hear all cases involving the same child or family.

This rule also provides for the procedures for the manner of the hearing, recording, and *ex parte* communication.

*Rule 1514—Dispositional Finding Before Removal From Home*

This rule lays out the requirements of 42 Pa.C.S. § 6351(b).

*Rule 1515—Dispositional Order*

This rule provides the minimal requirements of the dispositional order. It may be necessary to include additional information in the order depending on the type of case or if the court is to receive funding.

Additionally, the court may transfer legal custody of the child. See *Comment* to Rule 1408 for transferring of custody without an adjudication of dependency.

*Rule 1516—Service of the Dispositional Order*

This rule provides those persons who are to receive a copy of the dispositional order.

**CHAPTER SIXTEEN**

This chapter provides for the post-dispositional procedures. Part A, Rules 1600 and 1601 provide for the dispositional summons and notice. Part B provides for permanency hearing, rights and duties of temporary custodians, and termination of court supervision.

**PART A—SUMMONS AND NOTICE**

*Rule 1600—Summons for the Permanency Hearing*

This rule provides that all parties are to receive a summons of the permanency hearings.

*Rule 1601—Permanency Hearing Notice*

This rule provides for which persons are to receive notice of the permanency hearing.

**PART B—PERMANENCY HEARING**

*Rule 1607—Regular Scheduling of Permanency Hearing*

This rule sets forth the requirements of 42 Pa.C.S. § 6351(e)(3), which requires permanency hearings in thirty days or six months, depending on the case.

*Rule 1608—Permanency Hearing*

This rule provides for the purpose of the permanency hearing, the court’s finding, recording, evidence, and the

family service plan. Specific regulations concerning the family service plan can be found at 55 PA CODE §§ 3130.61 & 3130.63.

*Rule 1609—Court Order of Permanency Hearing Determinations*

This rule provides for the finding and determination that the court must make following a permanency hearing.

*Rule 1613—Termination of Court Supervision*

This rule provides for the requirements of termination of the court’s supervision. If a party has an objection to the termination of supervision, the court must schedule and conduct a hearing. The court must give each party an opportunity to be heard.

**CHAPTER SEVENTEEN**

This chapter provides for aggravated circumstances in Rules 1701—1705.

*Rule 1701—Motion for Finding of Aggravated Circumstances*

A motion for finding of aggravated circumstances may be included in the petition. If a petition has already been filed, a motion for a finding of aggravated circumstances must be filed. The motion procedures of Rule 1344 must be followed.

*Rule 1702—Filing of Motion for Finding of Aggravated Circumstances*

A county agency has twenty one days from the day the county agency determined aggravated circumstances exist to file a motion.

*Rule 1705—Adjudication of Aggravated Circumstances*

Before the court is able to find aggravated circumstances, the court must enter a finding of dependency pursuant to Rule 1409. If the court does find aggravated circumstances to exist, the court must determine if reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve the family shall be made or continue to be made.

**CHAPTER EIGHTEEN**

*Rule 1800—Suspensions of Acts of Assembly*

This rule provides for suspensions of Acts of Assembly to facilitate the recommended rules. The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution.

[Pa.B. Doc. No. 05-1510. Filed for public inspection August 12, 2005, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### LEBANON COUNTY

Local Family Division Rule Amendment (Rule 52-FD-1910.20); Doc. No. 1996-00250

#### Order

And Now, to wit, this 2nd day of August, 2005, it is hereby Ordered and Decreed that Local Family Division Rule 52-FD-1910.20 is hereby amended and shall read as follows:

**Rule 52-FD-1910.20—Enforcement of Orders.**

A. A wage attachment shall automatically be issued by the Court for the enforcement of any order for which four (4) weeks of arrearages have accumulated. Ten percent (10%) of the amount of the support order shall be added for payment on account of arrearages until they are fully paid. This action shall be taken by the Domestic Relations Section without further notice to the parties.

This Rule shall become effective October 1, 2005.

*By the Court*

ROBERT J. EBY,  
*President Judge*

[Pa.B. Doc. No. 05-1511. Filed for public inspection August 12, 2005, 9:00 a.m.]

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**NORTHAMPTON COUNTY**

**Child Custody Conference Procedure; Administrative Order 2005-1**

**Order of Court**

*And Now*, this 20th day of July, 2005, it is hereby ordered the court adopts the following Rule N1915.1, Child Custody Conference Procedure, effective this date. The following rules are hereby vacated: Administrative Orders 1998-2, 1994-16 and Local Rules 1915.1, 1915.4, 1915.8, and any other rule or administrative order consistent herewith.

*By the Court*

ROBERT A. FREEDBERG,  
*President Judge*

**Rule N1915.1 Child Custody Conference Procedure**

1. The child custody conference officer shall conduct pre-hearing conferences in all habeas corpus actions involving custody of children (including primary, partial and visitation custodial matters) at such times and places as the child custody conference officer shall from time to time direct. The child custody conference officer shall conduct pre-hearing conferences, encouraging and supervising the formulation of settlement agreements between the parties, and, as necessary, interim Orders in accord with the procedures herein. The child custody conference officer shall perform such additional duties as the Court from time to time directs.

2. Unless otherwise ordered by the Court for substantial cause shown, pre-hearing conferences before the child custody conference officer are mandatory in all cases relating to child custody or visitation, including proceedings begun under the Divorce Code and by complaint for custody, and including issues of child custody, confirmation of custody, partial custody, visitation, modification of custody and contempt proceedings.

3. At the time of filing the complaint for custody or other pleading raising an issue which is subject to the requirement of a pre-hearing custody conference, the party filing the pleading shall attach thereto and present to the motions' judge a proposed order in the form set forth at Pa.R.C.P. 1915.15(c), the conference date to be in accord with the next available conference list, which, except for good cause shown, shall be within 45 days (as required by Pa.R.C.P. 1915.4(a)), but not less than 21 days from the date of filing the Order.

4. The party who files such a claim shall file simultaneously a praecipe placing the matter on for conference on the date of the next available conference list.

5. The party filing such a claim shall file simultaneously with the prothonotary a pre-trial conference statement, together with a notice to respond. The service copy shall include a blank pre-trial statement for use by the opposing party. The pre-trial conference statement shall contain the following information:

(a) name, age, address (including the school district) of the party's residence, employment information, telephone numbers, and name of the attorney representing the party, if any;

(b) the opposing party's name, age, address (including the school district) of the residence, and employment information;

(c) the marital status of the parties, and date of separation, if applicable;

(d) name, address and date of birth of the child(ren) subject to the proceeding;

(e) the residence(s) of the child(ren) during the lifetime of the child(ren);

(f) list (and copies) of prior orders, if any, and list of evaluations or reports, if any (copies of reports and evaluations should not be attached to the statement, but provided to the custody conference officer at the conference);

(g) a description of the actual current custody/visitation arrangements, if any;

(h) a description of the physical and mental health conditions and school performance of the child(ren) and a description of any special circumstances of the parties, the child(ren) or the situation;

(i) a statement of the relief the party seeks; and

(j) description of any efforts to resolve the matter and a proposal for resolution.

6. The party filing such a claim shall serve on the opposing party copies of the pleadings, the preliminary order, praecipe, notice to respond, pre-trial statement of the filing party and a blank pre-trial statement for the opposing party's use. An affidavit of service of the foregoing shall be filed no later than the time for the custody conference.

7. The party filing such a claim shall provide to the court administrator a copy of the praecipe, which shall include proper addresses of all parties and counsel. The address of any unrepresented party shall be the address of said party as set forth in the pleadings unless good cause is shown to use a different address. The court administrator will forward notice of the hearing date and time by regular mail.

8. Except upon good cause shown, which shall include situations where a parent has absconded with or without the child(ren), the custody conference will not be conducted in the absence of service and notice as required herein, and will be continued pending service and notice.

9. If all parties are in agreement to continue a custody conference, the party shall notify the court administrator of the agreed continuance request in writing. Where a request for a continuance of custody conference is opposed, such request shall be made in writing through the office of the custody conference officer and may be granted by the custody conference officer only upon certification that there has been an attempt to obtain an

agreement of the opposing counsel or party and only upon good cause shown, or order of court. In all cases where a custody conference is continued, the party seeking the continuance shall file a new praecipe as set forth above.

10. Not later than three days preceding the date for the conference, the respondent shall file with the prothonotary an original pre-trial conference statement in accord with Paragraph 5 of this rule (and in the form attached hereto), and shall provide a copy to the opposing party or counsel. At the time of the conference all parties shall provide to the custody conference officer copies of the filed pre-trial statements. Pre-trial statements shall not be mailed to the custody conference officer. Failure to comply with this procedure may result in a finding of contempt with appropriate sanctions.

11. Conference procedures are set generally in the discretion of the custody conference officer. Counsel for all parties shall be prepared to present to the custody conference officer all information as necessary for the custody conference officer to ascertain the issues. Conferences are not of record and no testimony is taken by the custody conference officer. In the custody conference officer's discretion, the custody conference officer shall attempt to determine the relevant facts through discussion with counsel, the parties and third parties. All parties shall be admitted to the conference as directed by the custody conference officer. Upon request of a party or the custody conference officer, the custody conference officer, in the custody conference officer's discretion, may interview the child(ren) in the presence of counsel. Generally, the custody conference officer will not interview children less than 10 years of age and unless specifically ordered by the Court or requested by the custody conference officer, children should not be present for the conference.

12. If the custody conference officer determines that the parties have reached a full or partial agreement, the custody conference officer shall prepare a proposed order setting forth the terms of the agreement and promptly forward to the motions' judge for review. Said order shall be effective the date of the conference. The custody conference officer may prepare an agreed order based upon the submission of a written stipulation executed by counsel of record and/or the parties.

13. If the custody of the child(ren) is in controversy and unresolved in part or full following the conference, the custody conference officer may do any one or all of the following:

(a) prepare an order directing the parties to cooperate with all applicable evaluations. Copies of any reports shall be provided to counsel for the parties. Unless directed otherwise upon good cause shown, the costs for such evaluations shall be placed equally upon the parties and shall be paid in advance. Upon application by a party or on its own motion, the Court may assess evaluation costs as part of the costs of the action. In the event a party fails to cooperate with a home evaluation, the evaluation shall be completed only as to the compliant party and the lack of cooperation of the other party may be considered by the court against the non-cooperating party as a presumption that the report as to the non-cooperative party would have been negative. Nothing herein shall preclude a party from seeking relief by a petition for special relief.

(b) set deadlines for investigative reports and evaluations necessary to prepare the case for presentation to the court;

(c) designate a non-jury trial listing of the case;

(d) submit to the court a written resume of the conference, including any recommendations for disposition of the case;

(e) submit to the court a proposed interim order, which the court may enter pursuant to Pa.R.C.P. 1915.4(e) (authorizing interim special relief at any time), subject to the right of any party to contest any provision of the interim order by filing an application for special relief pursuant to Pa.R.C.P. 1915.13. Notice of this right shall be set forth in the interim order. The party filing a petition for special relief hereunder shall provide a copy to the custody conference officer, who may prepare for review by the Court a report of the conference.

14. Following receipt of ordered evaluations and investigations, but prior to listing for trial, either party (through counsel, if any) may praecipe the matter for a subsequent conference with the custody conference officer who previously conferenced the matter, file a pre-trial conference statement in accord with these rules and provide to the custody conference officer at the conference copies of all evaluation and reports.

[Pa.B. Doc. No. 05-1512. Filed for public inspection August 12, 2005, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 52—PUBLIC UTILITIES

### PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 63]

[L-00030163]

#### Changing Local Service Providers

The Pennsylvania Public Utility Commission, on May 5, 2005, adopted a final rulemaking order which sets forth regulations establishing an orderly process for customer migration between local service providers within the telecommunications industry.

##### *Executive Summary*

The advent of competition in the local telephone market in this Commonwealth has created situations that the Commission's current regulations do not address. Specifically, consumers have encountered a variety of problems when they attempt to change local service providers (LSPs) in the competitive market. In April 2002, recognizing the need for both short-term and long-run solutions to problems associated with migrating local phone service, the Commission approved Interim Guidelines addressing the issues raised by the changes. Later in 2002, the Commission held collaborative sessions that involved telecommunications carriers and other interested parties in discussions of the issues. Two of the collaborative groups focused on issues related to changing local service providers and quality of service. The participants in these two groups agreed to combine the issues into one rulemaking. The collaborative participants addressed proposals for regulations and proposed solutions to the problems created by the changing telecommunications marketplace.

By Order entered on October 3, 2003, at Docket No. L-00030163, the Commission adopted a Proposed Rulemaking Order to amend Chapter 63, consistent with the order and recommendations of the collaborative participants, the Bureau of Consumer Services and the Law Bureau. The intent of the proposed rulemaking was to promulgate a regulation to establish general rules, procedures, and standards to ensure that customers can migrate from one LSP to another without confusion, delay, or interruption of their basic telephone service.

Comments to the proposed rulemaking were filed, and the Commission addressed all comments and entered a final rulemaking order on February 9, 2005. A petition for reconsideration was timely filed and granted in part by the Commission by Order entered on May 5, 2005. The May 5, 2005, Order replaces the February 9, 2005, Order in its entirety.

The new regulation applies to all LSPs and network service providers (NSPs) operating in this Commonwealth. Although the new regulations do not apply to mass migrations of customers brought about by the selling or transferring of a customer base of one LSP to another, an LSP that has properly proceeded with the abandonment of service to its customer base, Digital Subscriber Line migration, or line sharing/splitting arrangements, the rules may provide guidance for those transactions.

The regulations recognize the right of a telephone customer to migrate from one LSP to another and address the responsibilities of old LSPs, new LSPs and NSPs

throughout the migration process. The old and new LSPs are to work together to minimize or avoid problems associated with migrating a customer's account. The Commission will establish an industry work group to develop and update migration guidelines that LSPs and NSPs are to follow to facilitate migration of a customer's local telephone service.

Prospective new LSPs will need verified authorization from a customer to obtain the customer's service information from the current LSP. The current LSP is to provide specific customer service information within a specified time frame to the prospective new LSP when the customer has indicated a desire to switch LSPs. The prospective new LSP may not process a change in LSPs for a customer who has a local service provider freeze in effect. LSPs are to provide various methods for customers to lift or remove local service provider freezes.

An old LSP may not refuse to port a customer's telephone number to a new LSP unless the old LSP has terminated or discontinued service for that number prior to the migration request. In addition, an old LSP shall issue a final bill within 42 days to any customer who has requested to switch service providers and the old LSP shall stop billing the customer for any recurring charges as of the date of the change to the new LSP.

LSPs and NSPs are to follow specific procedures when preexisting service at a location prevents a new LSP from reusing the existing telephone facilities to serve a new customer. If the problem cannot be resolved, the new LSP is to inform the consumer of various options for obtaining service including paying for the installation of new facilities.

In the event of a migration dispute between LSPs or between an LSP and an NSP, the Commission will make available a nonadversarial, expedited dispute process within the Commission to address the dispute and suggest a resolution.

##### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 18, 2004, the Commission submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 1784 (April 3, 2004), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committees on Consumer Protection and Professional Licensure 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 July 13, 2005, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(c) of the Regulatory Review Act, IRRC met on July 14, 2005, and approved the final-form rulemaking.

Public Meeting held  
May 5, 2005

Commissioners Present: Wendell F. Holland, Chairperson;  
Robert K. Bloom, Vice Chairperson; Kim Pizzingrilli

Rulemaking Re Changing Local Service Providers;  
L-00030163

### Final Rulemaking Order Order on Reconsideration

By the Commission:

On October 3, 2003, the Commission entered a Proposed Rulemaking Order to promulgate regulations to establish an orderly process for customer migration between local service providers (LSPs) within the telecommunications industry. The final-form regulations apply to all LSPs and all network service providers (NSPs) operating in Pennsylvania and are not mandatory with respect to mass migrations of customers brought about by the selling or transferring of customer base from one LSP to another, to an LSP that has properly proceeded with the abandonment of service to its customer base, to Digital Subscriber Line migration, or to line sharing or line splitting arrangements.

*History*

The October 3, 2003 Order was published in the *Pennsylvania Bulletin* on April 3, 2004, at 34 Pa.B. 1784. The Commission received written comments from the Independent Regulatory Review Commission (IRRC); the Office of Consumer Advocate (OCA); the Office of the Attorney General (OAG), the Pennsylvania Telephone Association (PTA); AT&T Communication of Pennsylvania, LLC. (AT&T); Curry Communications, Inc. (Curry); Full Service Network (FSN); MCI WorldCom Network Services, Inc. (MCI); and Verizon Pennsylvania Inc./Verizon North Inc. (Verizon).

On February 9, 2005, this Commission entered an Order addressing the comments and setting forth final regulations. On February 24, 2005, before the Order and final-form regulations were transmitted to IRRC for final review prior to publication, Verizon filed and served<sup>1</sup> a timely Petition for Reconsideration seeking review of three points:

(1) Migration and restoration coordination responsibilities. (P/R at ¶9). Specifically, the new LSP (NLSP), rather than the network service provider (NSP), should be responsible for coordinating migrations of service and restorations of service if the migration fails.

(2) The non-contact period by current LSPs with potentially departing customers. (P/R at ¶10). Specifically, Federal Communications Commission (FCC) regulations provide that this period does not expire.

(3) Confirmation or rejection of a Local Service Request (LSR). (P/R at ¶11). Specifically, the § 63.202(d) interval should be shortened, the section should apply to the old LSP (OLSP), and "or rejection" should be deleted from the section.

On March 15, 2005, Metropolitan Telecommunications (MetTel) filed a letter in lieu of answer generally supporting reconsideration on Verizon PA's first and third points. MetTel did not address the second point.

The substance of Verizon's concerns raised in its Petition for Reconsideration, coupled with MetTel's support and the lack of any formal opposition to reconsideration

or Verizon's concerns, persuade us to consider their merit under the standard enunciated in *Duick v. Pa. Gas & Water*, 56 Pa PUC 553 (1982).

This Final Rulemaking Order/Order on Reconsideration and Annex A replace the February 9, 2005 Order and regulations in their entirety, address the comments to the February 3, 2003 Order, address the Petition for Reconsideration, and adopt and set forth in Annex A revised final regulations.

*Discussion*

As a preliminary matter, we note that it is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. P.U.C.*, 625 A.2d 741 (Pa. Cmwlth. 1993); *U. of Pa. v. Pa. P.U.C.*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Accordingly, any comment, issue, or request for reconsideration that we do not specifically address herein has been duly considered and rejected and will not be further discussed. Further, ministerial edits, which do not have a substantive effect, have been included in this order without specific discussion.

### Subchapter M. CHANGING LOCAL SERVICE PROVIDERS

*General Comments*

Several parties provided comments about some general aspects of the proposed regulations. AT&T suggested that the Commission should withdraw the proposal until the market evolves. According to AT&T, the proposed rulemaking is a bad solution in search of an unproven problem and may create problems in a process that is working well. The Commission's experience, however, has been that existing procedures for migration do not always work well. The Commission's Bureau of Consumer Services (BCS) has recorded numerous complaints from frustrated consumers for whom the process has not worked. At times, consumers are faced with the inability to migrate their local service to an LSP of their choice. Other complaints include the inability to port telephone numbers when they change LSPs, continued billing from an OLSP after switching to a NLSP, lack of communication about the migration process, lack of cooperation among the entities involved in the migration process, delays in service migrations, and even loss of telephone service. Such complaints prompted the Commission to establish interim guidelines for changing LSPs and for quality of service, and to arrange collaborative meetings with interested parties. Additionally, numerous inter-carrier disagreements as to processes for migrations surfaced during the collaborative process. From its review of consumer complaints and the issues raised in the collaborative sessions, this Commission finds it must disagree with AT&T's suggestion and will, therefore, proceed with the rulemaking.

FSN agreed with the goal of the Commission's proposed regulations to establish consistent procedures and standards for customer migration between LSPs that will enable consumers to switch LSPs without confusion, abuse, delay, or service interruptions but feared that the proposed rules will have the opposite result. FSN alleged that "loopholes" and ambiguity in the proposed regulations could encourage abuse and discourage competition. As discussed in greater detail as follows, the Commission has made adjustments to the proposed rules in response to the comments of the parties. Those adjustments, as well as the protections that are already in place through other regulations and statutes, will serve to plug the "loopholes" and prevent the potential abuses about which FSN is concerned.

<sup>1</sup> Verizon served the active parties at this docket and provided a copy of the petition to IRRC.

*GENERALLY*

*§ 63.191. Statement of purpose and policy.*

IRRC commented that the final-form rulemaking should specify that the regulations apply to both residential and business customers. Based on this comment, we added language to subsection (a) and (b) to indicate that the purpose of the subchapter is to ensure that residential and business customers can migrate from one LSP to another without confusion, delay, or interruption of local service. As discussed more fully in regard to § 63.192, we replaced “basic service” with “local service” in the last sentence under subsection (a), as recommended by IRRC, and we revised the proposed regulations to use “local service” when appropriate throughout the final-form regulations.

*§ 63.192. Definitions.*

IRRC noted that the proposed rulemaking uses “telephone service,” “local service,” “local basic service,” “service,” “vertical service,” “optional services,” and “telecommunications service” throughout the regulations, yet “local service” was the only term that appeared in the definitions. IRRC recommended that “local service” be used throughout the regulations. We have modified the regulations to insert “local” before service where this addition is appropriate. We also substituted “local service” in place of “local basic service” and “telecommunications service” where “local service” is appropriate. However, since “vertical services” and “optional services,” are not interchangeable with “local service,” we added definitions for “optional services,” and “vertical services” and clarified other terminology to be consistent in usage. Based on IRRC’s further recommendation, we have added a number of other terms to this section: “appropriate retained documentation,” “authorized agent,” “facilities,” “interLATA,” “intraLATA,” “LATA,” “local loop,” “network serving arrangements,” “recording verifying permission,” “third party verification,” “UNE (unbundled network element),” “UNE-P (UNE-platform),” and “unbundled loop.” We also added “line loss notification.”

We have also made numerous changes and additions to this section based on comments by IRRC, AT&T, and OAG, coupled with our own efforts to add clarity and consistency to the regulations. We deleted the definition of “LSP-to-LSP end user migration guidelines or migration guidelines” because we have removed the provisions relating to these guidelines from the final-form regulations.<sup>2</sup> We also deleted “local service reseller” from the definitions because this term does not appear in the final-form regulations. Further, we changed “new LSP” to “NLSP” and “previous LSP” to “OLSP” in several locations.

Both the OAG and AT&T noted that the proposed definition of “applicant” did not include or make reference to applicants who would be business customers. The OAG noted that the use of the term “dwelling” within the definition connoted residential service only. We agreed with these comments and revised the definition to add that “applicant” includes “association, partnership, corporation, or government agency.” We also clarified the definition to include an entity “making a written or oral request for the commencement of local service.” Further, we inserted “local” before “service” throughout the definition and changed “dwelling” to “location” since “location”

<sup>2</sup> Nevertheless, we remain committed to fostering industry guidelines to respond to the needs of this technologically evolving industry. See our discussion of the former § 63.203.

is appropriate for both residential and business classes of service. We also inserted “same” before “LSP” to improve the clarity of this definition.

Based on comments from IRRC regarding customer service records (CSRs) and network service arrangements, as well as technical clarification from industry participants, we included “network serving arrangements” in the definition of “CSR” to specify that a customer’s network serving arrangements should be part of the information that is included in the customer’s CSR. “Network serving arrangements” is now also listed as one of the 13 requisite elements of a CSR in the renumbered § 63.203(e) in the final-form regulations.

Our agreement with IRRC’s suggestion to add “local” before “service” throughout the regulations was the basis for our adding “local” to the definition of “interfering station.”

Comments of both AT&T and IRRC prompted us to revise the definition of “LOA—Letter of authorization” so as to make the definition less ambiguous and vague. We deleted the first part of the definition that appeared in the proposed rulemaking as IRRC suggested and also deleted “The term is used to indicate” from the second part. Finally, we replaced “document” with “written or electronic record” to improve the relevance of this definition to today’s environment.

IRRC commented that the definition of “LSC—Local service confirmation” in the proposed rulemaking included the undefined term “unbundled loop connections.” In response, we have modified the definition of “LSC,” replacing “telecommunications service activities such as unbundled loop connections” with “the migration of local service.” This change makes the definition simpler and clearer.

IRRC commented that the terms “NLSP (new local service provider),” and “OLSP (old local service provider)” that appeared under the definition of “LSP—Local service provider” should have stand alone definitions. AT&T suggested language for the new definitions. In response, we modified the definition of “LSP” and added “NLSP” and “OLSP” as separately defined terms. We defined “NLSP” as “The company that will provide local service to a customer after a migration.” “OLSP” is defined as “The company that provides local service to a customer prior to a migration.” Although we did not totally adopt AT&T’s suggested language, the new definitions in the final-form regulations reflect AT&T’s suggestion.

IRRC and AT&T also each noted that the definition of “LSP” contained the undefined term “nonjurisdictional services.” Upon review, we determined that the sentence containing “nonjurisdictional services” was unnecessary and did not add clarity; we therefore deleted the sentence. This revision is consistent with the definition of “LSP” that appears in the final-form regulations pertaining to the Local Service Provider Abandonment Process (LSP Abandonment) at Docket L-00030165, as approved by the Commission on January 13, 2005.

AT&T commented that the definition of “LSR—Local Service Request” inappropriately requires the LSP to issue the LSR to the NSP. We deleted the phrase “issued by LSPs to NSPs” from the first section of the definition to accommodate AT&T’s concern. We also replaced “document” with “electronic or paper form” to recognize the industry’s use of electronic transmission of information or order.

In response to IRRC's comment that the definition of the term "NSP—Network service provider" contained the undefined term "carrier," we replaced "carrier" with "telecommunications provider." This change is consistent with the definition of "NSP" in the LSP Abandonment final-form regulations.

#### MIGRATION

##### *§ 63.201. General migration standards.*

AT&T commented that § 63.201(a) was inconsistent with other aspects of the proposed regulations in that it says that customers have a right to migrate while § 63.191(c) states that DSL customers, line share/splitting customers, and customers under special contracts do not have the right to migrate. We hasten to point out that the provisions of § 63.191(c)(1)—(3) do not preclude customers under the listed circumstances from migrating services, filing a complaint with the Commission, or porting their telephone numbers; they merely list circumstances in which the instant rulemaking is not mandatory. We find that AT&T's interpretation misconstrues the language and intent of § 63.191(c)(1)—(3). We did not revise subsection § 63.201(a).

Both IRRC and AT&T pointed out that the proposed rules at § 63.202(a) restated the § 63.201(b) requirement that the NLSP communicate and explain the migration process and timetable to the migrating customer. Each also expressed concern with the use of "when applicable" in the proposed § 63.201(b). In response, we revised the original language in § 63.201(b) and eliminated the redundancy in § 63.202.

AT&T and IRRC also voiced concerns with § 63.201(c). AT&T alleged that the section was confusing and that "[i]t should go without saying that a [service provider] can act in accordance with Commission regulations." IRRC asked how an OLSP could protect itself from loss and stated that the section should include a citation to applicable regulations. Our intention in including this subsection was to make clear that an OLSP is able to use available statutes and regulations to make sure that a migrating customer cannot use migration as a tool to avoid payment for services rendered. We agree with AT&T's comment that § 63.201(c) states the obvious. As a result, we deleted § 63.201(c) from the final-form regulations, rendering IRRC's comment moot.

AT&T commented that proposed § 63.201(d), now § 63.201(c), should extend good faith obligations to the NSP as well as to the OLSP and the NLSP. We agree and have inserted "NSP" into the renumbered § 63.201(c).

FSN commented that the word "facilities" is too broad as it is used in proposed § 63.201(e), § 63.201(d) and that it might be better to replace it with "loops." Rather than replace "facilities" with "loops," we added "facilities" to the definitions section to address FSN's concerns. In addition, we realized that an appropriate forum for resolving conflicts over the reuse of facilities may be the expedited dispute process under § 63.222 and have added a reference to that process to this subsection in the final-form regulations. IRRC recommended adding a reference to the interfering stations sections, which we have done. Conversely, AT&T advocated deleting the interfering stations provisions from the regulations, which would make the reference to the interfering station provisions inappropriate. However, because interfering stations are continually being brought to the Commission's attention, we retained the interfering stations provisions and the cross-reference in the renumbered § 63.201(d).

Based on comments from AT&T, FSN, and IRRC, we revised the language of proposed § 63.201(f), now § 63.201(e), to place the responsibility expressly on the NLSP for notifying the appropriate entities about 9-1-1 and directory listings. The final-form regulations direct the NLSP to notify the 9-1-1 host carrier<sup>3</sup> and the directory listings/white pages provider of the changes. We also added language that the NLSP must notify these entities at the end of each working day regarding changes that came about as a result of the day's work. This provision now appears at renumbered § 63.201(e).

Regarding proposed § 63.201(g), now § 63.201(f), we have incorporated the suggestion of AT&T to require each LSP and NSP to post a company contact list on a publicly accessible website and to supply the website address to the Commission. The Commission will post the addresses on its website so that they are available to any entity that needs them. The revised language appears in the renumbered § 63.201(f).

##### *§ 63.202. Migration responsibilities of NLSPs and NSPs.*

IRRC recommended that we should also list the responsibilities of an OLSP in this section. Our purpose in § 63.202 is to identify general responsibilities of the service providers involved in the migration process. Accordingly, we have revised the title and content of this section to include OLSP responsibilities when contacted by a prospective NLSP. As explained in our previous discussion regarding § 63.201(b), we eliminated the redundant iteration of the NLSP responsibility in § 63.202(a). The revised § 63.202(a) now specifies that the OLSP is responsible for responding to a prospective NLSP's request for a CSR and that the response is to be consistent with the requirements of § 63.203, which lists the required elements of a CSR. We note, however, that the listing of migration responsibilities in § 63.202 does not include all the potential confirmations, inquiries, and other communications that may be part of a migration. It would be excessive to spell out scenario-specific duties for OLSPs since at present there are at least 16 different scenarios. The steps required of the OLSP vary considerably depending on the type of migration (e.g., such as those involving bundled service arrangements, those involving unbundled service arrangements, those for full facilities-based LSPs, and so forth). A scenario-specific listing of duties is more appropriately left to industry migration guidelines, which can be revised more easily than regulations as industry practices change.

The proposed regulations placed responsibility on the NLSP to coordinate with the OLSP to fulfill the NLSP's LSR. In comments to the proposed § 63.202(b), AT&T suggested that the NSP should have that coordination responsibility. IRRC questioned how a prospective NLSP can be responsible for coordinating a migration that depends on the cooperation of the OLSP. In light of AT&T's comments and IRRC's inquiry, we adopted AT&T's suggestion in the February 9, 2005 Order.

In its Petition for Reconsideration, however, Verizon points out that throughout Verizon territories and in the New York Migration Guidelines (which have been mandated by the NY Public Service Commission), the NLSP manages the entire migration process from start to finish. Verizon maintains that the NLSP's customer expects the NLSP to coordinate a proper and timely transition of the customer from the OLSP to the NLSP. Verizon notes that it is the NLSP who has the most incentive to ensure that the migration goes smoothly and that the NSP should not

<sup>3</sup>The 9-1-1 host carrier is the incumbent LSP that provides service to the public service answering point (PSAP) for the end-user's geographic location.



be “stuck in the middle” between the OLSP and the NLSP. Verizon suggests that it is the responsibility of the NLSP to take appropriate action to make a balking OLSP fulfill its migration responsibilities, up to and including instituting legal action against the OLSP. Verizon further points out that an NSP has no more leverage over an OLSP regarding migration than a NLSP does. In support of the Verizon Petition for Reconsideration, MetTel states that it also believes that the NLSP is the entity that has a relationship with the customer and, as such, must engage in any necessary coordination between both the NSP and the OLSP.

Upon reconsideration, we agree with Verizon and MetTel. We find that our original proposal is the correct one—the NLSP is the entity with the contractual obligations to the customer. The NLSP has more information about the migrating customer’s services and can convey more information to the customer about the migration process when communicating directly with the OLSP as well as with the NSP. Further, as Verizon points out, the NLSP has a variety of options to ensure compliance from the OLSP and the NSP. Therefore, as we originally proposed, the NLSP shall be responsible for coordinating between the NSP(s) and the OLSP to make a customer’s service migration as seamless as possible. In the event that the entities cannot resolve a dispute, we designed the expedited process for resolution of migration disputes between service providers, to be codified at § 63.222, so that LSPs could use this process to resolve such issues. Further, the Commission’s mediation process under §§ 69.391–69.397 is available to the parties should the expedited dispute process fail. Accordingly, we shall retain § 63.202(b) as originally proposed.

In comments to the proposed § 63.202(d), IRRC suggested changing “working days” to “business days.” We note that §§ 63.1–63.102 (Chapter 63) consistently uses the term “working days” rather than “business days.” To avoid confusion, we chose to continue using this term. We did, however, add “working day” to the list of terms in the definitions section and revised the proposed regulations to use the term “working days” throughout. We also retained the interval of 5 working days from the proposed regulations.

In its Petition for Reconsideration of § 63.202(d), Verizon suggests that the response intervals of this subsection should apply to OLSPs as well as to NSPs since some LSRs, such as requests to port customer telephone numbers, are submitted to OLSPs. We agree with this suggestion that the response interval should apply to OLSPs as well as NSPs and have made the necessary adjustments to the language of this subsection.

Verizon also reiterates its comments that the dramatic increase in local competition plus rising customer expectations of speedy LSP changes call for a reduction in the time frame specified in the February 9, 2005 Order for processing LSRs. Verizon proposes that rather than five days, the interval for an NSP to provide a Local Service Confirmation (LSC) be set at 48 hours, and, after one year to allow time for increased mechanization, reduced to 24 hours. MetTel suggests that the time intervals be reduced progressively in 6-month intervals beginning with four days and decreasing to 24 hours to allow LSPs a phase-in period.

We agree with Verizon that consumer demand for prompt migrations calls for an accelerated migration process. However, we are concerned that some companies may not be able to process LSRs at times other than normal business hours. Further, we find that MetTel’s

suggestion to about give LSPs a phase-in period is valid although the suggested length of the phase-in is too lenient. As a result, we have taken a compromise position regarding the response time to an LSR. The final rule-making specifies that for the first six months from the effective date of the final rulemaking, the NSP or OLSP shall issue an LSC within 3 working days. For 6 months to 1 year after the effective date, the NSP or OLSP shall issue an LSC within 2 working days from the date it receives a valid LSR from the prospective NLSP. Thereafter, the NSP or OLSP shall issue an LSC within one working day.

Verizon further recommends that the words “or rejection” be deleted from this subsection since it makes reference to a “valid LSR” and, thus, there would be no need to reject the request. We carefully weighed this suggestion that we delete “or rejection” from this subsection because an NSP or OLSP would not reject a valid LSR. However, our intention in this subsection is to make certain that the NSP or OLSP acts on each LSR in a timely fashion, whether or not the LSR is valid. If the LSR is not valid, the NLSP would want to be able to quickly resolve the issues that render it invalid, if possible, in order to begin serving the new customer. To do this, the NLSP must be made aware by the NSP or the OLSP that the LSR is not valid. Rather than accept Verizon’s suggestion to remove “or rejection” from this subsection, we chose to delete the term “valid” as a modifier of “LSR.” Thus, the NSP or the OLSP must issue either an LSC or a rejection for each LSR within the time frame specified in this subsection.

The proposed § 63.202(e) placed responsibility for coordinating a service restoration on the NLSP. AT&T and FSN commented that the responsibility for coordinating a service restoration should be the responsibility of the NSP, not the NLSP. In light of AT&T’s comments, we adopted AT&T’s suggestion in the February 9, 2005 Order. However, Verizon maintains in its Petition for Reconsideration that, as with coordination of migrations, it should be the NLSP’s role to coordinate any service restoration that may become necessary due to difficulties caused by the migration process. The customer has entrusted the NLSP to provide the customer’s local service and, thus, expects that the NLSP will handle all migration problems, including restoration of service if that becomes necessary.

Upon reconsideration, we agree with Verizon. The customer, in fact has no interaction with an NSP and may not even be cognizant of an NSP’s existence. A customer should be able to handle any problems or questions regarding a migration of service (or restoration if the migration is problematic and the old service must be restored) with a single entity, the NLSP. Accordingly, the revised § 63.202(e) gives the NLSP the responsibility of coordinating between the customer and other entities on behalf of the customer when restoration of service is necessary.

We added § 63.202(f) to specify that the old NSP has the responsibility of notifying the OLSP that the migration of the customer to the NLSP has been completed. In the industry, this is generally known as a “line loss notification.” It is the Commission’s expectation that the NSP will issue the line loss notification to the OLSP within a reasonable period of time. As previously noted, we defined “line loss notification” in § 63.192.

*§ 63.203 (now deleted). Migration guidelines and industry work group.*

This aspect of the proposed regulations received considerable attention during the collaboratives. While there were challenges during the collaboratives, it appeared that there was substantial interest in developing a consensus document that would not take years to amend yet could be recognized as addressing, in a standard, concise, timely, and uniform fashion, the myriad questions regarding migration as processes and systems evolve. As a result, the proposed rulemaking was designed to facilitate this process. We received, however, a number of comments about the proposed migration guidelines and industry work group provisions. These comments led us to delete this section from the final-form regulations. Nevertheless, we remain firm in our commitment to encourage the formation of an industry working group that will formulate industry guidelines to identify and address the myriad and evolving intricate details associated with customer migrations within this technologically evolving industry.

*§ 63.204 (now § 63.203). Standards for the exchange of customer service records.*

IRRC and MCI commented that the title of this section should be changed to "Standards for the exchange of customer service records" since the term "customer service record" is defined in § 63.192 while "customer service information" is not. We agree and have changed the section title accordingly. Further, due to the elimination of § 63.203 as it appeared in the proposed rulemaking, the proposed § 63.204 is renumbered as § 63.203 in the final-form regulations.

Comments from IRRC and others regarding § 63.204 (a) and (d), now § 63.203(a) and (d), questioned the need for a 2-year retention period for customer authorization and verification of that authorization. This length of time is necessary to allow the Commission to properly investigate customer complaints about the exchange of CSRs and migrations. The Commission's experience is that it often takes longer than a year for a customer complaint investigation to take place and the 2-year retention period will allow the LSP to have adequate records to provide to the Commission in response to a customer complaint. Further, the FCC requires a submitting carrier to maintain and preserve certain records of verification of subscriber authorization for a minimum period of 2 years. 47 CFR 64.1120(c)(3)(iv). For these reasons, we will retain the 2-year requirement.

FSN commented that the access to customer records afforded by renumbered § 63.203(a) contains a potential for abuse that "could endanger its customers' proprietary information and work product." FSN noted that a carrier must have the discretion from time to time, as circumstances may warrant, to require a copy of the LOA from the requesting NLSP before releasing the customer's CSR. FSN further noted that the provisions of this subsection discourage "commercial end user customers from developing special telecommunications arrangements to further their business knowing that their competitor . . . could fraudulently request and receive their sensitive CSR information through a competing LSP." FSN suggested that the regulations should afford LSPs the opportunity to place a "proprietary records" protection indicator on customers' records as a protection against unscrupulous NLSPs and other customers. IRRC further asked what guarantees are in place to protect confidential customer information. We note in response that the Commission's regulations at §§ 63.131–63.137, relating

to confidentiality of customer communications and information, establish minimum standards to ensure that public utilities providing regulated telecommunication services maintain the confidentiality of customer communications and customer information. Failure to do so can lead to penalties. Additionally, the Commission does not prohibit LSPs from offering a "proprietary records" protection service to customers as may be applicable and as requested by and agreed to by individual customers.

In response to the proposed § 63.204(a)(5) and § 63.204(d)(4), now § 63.203(a)(5) and § 63.203(d)(4), IRRC questioned the use of the phrase "Additional procedures as may be authorized by the FCC or the Commission." IRRC asked why the prospective procedures from this Commission are not included in this rulemaking and how the additional procedures will be developed and communicated to affected parties. Our intention when we included this language was to recognize that the function of verification should not be constrained by the technology of today. The reference in the final-form regulations to prospective verification techniques will accommodate new methodologies as they become accepted in the ordinary course of commerce as well as in dispute resolution. We did not include a delineation of prospective verification techniques in the final-form regulations because the new methodologies have not been identified or developed. If the parties cannot resolve a specific controversy over whether a verification process not delineated is acceptable and effective, they have recourse to this Commission's dispute resolution processes. The burden would be on the party desiring to rely on an alternative method of verification to establish that the customer had actually granted the authority in question. For clarification purposes, we did make two small changes to these sections by inserting "verification" before "procedures" in the renumbered § 63.203(a)(5) and § 63.203(d)(4).

Regarding proposed § 63.204(a)(2), (3) and (4), now § 63.203(a)(2), (3) and (4), IRRC commented that we should explain or define the terms "third-party verification," "recording verifying permission," and "appropriate retained documentation." In response, we added these terms and their meanings to § 63.192.

In comments to proposed § 63.204(c), now § 63.203(c), IRRC raised three questions: why is the protection needed? when does this prohibition expire so the LSP can attempt to regain the customer? and what constitutes contact? In the February 9, 2005 Order, we revised the proposed regulations to define "contact" and added a 45-day limit to the prohibition.

Verizon's Petition for Reconsideration maintains that the prohibitions in the proposed regulations were designed to reflect a pre-existing Federal prohibition.<sup>4</sup> Verizon asserts that the Federal prohibition has no expiration date or time constraint and bars only contacts to retain or keep the customer that are made as a result of carrier change information from a potential NLSP. Verizon's request is based upon language that the FCC describes as a "rule that a carrier executing a change for another carrier is prohibited from using such information to attempt to change the subscriber's decision to switch to another carrier." *FCC CPNI* at para. 131. Specifically, the FCC explained in footnote 302 that:

<sup>4</sup> In footnote 7 of Verizon's Petition for Reconsideration, the citation to paragraph 31 actually refers to paragraph 131 of the FCC's *Customer Proprietary Network Information Third Report and Order*, FCC Dkt No. 02-214, 17 FCC Rcd 14860, 2002 FCC Lexis 3663 (July 25, 2002) (*FCC CPNI Order*).

[C]ompetition is harmed if *any* carrier uses carrier-to-carrier information . . . to trigger marketing campaigns, and consequently [the FCC] prohibit[s] such actions accordingly. . . . Thus, where a carrier exploits advance notice of a customer change by virtue of its status as the underlying network-facilities or service provider to market to that customer, it does so in violation of section 222(b) [47 USC § 222(b)].

(internal citations omitted).

Upon reconsideration, in melding IRRC's concerns with the parameters of the Federal requirements, the final regulations prohibit any type of contact with the customer specially designed "to retain or keep the customer," consistent with Federal requirements, and without a time limitation. Sending new rate information generally available to all customers of the same class of service or other mass advertising contacts could, however, be permissible under this prohibition. Accordingly, we have retained this subsection as it was originally proposed.

In its comments to proposed subsection § 63.204(d), now § 63.203(d), IRRC recommended that we clarify "network serving arrangements." In response, we added this term and definition to the definitions section at § 63.192. In addition, we removed "network serving arrangements" from the renumbered § 63.203(d) and added it to the renumbered § 63.203(e)(11) in place of "service configuration information" since the two terms are interchangeable.

Regarding the renumbered § 63.203(d), IRRC also asked how consumers and OLSPs will be protected from illegal business practices such as "slamming." We find that the FCC's slamming liability regulations at 47 CFR 64.1140–64.1180 are adequate to protect customers from the practice of "slamming." The FCC slamming liability rules take the profit out of slamming and offer incentives for other service providers to go after slammers. The FCC provisions also ensure that if the FCC finds that a slam occurred, the consumer will receive financial compensation from the unauthorized service provider. Regarding other possible illegal business practices, our response to FSN's similar concerns is equally applicable here. The Commission's rules at §§ 63.131–63.137 relating to Confidentiality of Customer Communications and Information provide prohibitions to any LSP that may be tempted to abuse its right to obtain customer information without being required to have and produce, as required, evidence of a customer's authorization to obtain the customer's service record.

In its comments to § 63.204(e), now § 63.203(e), IRRC noted concerns regarding the 13 items listed in the subsection as the composite parts of a CSR. IRRC suggested that there may be no need to list the items separately if the items are typically part of a CSR. If they are not typically part of a CSR, IRRC suggested that they be located in the definition of CSR at § 63.192. IRRC further asked about the relationship between network serving arrangements and the 13 elements of a CSR. We appreciate IRRC's recommendation but chose to retain the list in subsections § 63.203(e)(1)–(13) in the final-form regulations. In our opinion, the items serve as a checklist for the current LSP to use when making sure that it sends the necessary information to a prospective NLSP. These items do not merely describe or define the CSR; rather they are what an LSP must provide to be in compliance with the regulations. It has been the Commission's experience that in cases where we must rely upon a definition to list required elements or actions, it is difficult to cite a company for failure to comply with

requirements contained only in the definition section of regulations. The subsections as originally proposed serve a valuable purpose in identifying exactly what a current LSP must produce and send to a prospective NLSP when the prospective NLSP requests a CSR to migrate a customer's service. This construction will also aid the Commission in citing an OLSP's non-compliance with this aspect of the migration process. "Network serving arrangements" is now listed as one of the 13 CSR elements, having replaced the synonymous term "service configuration information" in the renumbered § 63.203(d).

IRRC commented that the final-form regulations should define several of the elements listed in proposed § 63.204(e), now § 63.203(e). We agree and added the following terms and definitions to § 63.192: "InterLATA," "IntraLATA," "LATA," "Network serving arrangements," "Unbundled loop," "UNEs (unbundled network elements)," and "UNE-P (UNE Platform)."

MCI commented that we should add "circuit IDs" to the list of required elements. We do not agree that circuit identification information should be required on all CSRs and, thus, did not add this to the list of required elements. Although a NLSP needs circuit identification when a loop must be migrated, it is not required for all migrations. Further, providing the circuit identification to the NLSP by the OLSP traditionally has served as notice to the NLSP that the NLSP may reuse facilities. Since the facilities are not always available for reuse, it is counterproductive for the circuit identification to be part of the CSR.

Consistent with our earlier discussion, we also removed "basic" from "local basic service" in § 63.204(e)(6) and (7), now § 63.203(e)(6) and (7), as recommended by IRRC, and we also replaced "service configuration information" with "network serving arrangements" in subsection § 63.203 (e)(11) since we confirmed with the telephone industry that these terms have the same meaning. We defined "network serving arrangements" in § 63.192.

Finally, in regard to this section, the timetable at now-renumbered § 63.203(f) drew comments from several parties. IRRC queried whether the timetable applies to both CSRs and network serving arrangements, or just to CSRs. PTA commented that its member companies do not have the resources to provide requested CSRs in less than 24 hours. PTA proposed that the timetable be revised to set the 24-hour standard to be effective within 12 months. Verizon proposed that all requested CSRs be provided within 2 business days initially and within one business day after 6 months. Verizon also recommended that the final-form regulations include a provision to cover situations when an OLSP has a legitimate reason for needing more time to produce CSRs such as migrations involving a business customer with complex or numerous CSRs. IRRC asked why the proposed regulations use hours rather than days as to when the OLSP is to provide the CSR. IRRC also pointed out that in proposed subsection § 63.204(f)(3) the word "day" should be modified with either "business" or "calendar."

We made several changes to this subsection based on these comments. In the new § 63.203(f)(1) and (2) containing these provisions, we changed the time requirements to "working days" rather than "hours," choosing "working" days rather than "business" days to be consistent with other subchapters of Chapter 63. Since network serving arrangements are part of CSRs, they are on the same timetable as CSRs. We did not make the change that Verizon requested that all CSRs be required within 2 working days initially and then within 1 working day at

the end of 6 months. In addition, we did not accept Verizon's suggestion that we develop a new subsection for exceptions such as complex CSRs that might take longer than the prescribed time limit. We structured the 80% requirement as originally proposed to allow for the exceptional cases, and thus we chose to retain this percentage in subsections (f)(1) and (f)(2). Similarly, we did not revise the language that requires all OLSPs to provide CSRs by the same day if the request is made by noon of that day, or by noon the next day if requested after noon. It is important that the migration process be as expeditious as possible in order to foster competition. We recognize that the varying capabilities of the smaller companies may require some time until they are able to meet the requirements of this subsection now at § 63.203(f)(3) and that is why we gave the companies 1 year from the effective date of the final-form regulations to modify their systems so they can meet the terms of this subsection.

*§ 63.205 (now § 63.204). Removal or lifting of Local Service Provider Freezes (LSPFs).*

We received a number of comments regarding this section of the proposed regulations. Both IRRC and FSN questioned the use of "appropriate" as modifying agent in proposed § 63.205(a)(2), now § 63.204(a)(2). To clarify our intentions, we substituted "appropriate" with "authorized" and have defined "authorized agent" as "any adult designated by an applicant or a customer to act on the behalf of the applicant or customer" in the definitions at § 63.192, consistent with the FCC definition at 47 CFR 64.1100(h).

We note that the discussion of the removal or lifting of LSPFs in our October 3, 2003 Order created an ambiguity with respect to proposed § 63.205, now § 63.204. The Order indicated that a "NLSP" could act as the "appropriate agent" to contact the OLSP to have the LSPF lifted, and the proposed regulations indicated that a "prospective NLSP" could not. As specified in the Federal rules, one LSP may not authorize the removal of an LSPF on behalf of a customer when that entity is acting solely as a prospective NLSP.

IRRC commented that the final-form regulations should clearly establish who can authorize lifting an LSPF and, if that authority can be delegated, the specific customer protections required in such a circumstance. Additionally, MCI pointed out that a customer does not physically remove an LSPF but rather authorizes its removal. MCI recommended that this be clarified in the regulations. At renumbered § 63.204(a), we specified that the applicant or the applicant's authorized agent must contact the OLSP to have an LSPF lifted. To protect customers, we expanded this section to require that the OLSP confirm appropriate verification data such as the customer's date of birth, social security number, or mother's birth name with the applicant or the applicant's authorized agent before processing the request to lift the LSPF. An authorized agent must have this information when acting on the customer's behalf. These revisions also clarify that the applicant or the authorized agent authorizes the "lifting" of the LSPF but does not actually "lift" the LSPF.

Curry commented that the Commission should amend this section to give the current LSP the right to refuse to remove the LSPF until an account is satisfied for past due amounts. Neither we nor the FCC agree with Curry, and we did not make the amendment as requested. The LSPF is not a collection tool to protect the LSP; it is instead a tool available to the customer for protection against slamming.

AT&T commented that this subsection requires that a customer lift an existing LSPF at the time of application in order that the prospective NLSP may process a change in LSP; however, the customer may forget that there is an LSPF on the account. According to AT&T, the customer should be able to take steps at a later time to lift an LSPF. We agree and have removed the phrase "at the time of application" from new § 63.204(a). The applicant may authorize the removal of an existing LSPF at any time. The prospective NLSP may not learn of the existence of an LSPF until it receives a CSR from the applicant's current LSP. At that time, the prospective NLSP should contact the applicant and remind the applicant that the LSPF must be lifted before the migration can take place.

AT&T also argued against imposing a duty on each NLSP to inform prospective customers of the three requirements, as prescribed by proposed § 63.205(a)(1)—(3), now § 63.204(a)(1)—(3). We do not agree with AT&T. This is important information for customers to have when they are contemplating a change in LSPs. We did not make the suggested revision.

In its comments to § 63.205(c), now § 63.204(c), AT&T argued that it should not be necessary for an LSP to provide methods of lifting an LSPF if the LSP does not offer an LSPF. We agree with AT&T and revised subsection (c) to include language that limits the requirements of this section to LSPs that offer LSPFs to their customers.

IRRC advised that the final-form regulations should include a list of the methods of lifting freezes or provide a reference to where those methods can be found. We agree. LSPs must follow the requirements of the FCC as set forth in 47 CFR Subpart K. The final-form regulations include a citation to the FCC regulations. We also deleted "the Commission" from this subsection since the Commission has established no required methods that LSPs must offer customers for lifting freezes and we do not currently anticipate doing so.

AT&T commented that this Commission does not have jurisdiction over intra- and interLATA freezes, notwithstanding the reference to lifting them in § 63.205, now § 63.204(b). Our reference to lifting intra- and interLATA freezes is not an attempt to exert jurisdiction on them but rather to recognize that the various telecommunications service providers often bundle jurisdictional and non-jurisdictional services. The reference allows service providers and customers an opportunity, if they so chose, to lift all freezes at the same time.

*§ 63.206 (now § 63.205). Porting telephone numbers.*

PTA commented that a customer should not be permitted to port his or her telephone number to another LSP if the current LSP has suspended the account for nonpayment or if there is an outstanding balance owed to the current LSP. This comment is very similar in intent to the Curry comment regarding LSPFs. For the same reasons we declined to adopt the Curry suggestion, we cannot accept PTA's recommendation. Control of porting is not a collection tool for the LSPs. Further, such a proposal conflicts with Federal porting requirements.

AT&T recommended that because the old NSP receives and processes LSRs, the regulations should be amended to include the NSP. We agree and added language to the final-form regulations to also prohibit NSPs from refusing to port a number to a NLSP unless the account has been terminated or discontinued under §§ 64.1—64.213 (Chapter 64). We also deleted the word "lawful" from this section as AT&T recommended.

*§ 63.207 (now § 63.206). Discontinuance of billing.*

AT&T, Curry, FSN, MCI, and IRRC all commented that using the receipt of a request to migrate as the trigger for a final bill, as originally proposed, was inappropriate. Based on comments from several parties, we revised the proposed § 63.207(b), now § 63.206(b), to make the receipt of a line loss notification from the NSP the trigger that generates a final bill from the OLSP. We added language to renumbered § 63.206(c) and § 63.206(d) to cover cases in which only partial migrations occur. Finally, we added language to renumbered § 63.206(d) as recommended by AT&T, to reflect the applicability of tariff or contract terms that may affect the customer's billing cycle.

*§ 63.208 (now § 63.207). Carrier-to-carrier guidelines and performance assurance plans.*

AT&T commented that we should add language to this proposed section to specifically include ILECs. We note that the use of "LSP" indicates that the section includes all LECs, i.e., both incumbents (ILECs) and competitive entrants (CLECs). Thus, to make this addition would be redundant and perhaps confusing. Therefore, we did not adopt this recommended change. We added the language "than otherwise specified under this subchapter" to provide a reference for the comparison.

#### INTERFERING STATIONS

##### *General Comments*

AT&T commented that it finds the entire interfering stations section to be fundamentally infirm and argued that it should be deleted in its entirety. According to AT&T, the circumstances under which the problem exists are not broad enough to warrant a regulation. In response to AT&T's comments, we note that the Commission receives a large number of consumer complaints that involve interfering station conditions that keep consumers from getting telephone service.

MCI also requested that the Commission eliminate this process from the final-form regulations because the process is not one that has been tested. MCI suggested that the Commission permit parties to use procedures that they have already developed or work together to develop new procedures. MCI also proposed that, in lieu of eliminating the procedures, the Commission give companies the option of using either the procedures outlined in regulations or procedures that the company has used successfully such as those MCI and Verizon currently use. Under the Verizon/MCI Procedure, the NLSP must call the applicant to obtain the landlord's name and telephone number if the service address is a rental property. Then the NLSP is to call the landlord to verify that the previous occupant has moved out and the new customer has taken over. If it is not a rental property, the NLSP must call the city or town assessor to verify the transfer of property ownership. Until the landlord or assessor makes the confirmation, the request for service cannot be processed. While this procedure may work for Verizon and MCI, industry participants and other interested parties discussed the procedure during the collaborative sessions but could come to no agreement about its use. In addition, representatives of consumer groups objected to aspects of the Verizon/MCI Procedure based on privacy concerns. We also envision delays in resolving the interfering station condition using the Verizon/MCI Procedure because it involves more parties (landlords and assessors). Further, certain steps in the Verizon/MCI Procedure may be beyond our jurisdiction to order. Thus, we declined to incorporate the Verizon/MCI Procedure into these regulations.

Verizon suggested that the interfering station procedures should be eliminated from the final-form rules and placed in the migration guidelines contemplated by the provisions originally proposed at § 63.203, which has since been eliminated. We find that the problems involving interfering stations are extensive enough to merit enforceable regulations rather than voluntary guidelines. The migration guidelines were conceived to be a fluid document to address items or processes that are likely to involve evolving technology over time. We do not see that an interfering station process requires such fluidity. As a result, we have retained these sections with some modifications in the final-form regulations.

*§ 63.211. Duties of OLSPs and NSPs when an interfering station condition is identified.*

AT&T commented that assigning responsibility to both the OLSP and the NSP for informing the prospective NLSP about the interfering condition may allow a situation in which neither party informs the prospective NLSP. IRRC agreed with AT&T's position and advised that we should establish parameters that would clearly indicate which party must perform the required duty. Based on these comments we made several revisions to this section and to the subsections that follow. We delegated the responsibility to the NSP of informing the prospective NLSP of the interfering station condition by the end of the next working day after the NSP identifies that the condition exists. We eliminated reference to the OLSP in § 63.211(a).

Regarding § 63.211(b), AT&T commented that the OLSP has no right to review the NLSP's LSR, which is submitted to the NSP. Regarding § 63.211(b)(1), AT&T commented that the OLSP is not able to cancel the NLSP's LSR to the NSP because the OLSP is not a party to the transaction. Verizon suggested a revision to the language of (b)(1), replacing "is cancelled" with "cannot be fulfilled." We revised the language of § 63.211(b) and (b)(1) as AT&T and Verizon proposed; accordingly, now the NSP has the responsibility of reviewing the LSR information with the prospective NLSP. As suggested by Verizon, we replaced "cancelled" with "cannot be fulfilled."

PTA commented that in § 63.211(b)(2) the issuing NLSP should have the responsibility for correcting the information where an error is found in the LSR. AT&T commented that the OLSP cannot and should not have any role in correcting the NLSP's LSR. IRRC asked what the need is for the OLSP to review the LSR. Based on these comments and question, we revised this subsection to give the responsibility of correcting the LSR to the prospective NLSP who shall "correct the information and resubmit the LSR to the NSP."

*§ 63.212. Duties of the prospective NLSP and the applicant when an interfering station condition is identified.*

IRRC and PTA commented that § 63.212(c) and (d) should be combined into one provision and § 63.212(e) and (f) should be merged into one provision. We agree with these comments and merged the sections as proposed. We also revised the construction of § 63.212(f), now § 63.212(d)(1)—(3). PTA commented that former § 63.212(f)(2) should be clarified to reinforce the intention that there be no disclosure of confidential proprietary customer information. We note that Commission regulations in §§ 63.131—63.137 ensure that regulated telecommunications services maintain the confidentiality of customer information. However, it has been our experience that the interfering station condition is sometimes caused by a departing roommate, spouse, or other individual

with whom the applicant has had a shared-domicile connection. In these instances, we find that it is appropriate for the applicant to attempt to resolve the problem with the customer of record. Based on PTA's comment and for clarification, we added "if known to the applicant" to the provision in former subsection (f)(2). In addition, we clarified the pronoun "it" in § 63.212(a) by replacing "it" with "NLSP." Further, in § 63.212(d)(3)(ii), we deleted "lawful" as a modifier of "tariff rates."

*§ 63.213. Duties of the OLSP if notified by the prospective NLSP that an interfering station exists at a location where existing service is provided by the OLSP and the applicant has shown proof of ownership or right of occupancy.*

PTA commented that the title of this section should be modified to include the requirement that in addition to proof of ownership, the applicant has also shown proof of identity. We agree and added "identity" to the title. In § 63.213(a) we added "the" before "notification." Verizon had suggested the addition of "such," but "such" is not consistent with proper regulatory language. For consistency with other Chapter 63 provisions, we also changed "business days" to "working days."

IRRC queried whether 7 days was a sufficient amount of time for a customer of record to respond to a termination notice. This interval is consistent with § 64.71, relating to general notice provisions.

IRRC and Verizon each commented on § 63.213(b). IRRC asked us to explain the reason for removing the customer of record from billing. Our response is that generally the OLSP may no longer bill a customer for services that are not being rendered. The applicant intends to become the customer of record, and sometimes an interfering station condition involves the same LSP. However, for clarification purposes, we modified this subsection to require the OLSP to "terminate the customer's service and take appropriate action to release the customer's facilities to the prospective NLSP." Verizon suggested some minor language changes to this subsection so that the provision would read: "If it is not contacted by the customer of record by the termination date, the OLSP . . ." Verizon also recommended changing § 63.213(c) so as to read: "If the customer of record contacts the OLSP by the termination date . . ." We accepted these recommendations and made the changes.

*§ 63.214. Duties of the prospective NLSP when the OLSP is unable to resolve the interfering station condition at the applicant's service location.*

In its comments to § 63.214(b)(1), MCI proposed that the regulations should expressly provide that the Commission will reject complaints that entail private disputes between customers and applicants and thus prevent companies from incurring additional and unnecessary costs and expenses associated with responding to these complaints.

The Commission understands MCI's concerns about the costs of handling consumer complaints; however, it is the Commission's policy to address every complaint separately on its merit. For this reason, we did not change this subsection based on MCI's concerns. The process for handling interfering stations complaints as established in the final-form regulations will significantly reduce the number of consumer complaints to the Commission about the issue of interfering stations. We did make some changes to the construction of § 63.214(b)(2) and former § 63.214(b)(3), now § 63.214(b)(2)(ii), in the final-form

regulations to clarify the intent of these subsections. We also deleted "lawful" as modifier of "tariff rates" in § 63.214(b)(3).

### DISPUTES

*§ 63.221. Customer complaint procedures.*

AT&T and MCI commented that the dispute provisions are unnecessary since similar provisions already appear in Chapter 64. We acknowledge that Chapter 64 does contain provisions for handling disputes from residential customers. However, there are no provisions that pertain to complaints from business customers. Because of this, we retained these provisions in the final-form regulations.

IRRC commented that the title of the subsection at § 63.221 contains the word "consumer" which is not defined and not used anywhere in the section. IRRC recommended changing the title to "Customer complaint procedures." We agree and revised the title as recommended.

In its comments to our proposed regulations, the OAG suggested that in § 63.221(a), "subscriber" should be replaced with "applicant" to be consistent with subsections (b) and (c). We agree with this suggestion and made the change.

Regarding the citation to Chapter 64 in subsection (b), IRRC asked if the citation should be §§ 64.131—64.182 rather than §§ 64.141—64.182. We agree and amended the citation.

IRRC and the OAG each commented that the final-form regulations should provide timeframes to indicate when the Commission or a service provider must perform the required duty as described in § 63.221(c) and (d). We have responded by adding language to (c) that provides for the Commission to transmit a summary of a complaint to the LSP within 1 working day of receiving a complaint covered by this subchapter. Regarding the duties of LSPs, § 64.153(b)(1) specifies that, in response to residential customer complaints, LSPs are to supply information and documents to the Commission within 30 days of the date the LSP receives the complaint summary. Since commercial accounts are often more complex than residential accounts they may require a longer time to gather the information needed to respond to the complaint. Therefore, we did not require LSPs to respond with the information and documents in the same 30-day window in all cases. In those cases where the LSP will need more than 30 days, it must advise the Commission of that need and establish a reasonable timeline for the production of the information and documents. We also inserted new language into § 63.221(d) to require an LSP to advise the Commission within 10 days of the resolution when a complaint has been resolved between the LSP and the complaining party. We did not insert language into the regulations specifying the time period within which the Commission will close a complaint resolved by the parties. Variations in complaint volumes and staffing levels make it impractical for the Commission to be able to specify a timeframe in which the Commission will be able to verify and act on this information from the LSP. As with all customer complaints, the Commission will close out these complaints as expeditiously as possible.

The proposed § 63.221(c) discusses a complaint from an applicant, customer or third party. IRRC asked who would be a "third party." A "third party" might be, for example—a spouse, agent, or consenting individual designated to act on the customer's part such as an employee of a business or the adult children of an elderly customer.

Any of these individuals may contact the Commission on the part of the customer of record to file a complaint.

*§ 63.222. Expedited process for resolution of migration disputes between service providers.*

MCI commented that it supports the Commission's proposal regarding an expedited dispute process. IRRC asked if a customer or applicant could file a complaint under this section. This process addresses only disputes between service providers, including LSPs and NSPs. To clarify our intent, we amended the title of this section to "Expedited process for resolution of migration disputes between service providers" and added similar language to § 63.222(a). IRRC also asked if the contact persons designated by the Commission in this subsection will be employees of the Commission. Our response is that the Commission will designate members of its staff as contact persons. To clarify this subsection, we have added language that indicates that the Commission will designate "Commission staff as" contact persons through which LSPs may request expedited resolution of problems.

IRRC further questioned the reference in § 63.222(d) of the proposed regulations to the Commission's alternate dispute resolution process. The correct reference and citation to this process is the Commission's mediation process under §§ 69.391—69.397. We amended the language of this subsection to include the appropriate citation.

*Conclusion*

Accordingly, under sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501; 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 at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P. S. § 732.204(b); section 745.5 of the Regulatory Review Act, 71 P. S. § 745.5; and section 612 of The Administrative Code of 1929, 71 P. S. § 232, and the regulations promulgated thereunder at 4 Pa. Code §§ 7.231—7.235, we find that the regulations establishing general rules, procedures, and standards to provide for the orderly migration of customers between LSPs at §§ 63.191—222 should be approved as set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. The Petition for Reconsideration filed by Verizon Pennsylvania Inc. on February 24, 2005, is granted in part and denied in part, consistent with this Order.

2. This Final Rulemaking Order/Order on Reconsideration and Annex A replace in their entirety the Commission's Order and Annex A entered on February 9, 2005, at this docket.

3. The regulations of the Commission, 52 Pa. Code Chapter 63, are amended by adding §§ 63.191, 63.192, 63.201—63.207, 63.211—63.214, 63.221 and 63.222 to read as set forth in Annex A.

4. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

5. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

6. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

7. A copy of this order and Annex A shall be served upon the Pennsylvania Telephone Association, the Pennsylvania Cable & Telecommunications Association, The North American Numbering Plan Administrator, National Emergency Numbering Association, the Office of Trial Staff, the Office of Consumer Advocate, the Small Business Advocate and active parties to this proceeding.

8. The final regulations in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 35 Pa.B. 4270 (July 30, 2004).)*

**Fiscal Note:** Fiscal Note 57-230 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 63. TELEPHONE SERVICE**

**Subchapter M. CHANGING LOCAL SERVICE PROVIDERS**

**GENERALLY**

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- 63.191. Statement of purpose and policy.
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**MIGRATION**

- 63.201. General migration standards.
- 63.202. Migration responsibilities of OLSPs, NLSPs and NSPs.
- 63.203. Standards for the exchange of CSRs.
- 63.204. Removal or lifting of LSPFs.
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**INTERFERING STATIONS**

- 63.211. Duties of NSPs and NLSPs when an interfering station condition is identified.
- 63.212. Duties of the prospective NLSP and the applicant when an interfering station condition is identified.
- 63.213. Duties of the OLSP if notified by the prospective NLSP that an interfering station exists at a location where existing local service is provided by the OLSP and the applicant has shown proof of identity and of ownership or right of occupancy.
- 63.214. Duties of the prospective NLSP when the OLSP is unable to resolve the interfering station condition at the applicant's service location.

**DISPUTES**

- 63.221. Customer complaint procedures.
- 63.222. Expedited process for resolution of migration disputes between service providers.

**GENERALLY**

**§ 63.191. Statement of purpose and policy.**

(a) The purpose of this subchapter is to establish general rules, procedures and standards governing the migration of customers between LSPs, including porting telephone numbers, resolving interfering stations, exchanging customer records and the transition of billing accounts. The primary objective of this subchapter is to establish standards to ensure that residential and business customers can migrate from one LSP to another LSP without confusion, delay or interruption to their local service.

(b) This subchapter applies to:

- (1) LSPs and NSPs for migration of residential and business customers between LSPs.

(2) LSPs and NSPs when interfering station conditions are encountered.

(c) This subchapter does not apply to:

(1) Mass migrations of customers brought about by the selling or transferring of a customer base of one LSP to another.

(2) An LSP that has properly proceeded with the abandonment of service to its customer base.

(3) DSL migration.

(4) Line sharing/splitting arrangements.

(d) To the extent that other regulations do not address circumstances as described in subsection (c), this subchapter may provide guidance for those transactions.

### § 63.192. Definitions.

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

*Applicant*—

(i) A person, association, partnership, corporation or government agency making a written or oral request for the commencement of local service, other than a transfer of local service from one location to another within the local service area of the same LSP or a reinstatement of local service following a discontinuation or termination.

(ii) The term does not apply to a customer who is subject to special contractual arrangements and has otherwise agreed to different conditions of local service that do not contradict Commission rules or regulations.

*Appropriate retained documentation*—Proof accompanying a customer's order, request for a change in telephone service or service providers, or permission to obtain the customer's CSR that uses a unique identifier associated with the customer, such as the customer's city of birth, Social Security number, mother's birth name or tax identification code.

*Authorized agent*—An adult designated by an applicant or a customer to act on the behalf of the applicant or customer.

*CSR—Customer service record*—Documentation indicating the customer's name, address, contact telephone number, quantity of lines, services, features, network serving arrangements, and other information associated with a customer account.

*Commission review*—Includes informal or formal review, evaluation or adjudication, staff-level review or alternate dispute resolution.

*Customer*—The end user recipient of telephone service provided by an LSP.

*DSL—Digital subscriber line*—A dedicated, high-speed, always-on service, frequently used in the context of "ADSL" or "XDSL."

*Discontinuation of service*—The temporary or permanent cessation of service upon the request of a customer.

*Facilities*—The equipment (for example—local loop, network interface device, transport facilities, and the like) necessary to provide local service to a customer.

*Freeze*—A designation elected by a customer that restricts a third party's ability to change the customer's choice of preferred service providers.

*Interfering station*—Preexisting local service that prevents the reuse of existing telephone facilities by an NLSP to serve a new customer at a location where the prior customer did not notify the OLSP to disconnect the local service. The OLSP and the NLSP may be the same company.

*InterLATA*—Originating in one LATA and terminating in another LATA. For example—an interLATA telephone call is a call that is placed from a telephone in one LATA to a telephone located in another LATA.

*IntraLATA*—Originating and terminating within the same LATA. For example—an intraLATA telephone call is a call that is placed from a telephone in one LATA to a telephone located within the same LATA.

*LATA—Local access and transport area*—One of the 196 geographical areas designated in 1984 by the decree that broke up AT&T into seven telephone operating companies. At that time, a LATA was the area within which one of the existing local service providers could offer either local or long distance service.

*LOA—Letter of authorization*—A specific written or electronic record signed by a customer granting a NLSP the authority to act as the customer's agent.

*LSC—Local service confirmation*—Documentation issued by the NSP to inform the LSP of the confirmed scheduled completion date for work affecting the migration of local service.

*LSP—Local service provider*—A company, such as a local exchange carrier (LEC), that provides local service by resale, by unbundled network elements (with or without platform) or through its own facilities, or by a combination of these methods of providing local service to a customer.

*LSPF—Local service provider freeze*—A designation elected by a customer that restricts a third party's ability to change a customer's choice of preferred LSP.

*LSR—Local service request*—The electronic or paper form that contains all the information required to arrange for installation of, change in or disconnection of local services.

(i) The LSR is sent by an LSP to an NSP, for example—to request the activation of number portability, the installation of an unbundled loop facility, or the disconnection of loop facilities and migration of a number.

(ii) The NSP uses the LSR to create the internal directives, for example—a service order, to cause the work to be performed as ordered.

*Line loss notification*—The report the old NSP issues upon completion of a migration to inform the OLSP that the OLSP no longer provides local service to a customer on a particular line.

*Line sharing*—The sharing of facilities by an LSP and an NSP in the provision of voice and data services to a given location over the same facilities.

*Line splitting*—The sharing of facilities by two LSPs, when neither is the NSP, in the provision of voice and data services to a given location over the same facilities.

*Local loop*—The wires and cable between the customer's premise and the central office of the local telephone company.

*Local service*—Telecommunications service within a customer's local calling area.



(i) The term includes the customer's local calling plan, dial tone line, touch-tone and directory assistance calls allowed without additional charge.

(ii) The term also includes services covered by the Federal line cost charge, Pennsylvania Relay Surcharge, Federal Universal Service Fund Surcharge, Local Number Portability Surcharge, Public Safety Emergency Telephone Act (9-1-1) Fee and applicable Federal and State taxes.

*Migration*—The movement of a customer from one LSP to another LSP at the same service location.

*NLSP—New local service provider*—The company that will provide local service to a customer after a migration.

*NSP—Network service provider*—A telecommunications provider that interacts with LSPs and provides the facilities and equipment components needed to make up a customer's telecommunications service.

(i) An NSP may also be referred to as an underlying carrier.

(ii) An NSP may also be an LSP.

*Network serving arrangements*—The service platform (for example—resale, unbundled loop, full facilities, UNE-P) to provide local service to a customer. Network serving arrangements may also be referred to as service configuration information.

*OLSP—Old local service provider*—The company that provides local service to a customer prior to migration.

*Optional services*—

(i) Telecommunications services in addition to local service that are offered by LSPs at a cost per individual service or as part of a package of services.

(ii) Examples include toll blocking, 900/976 blocking, inside wiring maintenance plans and extensions off premise.

(iii) The term also includes vertical services.

*Preferred service provider*—The company chosen by a customer to provide particular telecommunications services. A preferred service provider is sometimes referred to as a "preferred carrier."

*Porting*—The process that allows customers to keep their telephone numbers when changing LSPs.

*Recording verifying permission*—An auditory documentation of a customer's voice made when the customer ordered local service, requested a change in local service or local service providers or granted permission to a local service provider to obtain the customer's CSR.

*Service provider*—A generic term to include LSPs and NSPs.

*Termination of service*—Permanent cessation of service after a suspension without the consent of the customer.

*Third party verification*—The process by which an independent entity confirms that a customer ordered local service, authorized a change in local service or local service providers or granted permission to a local service provider to obtain the customer's CSR.

*UNEs—Unbundled network elements*—Various physical and functional parts of an NSP's infrastructure that may be leased to another LSP. These components include things such as local switching, local loops, interoffice transmission facilities, signaling and call-related databases, operator services, directory assistance, and the like.

*UNE-P—UNE-platform*—A combination of unbundled network elements that facilitates end-to-end service delivery. A typical arrangement includes at least a local loop and switching.

*Vertical services*—Telecommunications features available to local service customers at either an added cost or as part of a service package. Vertical services refer to the way in which a telephone line works and include customer calling features such as call forwarding and call waiting.

*Unbundled loop*—A local loop that is leased by one service provider from another service provider to provide local service to a customer.

*Working day*—A day except Saturday, Sunday or legal holiday.

**MIGRATION**

**§ 63.201. General migration standards.**

(a) A customer has the right to migrate from one LSP to another LSP.

(b) The prospective NLSP shall communicate and explain to the customer the migration process and the migration timetable for the local service and for any other service the customer may order.

(c) The OLSP, the NLSP and the NSP shall work together in good faith to minimize or avoid problems associated with migrating the customer's account.

(d) The OLSP may not prohibit the NLSP from reusing facilities that are no longer needed by the OLSP to provide local service to the migrating customer or other customer. If the OLSP has a conflict over the use of the facilities, it may be resolved using the interfering station procedures under §§ 63.211—63.214 (relating to interfering stations) or the expedited dispute process under § 63.222 (relating to expedited process for resolution of migration disputes between service providers).

(e) At the end of each working day, the NLSP shall notify the 9-1-1 host carrier and the Directory Listings/White Pages providers of that day's changes to these databases.

(f) Each LSP and NSP shall maintain a company contact and escalation list for use in resolving migration problems and interfering station conditions. The companies shall update the lists to ensure that the information is current and accurate. LSPs and NSPs shall post the list on a publicly accessible website and supply the website address to the Commission. The Commission will post the address on its website.

**§ 63.202. Migration responsibilities of OLSPs, NLSPs and NSPs.**

(a) The OLSP shall be responsible for responding to the prospective NLSP's request for a CSR, consistent with the requirements of § 63.203 (relating to standards for the exchange of CSRs).

(b) The prospective NLSP shall be responsible for coordinating the migration of the customer's local service with its NSP, if any, and with the OLSP.

(c) The prospective NLSP shall provide the LSR information to affected service providers, as applicable.

(d) The timetable for issuing an LSC is as follows:

(1) By August 13, 2005, the NSP or OLSP shall issue an LSC or rejection within 3 working days from the date the NSP or OLSP receives an LSR from the prospective NLSP.

(2) After February 13, 2006, the NSP or OLSP shall issue an LSC or rejection within 2 working days from the date the NSP or OLSP receives an LSR from the prospective NLSP.

(3) After August 14, 2006, the NSP or OLSP shall issue an LSC or rejection within 1 working day from the date the NSP or OLSP receives an LSR from the prospective NLSP.

(e) The NLSP shall be responsible for coordinating a customer's service restoration that may become necessary due to problems with the migration.

(f) After a migration has been completed, the old NSP shall provide notification to the OLSP that the customer has migrated to the NLSP.

**§ 63.203. Standards for the exchange of CSRs.**

(a) Prospective NLSPs may not acquire CSRs without a verified customer authorization. The prospective NLSP shall use one of the following verification procedures and shall retain the authorization and verification for 2 years:

(1) An LOA from the customer of record to review the customer's account.

(2) A third-party verification of the customer's consent.

(3) A recording verifying permission from the customer.

(4) Oral authorization documented with appropriate retained documentation.

(5) Additional verification procedures as may be authorized by the Federal Communications Commission (FCC) or the Commission.

(b) The prospective NLSP shall indicate to the customer's current LSP that it has a verified authorization for access to the CSR. The NLSP is not required to provide a copy of the authorization or verification to the current LSP.

(c) A current LSP may not contact a customer to retain or keep that customer as a result of a request from another LSP for the customer's CSR.

(d) When a prospective NLSP has verified authorization from the customer to switch the customer's LSP, the prospective NLSP shall request the customer's CSR from the OLSP. The prospective NLSP is not required to provide proof to the OLSP of the authorization or verification at the time of migration. The prospective NLSP shall use one of the following types of verification and shall retain the authorization and verification for 2 years:

(1) An LOA from the customer to switch LSPs.

(2) A third-party verification of the customer's request.

(3) An electronic verification of the customer's request to switch LSPs that contains unique identifying information.

(4) Additional verification procedures as may be authorized by the FCC or the Commission.

(e) A customer's current LSP shall provide the following information when the CSR is requested to migrate a customer's local service:

(1) Billing telephone number and working telephone number.

(2) Complete customer billing name and address.

(3) Complete service address, including floor, suite unit and any other unique identifying information.

(4) 9-1-1/E-9-1-1 information.

(5) Directory listing information, including address, listing type and all other pertinent information.

(6) Preferred service providers for interLATA, intraLATA, local service and other services.

(7) Provider freeze status by interLATA toll, intraLATA toll, local service and other services.

(8) Listing of all vertical services (for example—custom calling, hunting, and the like) to which the customer currently subscribes.

(9) Listing of all optional services (for example—900 blocking, toll blocking, remote call forwarding, off-premise extensions, and the like) to which the customer currently subscribes.

(10) Tracking number or transaction number (for example—purchase order number).

(11) Network serving arrangements (for example—resale, UNE-P, unbundled loop).

(12) Identification of NSPs.

(13) Identification of any line sharing/line splitting on the migrating customer's line.

(f) Timetable for providing CSRs, minimum requirements:

(1) By August 13, 2005, OLSPs shall provide 80% of requested CSRs within 2 working days.

(2) After February 13, 2006, OLSPs shall provide 80% of requested CSRs within 1 working day.

(3) After August 14, 2006, OLSPs shall provide 80% of requested CSRs the same day if the request is made by noon of that day, or by noon of the next working day if requested after noon.

**§ 63.204. Removal or lifting of LSPFs.**

(a) An applicant shall authorize the removal of an existing LSPF before a prospective NLSP may process a change in LSP. The prospective NLSP shall inform the applicant of the following at the time of application:

(1) If the applicant has an LSPF, the applicant shall authorize the removal of the LSPF before the request for a change of the customer's LSP can be processed.

(2) The applicant or the applicant's authorized agent shall contact the OLSP to have an LSPF lifted. Before processing the lifting of the LSPF, the OLSP shall confirm appropriate verification data such as the customer's date of birth, Social Security number or mother's birth name with the applicant or the applicant's authorized agent.

(3) A prospective NLSP may not authorize the removal of an applicant's LSPF.

(b) When the prospective NLSP is also seeking to provide other services, (for example, interexchange, intraLATA, interLATA, interstate or international toll) covered by freezes, authorizations to lift the freezes may be transmitted in one process, if the applicant expressly requests that each freeze be lifted. The prospective NLSP shall inform the applicant of the distinctions among the services and of the requirement that service may not be migrated unless the customer expressly lifts each freeze.

(c) LSPs that offer LSPFs to their customers shall provide various methods to customers for lifting LSPFs, as required by the Federal Communications Commission as set forth in 47 CFR Part 64, Subpart K (relating to changes in preferred telecommunications service providers).

**§ 63.205. Porting telephone numbers.**

An OLSP or NSP may not refuse an otherwise valid request to port a number to a NLSP unless the number is for local service that has been terminated or discontinued under Chapter 64 (relating to standards and billing practices for residential telephone service) for residential customers or consistent with the LSP's tariff for other customer classes.

**§ 63.206. Discontinuance of billing.**

(a) LSPs shall minimize overlap in billing during the migration between LSPs.

(b) Within 42 days of the receipt of a line loss notification from the NSP, the customer's OLSP shall issue the customer a final bill for services rendered.

(c) Once the customer has paid the charges on the final bill, the OLSP shall immediately remove the customer from its billing system and discontinue billing, unless the OLSP provides other services to the customer.

(d) Subject to the terms of an applicable tariff or customer specific pricing arrangement, the OLSP shall stop billing the customer for any recurring charges associated with the migrated services as of the date of the migration.

(e) This subchapter does not affect a customer's debtor/consumer rights or an LSP's creditor's remedies, as may be otherwise permitted by law.

**§ 63.207. Carrier-to-carrier guidelines and performance assurance plans.**

For an LSP or NSP subject to State or Federal carrier-to-carrier guidelines or performance assurance plans, if the carrier-to-carrier guidelines or performance assurance plan provide a more explicit or a narrower window for performance than otherwise specified under this subchapter, the carrier-to-carrier guidelines or performance assurance plan shall control for that LSP or NSP.

**INTERFERING STATIONS**

**§ 63.211. Duties of NSPs and NLSPs when an interfering station condition is identified.**

(a) The NSP shall inform the prospective NLSP of an interfering station condition by the end of the next working day after the NSP identifies that an interfering station condition exists.

(b) The NSP shall review the LSR information with the prospective NLSP to determine possible errors:

(1) Upon confirmation that the LSR information is correct, the NSP shall inform the prospective NLSP that the LSR cannot be fulfilled because there is preexisting local service at the service location.

(2) If the LSR information is incorrect, the prospective NLSP shall correct the information and resubmit the corrected LSR to the NSP.

**§ 63.212. Duties of the prospective NLSP and the applicant when an interfering station condition is identified.**

(a) The prospective NLSP shall notify the applicant that there is preexisting local service at the service location within 1 business day of the date the NLSP receives notice of the interfering station condition. The prospective NLSP shall contact the applicant by telephone, email, first class mail or in person to request that the applicant verify the address at the service location.

(b) If the applicant fails to respond to the notice within 5 days, the prospective NLSP may cancel the application.

(c) If the applicant informs the prospective NLSP that the address is incorrect, the prospective NLSP shall correct the information on the application, submit a new LSR and provide the new local service installation date.

(d) If the applicant verifies that the address is correct, the prospective NLSP shall explain that new local service is not able to be installed using the same facilities due to preexisting local service at the address and request the applicant to provide proof of ownership or right of occupancy.

(e) If the applicant provides proof of ownership or right of occupancy, the prospective NLSP shall advise the applicant of the following options:

(1) The applicant may authorize the prospective NLSP to contact the OLSP to confirm abandoned service.

(2) The applicant may attempt to resolve the interfering station condition with the customer of record, if known to the applicant.

(3) The applicant may arrange for the installation of new facilities.

(i) If inside wiring is required, the applicant shall provide proof of installation before the prospective NLSP is able to proceed with the LSR.

(ii) If new facilities (for example—outside wiring or a network interface device (NID)), are required, the prospective NLSP shall advise the applicant that the applicant shall pay for the installation of the new facilities pursuant to tariff rates and that the installation may take longer than 5 days.

(4) The applicant may cancel the application.

**§ 63.213. Duties of the OLSP if notified by the prospective NLSP that an interfering station exists at a location where existing local service is provided by the OLSP and the applicant has shown proof of identity and of ownership or right of occupancy.**

(a) Within 3 working days of the notification, the OLSP shall issue a termination notice to the customer of record in the OLSP's billing system. The notice of termination must state the reason for termination, date of termination and what the customer of record is required to do to prevent termination. The termination date must be 7 days from the date of the mailing of the notice by first class mail.

(b) If the customer of record does not contact the OLSP, the OLSP shall terminate the customer's service and take appropriate action to release the customer's facilities to the prospective NLSP.

(c) If the customer of record contacts the OLSP by the termination date and does not agree to the termination of service, the OLSP shall notify the prospective NLSP of the inability of the OLSP to release the facilities to be used by the prospective NLSP.

**§ 63.214. Duties of the prospective NLSP when the OLSP is unable to resolve the interfering station condition at the applicant's service location.**

(a) The prospective NLSP shall contact the applicant and explain that the preexisting customer will not agree to the termination of service and that the prospective NLSP is not able to use the existing facilities.

(b) The prospective NLSP shall inform the applicant of the following options to obtain local service:

(1) The applicant may pursue any disputes between co-tenants, owners and occupants before an appropriate forum for the remedy. The prospective NLSP shall inform the applicant that neither the prospective NLSP, the OLSP nor the Commission is responsible for or available to resolve private disputes between customers and applicants.

(2) The applicant may arrange for the installation of new facilities.

(i) If inside wiring is required, the applicant shall provide proof of installation before the prospective NSLP is able to proceed with the LSR.

(ii) If new facilities (for example—outside wiring or a NID) are required, the applicant shall pay for the installation of the new facilities pursuant to tariff rates and the installation may take longer than 5 days.

### DISPUTES

#### § 63.221. Customer complaint procedures.

(a) *Records of complaints.* An LSP covered by or operating under this title shall preserve written or recorded complaints showing the name and address of the applicant or complainant, the date and character of the complaint, the action taken and the date of final disposition. Records of complaints for residential customers shall be kept in accordance with § 64.192 (relating to record maintenance).

(b) *Commission review.* If a customer or applicant expresses dissatisfaction with the LSP's decision or explanation, the LSP shall inform the customer or applicant of the right to have the dispute considered and reviewed by the Commission and shall provide the name, address and telephone number of the appropriate Commission bureau. This subsection shall be read in conjunction with Chapter 64, Subchapters G and H (relating to disputes; informal and formal complaints; and restoration of service) for residential service.

(c) *Investigations.* Within 1 working day of receiving a complaint covered by this subchapter from an applicant, customer or third party, the Commission will transmit a summary of the complaint to the LSP. When complaints are referred to the LSP through the Commission, the LSP and the Commission will work to process and resolve the complaints. An LSP shall make a full and prompt investigation of complaints made to it through the Commission by the applicant, customer or third party. For complaints involving commercial service, if the LSP needs more than 30 days to respond to the Commission, the LSP shall advise the Commission of that need within 30 days of the date it receives the complaint summary and indicate when it will send its response to the Commission.

(d) *Resolutions.* If a complaint is resolved between the LSP and the complaining party, the LSP shall advise the Commission within 10 working days of the resolution and submit a copy of the service order or other documentation of satisfaction which identifies the action taken by the LSP to resolve the complaint. The LSP may not consider the complaint closed until the Commission advises the LSP that the Commission has closed the complaint.

#### § 63.222. Expedited process for resolution of migration disputes between service providers.

(a) The Commission will provide a nonadversarial, expedited dispute process to address migration disputes between service providers. The Commission will designate Commission staff as contact persons through which LSPs and NSPs may request expedited resolution for alleged problems between service providers or compliance with this title.

(b) An LSP or NSP that has a dispute under this subchapter with another LSP which cannot be resolved between the entities may refer the dispute to the expedited dispute process for a suggested resolution in a nonadversarial context.

(c) The Commission designee will review the dispute within 2 working days of the date the dispute was received, attempt to contact the involved entities and suggest a nonbinding resolution of the dispute, consistent with § 1.96 (relating to unofficial statements and opinions by Commission personnel).

(d) If the expedited dispute process fails to resolve the dispute, the parties may resort to the Commission's mediation process under §§ 69.391—69.397 (relating to mediation process) or formal dispute resolution processes.

(e) The expedited dispute process is neither mandatory nor a prerequisite to the Commission's mediation or formal dispute resolution processes.

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## Title 55—PUBLIC WELFARE

### DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1187]

#### Nursing Facility Services; Metropolitan Statistical Area

The Department of Public Welfare (Department), under the authority of sections 201(2), 206(2), 403(b), 443.1(5) and 454 of the Public Welfare Code (code) (62 P. S. §§ 201(2), 206(2), 403(b), 443.1(5) and 454), as amended by the act of July 7, 2005 (P. L. 177, No. 42) (Act 42), amends § 1187.94 (relating to peer grouping for price setting) to read as set forth in Annex A.

Act 42 amended, among other things, provisions of the code regarding payment for nursing facility services under the Medical Assistance (MA) Program. More specifically, Act 42 added paragraph (5) to section 443.1 of the code. This new paragraph provides that on or after July 1, 2004, and until regulations are otherwise adopted by July 1, 2006, payments to MA nursing facility providers shall be calculated and made as specified in the Department's regulations in effect on July 1, 2003, except as may be otherwise required by the Commonwealth's approved Title XIX plan for nursing facility services and regulations promulgated by the Department under section 454 of the code.

Section 454, which was also added to the code by Act 42, authorizes the Department to promulgate regulations to establish provider payment rates. Section 454 of the code specifies that, until December 31, 2005, notwithstanding any other provision of law including section 814-A of the code (62 P. S. § 814-A), provider payment

rate regulations must be promulgated under section 204(1)(iv) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(1)(iv)), known as the Commonwealth Documents Law (CDL), which permits an agency to omit or modify proposed rulemaking when the regulation pertains to Commonwealth grants or benefits. In addition, section 454 of the code expressly exempts these provider payment rate regulations from review under the Regulatory Review Act (71 P. S. §§ 745.1—745.15), and from review by the Attorney General under section 205 of the CDL (45 P. S. § 1205) and section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732-204(b)).

#### *Justification for Adoption of Final-Omitted Rulemaking*

In accordance with sections 443.1(5) and 454 of the code, the Department is adopting the final-omitted rulemaking because:

- As recognized by section 454(b) of the code, the final-omitted rulemaking regards MA provider payments, which are Commonwealth grants or benefits.
- The final-omitted rulemaking regards payments for MA nursing facility services provided on or after July 1, 2004.
- The final-omitted rulemaking is necessary to conform the Department's regulations to the Commonwealth's approved State Plan for nursing facility services.

#### *Purpose*

The Department is amending § 1187.94 to specify that the Department will use the Metropolitan Statistical Areas (MSA) group classification published in the Federal Office of Management and Budget (OMB) Bulletin No. 99-04 (relating to revised statistical definitions of Metropolitan Areas and guidance on uses of Metropolitan Area definitions) to classify nursing facilities into peer groups instead of the most recent MSA group classification published on or before April 1 of each year. This final-omitted rulemaking conforms § 1187.94 to the Commonwealth's approved State Plan for nursing facility services.

#### *Background*

Under its case-mix payment system regulations, 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 regulations specify that, in setting net operating prices, the Department will classify each nursing facility participating in the MA Program, except those 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 one of 12 mutually exclusive peer groups based on 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 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 249,999). The Department's case-mix payment system regulations, § 1187.94(1)(iii), make explicit reference to the three MSA groups (A, B

and C) in identifying the 12 peer groups into which nursing facilities are classified under the case-mix payment system.<sup>1</sup>

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 made 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 could not 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 undertook the necessary steps to amend both the Commonwealth's approved State Plan and the language of § 1187.94.

The Department published an advance public notice at 34 Pa.B. 1863 (April 3, 2004) announcing its intent to amend its State Plan to specify that, for rates effective July 1, 2004, the Department will use the MSA group classifications published in OMB Bulletin No. 99-04 and inviting public comment. To ensure the July 1, 2004, effective date, the Department submitted a proposed State Plan Amendment to the Federal Centers for Medicare and Medicaid Services (CMS) on June 11, 2004. Subsequently, while the proposed State Plan Amendment was pending with the CMS, the Department published a proposed rulemaking at 34 Pa.B. 4465 (August 14, 2004) to make a corresponding change in § 1187.94 and again invited interested parties to comment.

On January 27, 2005, the CMS notified the Department that the State Plan Amendment incorporating the provisions of this final-omitted rulemaking into the Commonwealth's State Plan was approved effective July 1, 2004. This final-omitted rulemaking now conforms the text of § 1187.94 to the approved State Plan.

#### *Affected Individuals and Organizations*

Nursing facilities enrolled in the MA Program are affected by this rulemaking, except nursing facilities that meet the definition of "hospital-based nursing facility" or "special rehabilitation facility" in § 1187.2. This final-omitted rulemaking simply preserves the manner in which peer groups are classified under the existing case-mix payment system and therefore has a neutral effect on nursing facility reimbursement rates.

#### *Accomplishments and Benefits*

The Department is amending § 1187.94(1)(i) in conformity with the Commonwealth's approved Title XIX State Plan to specify that the Department will use the MSA group classification published in OMB Bulletin No. 99-04 to place nursing facilities into peer groups. By using the MSA classification in OMB Bulletin No. 99-04, the Department maintains the historical MSA groups which classify each MA nursing facility as MSA A, B or C or as

<sup>1</sup> 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).

non-MSA. Although the language of § 1187.94 is amended, the effect of this final-omitted rulemaking is to preserve the status quo. The final-omitted rulemaking enables the case-mix payment system to continue to take into account variables that may impact the cost of providing nursing facility services while maintaining reasonable and appropriate reimbursement rates to nursing facility providers.

#### *Fiscal Impact*

No fiscal impact will result from this final-omitted 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 into peer groups since the case-mix payment system was implemented in January 1996. No cost to the Commonwealth, local government, general public or nursing facility providers is anticipated as a result of this final-omitted rulemaking.

#### *Paperwork Requirements*

No new or additional paperwork requirements result from adoption of this final-omitted rulemaking.

#### *Public Comment*

On November 26, 2003, and December 23, 2003, the Department met with representatives of the four nursing home associations, Pennsylvania Association of Non-Profit Homes for the Aging, Pennsylvania Health Care Association, Hospital and Healthsystem Association of Pennsylvania and Pennsylvania Association of County Affiliated Homes, to discuss the implications of the Federal changes to the MSA definitions and whether the Department should adopt the changes for rate-setting purposes. The Department also discussed and solicited comments on the proposed changes at the Long-Term Care Subcommittee of the Medical Assistance Advisory Committee (MAAC) on February 11, 2004, April 14, 2004, October 13, 2004, and December 1, 2004.

As previously noted, the Department published an advance public notice at 34 Pa.B. 1863, announcing its intent to amend its State Plan and to specify that the Department will use the MSA group classifications published in OMB Bulletin No. 99-04. The Department provided for a 30-day comment period on the proposed amendment to the State Plan. The Department received a total of five comment letters in response to the notice. After receipt and consideration of these comments, the Department submitted a proposed State Plan Amendment to the CMS to change the Commonwealth's approved State Plan.

While the proposed State Plan Amendment was pending with the CMS, the Department published a proposed rulemaking at 34 Pa.B. 4465. The Department received a total of 12 public comment letters regarding the proposed rulemaking. Comments were also received from the Independent Regulatory Review Commission (IRRC) and a State Senator.

Subsequent to the publication of the proposed rulemaking, the General Assembly enacted Act 42 directing the Department to promulgate provider payment rate regulations in accordance with Act 42. Although not required by Act 42, the Department considered all public comments received in response to its advance public notice and proposed rulemaking.

#### *Discussion of Comments and Major Changes*

Following is a summary of the comments received by the Department following publication of the advance public notice and the proposed rulemaking and the Department's response to those comments.

#### *§ 1187.94 Peer grouping for price setting.*

##### *Comment*

Two nursing facility associations sent comments endorsing the proposed rulemaking. They believed that the use of the new OMB classifications for peer grouping purposes would create significant disruption and hardship in the nursing facility provider community.

##### *Response*

The Department initiated discussions with affected stakeholders regarding a more comprehensive overhaul of the case-mix payment system in early 2004. Until those discussions are completed and larger systemic reforms are developed and adopted, the Department agrees with the associations that this amendment creates the least amount of disruption and hardship in the nursing facility provider community. Before publishing both the proposed and final rulemaking, the Department analyzed the potential reimbursement impact of adopting the new MSA definitions for peer-grouping purposes using the various rate-setting databases that were available. Each analysis confirmed that, while some providers would benefit if the new definitions were used, the majority of nursing facility providers would suffer some adverse impact—the payment rates of the majority of nursing facility providers would be reduced if the Department used the new Federal definitions to assign nursing facilities to peer groups. The Department determined that maintaining the historical MSA group classification and, thereby preserving the status quo, was a more preferable alternative than reducing the payment rates of the majority of nursing facility providers. Therefore, the Department finds that this approach is consistent with the best interests of consumers and the MA Program.

##### *Comment*

Several commentators disagreed with the Department's position that the June 2003 OMB MSA changes made it impossible for the Department to apply its existing peer grouping regulation. The commentators suggested that the Department can implement the OMB Bulletin No. 03-04 MSA changes within current regulatory language. They claimed that OMB Bulletin No. 03-04 does not eliminate MSA Group Levels or repeal the MSA Group Level criteria defined by the OMB's 1990 standards. Although the commentators acknowledged that the OMB no longer includes Group Level classifications A—D in the updated MSAs, they contended that the Group Level classifications can be incorporated by reference to known population data, publicly available from the Census Bureau and the 1990 standard criteria. The commentators suggested that the Department issue an interpretation of general applicability adopting their proposed construction of the existing regulation instead of amending the regulation as specified in the proposed rulemaking.

##### *Response*

The Department disagrees with the commentators. Prior to 2003, the OMB used a grouping system that classified MSAs into "Group A," "Group B" and "Group C." However, as plainly stated in its June 3, 2003, notice, the OMB abandoned the A-B-C grouping system and has, instead, begun using a new classification system.

As previously noted, Department regulations make explicit reference to the A-B-C grouping system by requiring the Department to classify nursing facilities into peer groups based in part on whether they are located in MSA Groups A, B, C or in a non-MSA Group. See § 1187.94(1)(iii). As written, therefore, the clear intent of the regulation was to incorporate the A-B-C grouping system that was in effect at the time the case-mix regulations were adopted while recognizing modifications in classifications under that grouping system.

When the OMB ceased using the A-B-C grouping system as of June 3, 2003, the Department determined that § 1187.94(1)(i) and (iii) was plainly inconsistent in that subparagraph (i) requires the Department to use the most recent OMB MSA group classification while subparagraph (iii) requires the Department to classify facilities based upon the now defunct A-B-C grouping system. Consequently, the Department determined that the regulation was impossible to apply as written. After consulting with representatives of all nursing home associations, the Department proposed to eliminate that inconsistency by amending the State Plan and its regulations to expressly require the determination of peer groups to be based upon the last OMB MSA group classification that still used the A-B-C grouping system. This final-omitted rulemaking adopts the necessary amendment. Its effect is to maintain the status quo in a manner that is consistent with the original intent of the regulation and that conforms to the Commonwealth's approved State Plan.

Even if the Department were to accept the commentators' position that § 1187.94(1) may be applied unchanged, despite the OMB's elimination of the A-B-C grouping system, the Department would still proceed with the amendment. Act 42 requires, among other things, that the Department calculate and make payments to providers are required by the Commonwealth's approved State Plan. This final-omitted rulemaking ensures that result. Moreover, as previously discussed, the Department has determined that the payment rates of a majority of nursing facilities would be reduced if the Department were to take the approach recommended by the commentators. To avoid this result, the Department has concluded that maintaining the existing MSA classifications is warranted and appropriate.

#### *Comment*

IRRC and several commentators raised concern that the proposed rulemaking is inconsistent with the design of the case-mix system and that nursing facility providers located in areas that have undergone significant economic changes are being denied the rate recognition of those changes. They suggested that the proposed amendment deprives nursing facility providers with atypical labor-related costs of any opportunity for reclassification and fails to consider relevant factors supporting reclassification. The commentators noted that the Medicare Program decided to implement the OMB MSA updates in determining payment rates for inpatient hospital programs and suggested that the Department take the same approach because they believed that the new MSA group classifications more accurately reflect current costs associated with operating a nursing facility.

#### *Response*

The Department disagrees with the commentators' view that the existing peer groups do not accurately classify providers or recognize provider costs. Although not required by either State or Federal law, historically, the Department has used MSA classifications to peer group

nursing facilities for rate-setting purposes to account for variables that may impact the cost of providing nursing facility services. When the OMB issued its new MSA definitions in June 2003, however, the OMB recommended that the new definitions not be used for the development or implementation of any Federal, state or local nonstatistical programs without full consideration of the effects that the changes would have on the programs. Following the OMB's recommendation, the Department analyzed and considered the implications of adopting the new Federal definitions and using 2000 census data to establish peer groups.

For analysis and comparison purposes, each county was assigned to a new 2000 MSA group based on the 2000 OMB MSA definitions and the 1990 OMB level A, B and C subgroups definitions. Census data from 2000 for the counties were used to determine the subgroups. This approach resulted in six counties (Armstrong, Columbia, Lebanon, Mercer, Pike and Somerset) changing from their 1990 MSA group to a different 2000 MSA group.

Using the databases compiled for Year 8 (Fiscal Year (FY) 2002-03) and Year 9 (FY 2003-04), the Department then calculated rates for the nursing facilities in the reconfigured peer groups and compared those rates to the rates it had computed for the nursing facilities using the existing peer groups. The Department determined that the payment rates of more than 400 nursing facilities would be reduced in both rate years. Although the Department has not set final payment rates for Year 10 (FY 2004-05) pending the publication of this final-omitted rulemaking, the Department's preliminary estimates using the Year 10 database indicate the same trend would continue—more than 400 nursing facilities would have lower payment rates in Year 10 if the Department were to use the new MSA definitions and census data.

In addition to determining the impact on payment rates, the Department also evaluated the implications of both maintaining the existing peer groups and reconfiguring the peer groups using the new MSA definitions and 2000 census data from a cost perspective. Prior to publishing both the proposed rulemaking, the Department conducted an analysis of labor costs related to direct care staff as reported by nursing facilities on their MA cost reports. Labor costs represent the biggest portion of the Resident Care component of nursing facility case-mix payment rates. The Resident Care rate component is, in turn, the single largest component of payment rates, typically accounting for over 60% of the total nursing facility payment rates.

To conduct the labor cost analysis, nursing facilities' reported labor costs were compiled and summarized by county and by MSA group. For each of the affected six counties (Armstrong, Columbia, Lebanon, Mercer, Pike and Somerset), the median labor costs for the county were compared to the median labor costs for both the county's 1990 MSA group and 2000 MSA group. The data indicated that the 1990 MSA groups were more representative of labor costs for the six affected counties than the 2000 MSA groups.

Given that use of the new definitions and data would adversely impact the majority of providers and that use of the existing peer groups would continue to properly account for labor cost variables, the Department has concluded that it is in the best interests of consumers, nursing facility providers and the MA Program to maintain the historical MSA classifications while the Department and affected stakeholders undertake a more comprehensive review of the case-mix payment system.

*Comment*

Several commentators from Armstrong County alleged that the proposed rulemaking will have ill effects on facilities in their county. The Armstrong County Health Center (ACHC) claimed that it may lose approximately \$200,000 to \$500,000 per year by being kept at the rural MSA designation and that the proposed amendment will harm the quality of care of the residents and the quality of life of the caregivers at ACHC. The Armstrong County commentators also suggested that Armstrong County's close proximity to Pittsburgh creates a competitive job market, especially for professional and licensed personnel, and that the proposed rulemaking ignores the economic realities of their county. They claimed that Armstrong County is being discriminated against based solely on the population of the county and an arbitrary formula that rewards counties smaller than Armstrong County. Another commentator suggested that the Department ignored impact analysis provided on behalf of nursing facilities in the affected counties that demonstrate that they will receive significant payment increases if the new MSA definitions are used. The commentators opposed adoption of the proposed rulemaking because they believe that it would permit the Department to ignore its regulations and the changes in OMB MSA designations for Armstrong County and the other affected counties.

*Response*

The Department does not dispute that the three MA nursing facility providers in Armstrong County, including ACHC, as well as some nursing facility providers in other affected counties, would receive increased payment rates if the Department were to adopt the new MSA definitions and use 2000 census data to peer group nursing facilities. That these nursing facilities would receive higher rates if peer groups were reconfigured, however, does not mean that the nursing facilities will receive payment rates that are unreasonable or inadequate if the existing peer group classification system is maintained. In evaluating whether to adopt the new MSA definitions, the Department must consider the overall impact on MA nursing facility providers, and not just the impact on nursing facilities in the affected counties. In this instance, the Department has concluded that the adverse rate impact that would be felt by the majority of nursing facilities must outweigh the beneficial impact to the remaining nursing facilities even though the Department recognizes that, for a very few nursing facilities, that beneficial impact may be substantial.

The Department also disagrees that Armstrong County nursing facilities' costs are more like the costs of Allegheny County nursing facilities than those of nursing facilities in their existing peer group. As previously noted, the Department's cost analysis indicates that median labor costs for Armstrong County are more typical of the median labor costs of the county's 1990 MSA group, than the county's reconfigured 2000 MSA group, which would include Allegheny County. In addition, the Department's preliminary estimates using the Year 10 database and maintaining the existing MSA classifications indicate that 12 of the 15 MA nursing facility providers in Armstrong, Mercer and Pike Counties with audited costs in the database will receive payment rates that exceed their average inflated per diem costs. Nine of those 15 facilities have average inflated cost per diems that are less than the estimated prices for their existing peer group in all three net operating categories and all but 1 of the 15 have average resident care cost per diems that are less than the resident care price for their peer group. Thus,

the Department finds that payment rates under the existing peer grouping methodology for nursing facilities in the affected counties, including all three Armstrong County nursing facilities, are both reasonable and adequate.

*Comment*

IRRC and several commentators raised concern that the proposed July 1, 2004, effective date of the rulemaking was inconsistent with § 1187.95(a) which requires prices and rates to be established prospectively prior to the beginning of the rate-setting year. In addition, the commentators suggested that providers' right to receive payments vested on July 1, 2004, and the Department is improperly attempting to change the providers' vested rights retroactively by adopting the amendment to its regulation. The commentators also claimed that Federal law prohibits the Department from making the amendment effective July 1, 2004.

*Response*

The Department disagrees with the commentators' view that the final-omitted rulemaking will deprive them of any vested rights to payment. The commentators' view is based upon the faulty premise that the existing regulatory language requires the Department to use the June 2003 OMB classification without regard to the fact that the classification no longer uses the A-B-C grouping system required by Department regulations. As previously discussed, the regulation does not require the use of that classification. Therefore, the change made by this final-omitted rulemaking will not affect any vested property rights. By amending § 1187.94 to make OMB Bulletin No. 99-04 the standard for determining MSA groupings, the Department is merely preserving the status quo and ensuring that no further changes on the part of OMB can disrupt the case-mix payment system.

The Department also disagrees with the commentators' suggestions that the July 1, 2004, effective date is prohibited by Federal law or other Department regulations. As required by Federal law, the Department undertook a public process before adopting the amendment to § 1187.94(1). After the OMB published its new MSA definitions in June 2003, the Department analyzed the change, developed a recommendation, drafted proposed regulations and discussed the change with the Long-Term Care Subcommittee of the MAAC and the nursing facility industry. Subsequently, the Department published an advance public notice in the Pennsylvania Bulletin announcing its intent to amend the method by which peer groups are established under the case-mix payment system. On June 11, 2004, the Department submitted the necessary State Plan amendment to the CMS to make a corresponding change in the Commonwealth's State Plan. The Department notes, however, that applicable Federal regulations specifically permit a State Plan amendment to be "retroactively" effective to the first day of the calendar quarter in which an approvable amendment is submitted. See 42 CFR 447.256(c) (relating to procedures for CMS action on assurances and State plan amendments). Therefore, the Department could have submitted its State Plan Amendment as late as September 30, 2004, and still maintained the July 1, 2004, effective date. Ultimately, the CMS approved the State Plan amendment authorizing the Department to make the change in its methods and standards for payment of MA nursing facility services effective with the FY 2004-05.



The Department also disagrees with the commentators' suggestion that the amendment is precluded by other Department regulations which specify the time period in which the Department generally computes rates. This final-omitted rulemaking eliminates an inconsistency in the regulatory language and enables the Department to issue nursing facility provider payment rates for FY 2004-05.

*Comment*

A commentator raised concern that the proposed amendment, which effectively freezes nursing facility peer groups, would preclude the Department from making realignments based on later updates to OMB MSA assignments, or permitting "good cause" reclassifications of facilities or counties, such as those permitted under the Medicare payment methodology for inpatient hospital providers. The commentator also claimed that the amendment would preclude the Department's consideration of the new reclassification system for Medicare SNFs which will be developed in accordance with section 315 of the Federal Benefits Improvements and Protections Act (BIPA) of 2000 (Pub. L. No. 106-554). The commentator suggested that the Medicare reclassification system could significantly dampen the negative impact of the new MSA definitions on rural providers. The commentator also suggested that the Department's cost-based mandate is best met when the Department retains flexibility in the rate-setting and price-setting process.

*Response*

As previously noted, the Department and stakeholders have already begun discussions aimed at effecting a more comprehensive review and overhaul of the case-mix payment methodology. As part of that process, the Department expects that, together with stakeholders, it will evaluate whether and how nursing facilities should be assigned to peer groups. Among other things, the Department expects to consider whether the new Medicare SNF reclassification system, developed under section 315 of BIPA, is appropriate for the Pennsylvania MA Program. The Department will also explore and consider other alternatives which may be proposed by consumers and providers, including alternatives that permit "good cause" reclassifications. This amendment merely preserves the status quo while that review and evaluation process takes place and is not intended to forever fix the method by which the Department groups nursing facilities for rate-setting purposes.

*Comment*

The commentator recommended that, as an alternative to the proposed amendment, the Department consider another solution which would preserve the existing MSAs but allow for facilities to be placed in a different MSA as a result of the June 6, 2003, OMB reclassification. The commentator suggested amending § 1187.94(1)(i) as follows: "the Department will use the MSA group classifications published in the Federal OMB Bulletin 99-04 to classify each nursing facility into one of three MSA groups (Level A, B, or C) or into one non-MSA group; except facilities in any county that, as of April 1, 2004, was defined by OMB to be located in and not combined with an MSA other than the one with which it was classified in OMB Bulletin No. 99-04, shall be assigned to the MSA group classification of such other MSA in OMB Bulletin No. 99-04. (This results in recognizing the changes to MSAs in OMB Bulletin No. 03-04 for Armstrong, Mercer and Pike but not the shifts to 'lower' MSA groups for Columbia, Lebanon or Somerset Counties)."

*Response*

The Department appreciates the commentator's attempt to minimize the adverse impacts resulting from the use of the new definitions. However, the Department's analysis of the commentator's "grandfathering" alternative indicates that it would still result in reduced payment rates to over 400 nursing facility providers. For the same reasons previously noted, the Department does not believe that the suggested alternative is appropriate.

In addition to the commentator's "grandfathering" alternative, the Department also evaluated and considered the adoption of a "hold harmless" alternative whereby each nursing facility would receive the higher of the rate calculated for the nursing facility using existing peer groups or the rate calculated using reconfigured peer groups based upon the new MSA definitions and census data. The Department calculated that this alternative would result in \$3.8 million in increased costs to the MA Program in the first year and that the costs would continue to increase in subsequent years. The Department does not have sufficient funds available to cover these increased costs. In addition, the Department also determined that the "hold harmless" alternative, which would require double rate and price calculations, would be administratively burdensome to implement and could be error-prone. For these reasons, the Department determined that a "hold harmless" provision would not be appropriate for the MA Program.

*Comment*

A commentator suggested that the Department should amend § 1187.95(a)(3) to read as follows: "If a nursing facility changes bed size after prices have been set and prior to the following April 1, the prices and rates for the nursing facility will continue to be based on the nursing facility's bed size prior to such changes until June 30 after the changes but the nursing facility shall be reassigned to a peer group based on the changes in bed certification for price and rate setting as of July 1 after the changes. If a nursing facility changes bed size after prices have been set but after the following April 1, the prices and rates for the nursing facility will continue to be based on the nursing facility's classification prior to the changes until June 30 of the following calendar year but the nursing facility shall be assigned to a peer group based on the changes in bed certification for price and rate setting as of July 1 thereafter. [This eliminates references to changes in MSA Group from the regulation]."

*Response*

The Department does not find that there is any need to change the language of § 1187.95(a)(3). Section 1187.95(a)(3) specifies that "If a nursing facility changes bed size or MSA group, the nursing facility will be reassigned from the peer group used for price setting to a peer group based upon bed certification and MSA group as of April 1, for rate setting." The Department recognizes that, with the adoption of this final-omitted rulemaking, it is unlikely that a nursing facility will change its MSA group, although it may be possible if, for example, the nursing facility relocates its operation from one county to another. The Department notes that it is more likely and very possible, however, that the number of certified beds in a nursing facility may change in a way that affects the nursing facility's peer group assignment. In these instances, § 1187.95(a)(3) explains how the Department will group the nursing facility for price-setting and rate-setting.

*Comment*

Several commentators noted that the impact analysis contained in the Department's advance public notice and proposed rulemaking were based upon calculations made by the Department using the Year 8 FY 2002-03 rate-setting database rather than the database that the Department will use to set rates effective July 1, 2004 (Year 10). The commentators contended that the Department's failure to use the Year 10 database renders its impact analyses flawed and inaccurate. The commentators also complained that the Department refused to make the Year 10 database available for public review and use in connection with this rulemaking process. They claimed that, without access to the Year 10 database, they have been unable to "meaningfully comment" on the proposed amendment.

*Response*

The Department disagrees with the commentators' suggestion that its impact analyses are inaccurate or flawed. The Department used the data that was available to it during the course of this rulemaking process, and has analyzed the impact of using the new MSA definitions and 2000 census data with the Year 8, Year 9 and Year 10 databases as each of those databases was compiled. Each analysis yielded the same result. As previously noted and discussed, a clear majority of providers would suffer payment rate reductions if the Department reconfigures peer groups using the new MSA definitions and 2000 census data.

The Department also disagrees with the suggestion that commentators have been denied the opportunity for meaningful comment because they did not have access to the Year 10 database. Generally, it has been the policy of the Department to make its rate-setting databases available to the public at the time it issues rates and prices for a fiscal year. During the course of this rulemaking process, the Department posted its Year 8 and Year 9 databases on its website. The commentators had access to and submitted various analyses to the Department based upon that data. The Department recently made its Year 10 database available on its website for interested parties to download. Although this database may not have been available to commentators during the rulemaking process, the Department nonetheless received numerous thoughtful comments in response to its advance public notice and notice of proposed rulemaking. Notably, the same commentators who claim to have been denied the opportunity for meaningful comment submitted lengthy substantive comments on the Department's proposed amendment and offered alternative proposals to the Department for consideration. The Department considered all of the comments and alternative proposals it received.

*Comment*

A commentator noted that an impact analysis conducted by the Bureau of Long Term Care Programs indicated that the use of the new OMB MSA classifications would result in cost-savings to the MA Program of approximately \$1 million. The commentator stated that the proposed rulemaking did not address this impact analysis or possible savings from the use of alternatives, but indicated instead that the proposed amendment would have no fiscal impact if adopted. The commentator suggested that the Bureau's own impact analysis demon-

strates that the Department's proposed rulemaking has a fiscal impact which differs from the "no impact" described in the preamble to the proposed rulemaking.

*Response*

The Department has repeatedly acknowledged that the use of the new MSA definitions and census data would result in payment rate reductions for the majority of nursing facility providers. If these payment rate reductions were implemented, the Department estimates that payments in Year 10 would decline overall by approximately \$1.3 million. The Department considered this estimate, as well as its previous estimates, which were computed based upon the earlier databases. These estimates identify the potential fiscal impact of changing the payment methodology to specifically incorporate the new MSA definitions and census data, not the impact of the amendment.

The Department determined that it should not adopt the new MSA definitions but should instead amend its regulations to expressly maintain the status quo in the geographic peer groups. As previously discussed, the Department concluded that maintaining the status quo would cause less disruption in the provider community, would continue to group similarly located nursing facilities and was a more preferable alternative for the MA Program. Because the Department is maintaining the status quo by adopting this amendment, the Department correctly stated that there is no fiscal impact associated with the final-omitted rulemaking.

*Comment*

A commentator noted that the populations of Somerset and Carbon Counties are below the 100,000 minimum required for a Level C classification. However, the Department designated those counties as MSA Level C in the proposed rulemaking. The commentator asked the Department to explain why these two counties have Level C status when they do not meet the necessary population requirements. The same commentator also noted that the proposed rulemaking describes the Level B group as having a population of 250,000 to 999,999 and Level C group as having population of 100,000 to 249,000. The commenter pointed out that counties with populations between 249,000 and 250,000 were not addressed and asked at which level these counties would be assigned.

*Response*

The Department notes that the Level C population range was identified in the proposed rulemaking as 100,000 to 249,000. This was an error. The correct population for Level C should have read 100,000 to 249,999. In determining the correct MSA level for a group, each county does not have to meet the population requirements individually; rather the population requirement for the different levels applies to the total population of all counties in the MSA. Since Carbon County is grouped with Lehigh and Northampton Counties, the total population of the three counties is considered, and, when combined, the total population is within the MSA level B range as specified by the 1990 MSA grouping classifications. Similarly, Somerset and Cambria Counties are grouped together and their combined total population falls within the 100,000 to 249,999 range for MSA Level C.

*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.

*Regulatory Review Act*

Under sections 443.1(5)(ii) and 454 of the code, this final-omitted rulemaking is not subject to review under the Regulatory Review Act.

*Findings*

The Department finds that:

(1) Notice of proposed rulemaking is omitted in accordance with section 204(1)(iv) of the CDL and 1 Pa. Code § 7.4(1)(iv) because this rulemaking relates to Commonwealth grants and benefits.

(2) The adoption of this amendment in the manner provided by this order is necessary and appropriate for the administration and enforcement of the code.

(3) Any delay in the effective date of this final-omitted rulemaking beyond July 1, 2004, would be impracticable and contrary to the public interest since: (i) it would be inconsistent with the Commonwealth's approved State Plan and, thereby, jeopardize the receipt of Federal matching funds; (ii) it would violate the requirement of section 443.1(5) of the code that the Department calculate and make payments to nursing facility providers consistent with the Commonwealth's approved State Plan; (iii) it would prevent the Department from removing an inherent inconsistency within the Department's regulation which made the regulation impossible to apply for rate-setting beginning July 1, 2004; and (iv) a subsequent effective date would cause disruption to the majority of providers by creating ongoing uncertainty in the rate-setting process.

*Order*

The Department, acting under the authority of sections 201(2), 206(2), 403(b), 443.1(5) and 454 of the code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapter 1187, are amended by amending § 1187.94 to read as set forth in Annex A.

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

(c) The Secretary of the Department shall certify and deposit this order and Annex A with the Legislative Reference bureau as required by law.

(d) This final-omitted rulemaking shall take effect July 1, 2004.

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-496. 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) Effective for rate setting periods commencing July 1, 2004, the Department will use the MSA group classification published by the Federal Office of Management and Budget 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.

(ii) The Department will use the bed complement of the nursing facility on the final day of the reporting period of the most recent audited MA-11 used in the NIS database to classify nursing facilities into one of three bed complement groups.

(iii) The Department will classify each nursing facility into one of the following 12 peer groups:

<i>Peer Group #</i>	<i>MSA Group</i>	<i># Beds</i>
1	A	> or = 270
2	A	120—269
3	A	3—119
4	B	> or = 270
5	B	120—269
6	B	3—119
7	C	> or = 270
8	C	120—269
9	C	3—119
10	non-MSA	> or = 270
11	non-MSA	120—269
12	non-MSA	3—119

(iv) A peer group with fewer than seven nursing facilities will be collapsed into the adjacent peer group with the same bed size. If the peer group with fewer than seven nursing facilities is a peer group in MSA B or MSA C and there is a choice of two peer groups with which to merge, the peer group with fewer than seven nursing facilities will be collapsed into the peer group with the larger population MSA group.

(2) To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program that meet the definition of a special rehabilitation facility into one peer group, peer group number 13. Regardless of the number of facilities in this peer group, the Department will not collapse the peer group of special rehabilitation facilities.

(3) To set net operating prices under the case-mix payment system, the Department will classify the nursing facilities participating in the MA Program that meet the definition of a hospital-based nursing facility into one peer group, peer group number 14. Regardless of the number of facilities in this peer group, the Department will not collapse the peer group of hospital-based nursing facilities.

(4) Once nursing facilities have been classified into peer groups for price setting, the nursing facility costs will remain in that peer group until prices are rebased, unless paragraph (5) applies.

(5) Paragraph (3) sunsets on the date that amendments are effective in Chapter 1163 (relating to inpatient hospital services), to allow for the inclusion of costs previously allocated to hospital-based nursing facilities. Subsequent to the effective date of the amendments to Chapter 1163, the Department will classify hospital-based nursing facilities in accordance with paragraph (1).

[Pa.B. Doc. No. 05-1514. Filed for public inspection August 12, 2005, 9:00 a.m.]

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# 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 \$500,000 in grants under the Year 2006 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 this 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 35 Pa.B. 3428 (June 18, 2005). 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 three comments on the proposed guidelines and conditions. One commentator suggested that the eligibility criteria be based on factors other than the operating budget of the facility, including the number of animals handled. While the Department declines to implement this suggestion, it will reconsider its eligibility guidelines for subsequent years. This year, the Department expanded eligibility to include larger facilities with operating budgets over \$350,000 and will evaluate the available funding to determine further adjustments to the eligibility guidelines. One commentator suggested that the eligibility guidelines include the requirement that the number of stray dogs handled by a facility be dogs originating from this Commonwealth. The Department will incorporate this suggestion. Finally, one commentator requested that in circumstances where a humane society or association for the prevention of cruelty to animals has more than one kennel location, all locations be eligible for individual reimbursement grants. The Department agrees with this suggestion and will incorporate it.

#### Guidelines and Conditions for the Year 2006 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 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. 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. Veterinarian services may not include spay/neuter services.
  - 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 invoice or receipt.

*Humane society or association for the prevention of cruelty to animals (SPCA)*—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 the Dog Law (3 P. S. § 459-102).

*Program*—The Year 2006 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 originating from this Commonwealth 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 the year 2006.

e. Agrees—as a condition of receiving any grant money under the Program—to continue to perform dog control activities and to accept stray or unwanted dogs from the Department's State Dog Wardens performing dog control functions through the year 2006.

f. Has a valid Pennsylvania 2006 "Non Profit" kennel license, and operates only a non-profit kennel at the facility for which grant reimbursement is requested. Facilities which house kennel operations other than a nonprofit facility (such as, boarding kennel and/or commercial kennel) at the same location are not eligible to participate in this program.

g. If the Humane Society/SPCA has a total operating budget of \$350,000 or less for the 2006 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 2006, the maximum grant amount will not exceed \$10,000.

h. If the Humane Society/SPCA has a total operating budget exceeding \$350,000 for the 2006 calendar year or, if its budget is on a basis of other than calendar year, has a total operating budget over \$350,000 for each fiscal year comprising any portion of calendar year 2006, the maximum grant amount will not exceed \$5,000.

i. If the Humane Society/SPCA has more than one kennel location, and if each location maintains a separate operating budget and 2006 PA nonprofit kennel license, each location is eligible according to the requirements of (g) and (h) above.

### 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, 2006 through December 31, 2006. The total reimbursement the Department will pay a grant recipient will not exceed the maximum grant amount. Any 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, 2006 or after December 31, 2006, 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 2005 and in part in 2006, and the grant recipient was also a grant recipient under the Year 2005 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 shall require 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 set forth 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.

v. Verification that, in the event a grant is awarded, the applicant will continue to perform dog control activities, and to accept stray or unwanted dogs from the Department's State Dog Wardens performing dog control functions, through the year 2006.

vi. 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.

vi. The relative contribution of the applicant in terms of the number of stray or unwanted dogs it accepts from the Department's State Dog Wardens performing dog control functions.

### 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, 2006, the grant recipient will: (1) deliver copies of the eligible bills it has paid between January 1 and April 30, 2006; (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, 2006, the grant recipient will: (1) deliver copies of the eligible bills it has paid between May 1 and August 31, 2006; (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, 2007, the grant recipient will: (1) deliver copies of the eligible bills it has paid between September 1 and December 31, 2006; (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. 05-1515. Filed for public inspection August 12, 2005, 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 9, 2002 (P. L. 1572, No. 207), known as the Credit Union Code, has taken the following action on applications received for the week ending August 2, 2005.

### BANKING INSTITUTIONS

#### Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
7-25-05	Community State Bank of Orbisonia Orbisonia Huntingdon County	307 North Church Street Three Springs Huntingdon County	Opened
7-27-05	First Savings Bank of Perkasio Perkasie Bucks County	219 South Ninth Street Perkasie Bucks County	Filed
8-1-05	Orrstown Bank Shippensburg Cumberland County	3045 Market Street Camp Hill Cumberland County	Opened
8-1-05	East Penn Bank Emmaus Lehigh County	4510 Bath Pike Hanover Township Northampton County	Filed

#### Branch Relocations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
7-29-05	ESB Bank Ellwood City Lawrence County	<i>To:</i> 1552 Beechview Avenue Pittsburgh Allegheny County  <i>From:</i> 1609 Broadway Avenue Pittsburgh Allegheny County	Filed

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-2-05	Penn Liberty Bank Wayne Delaware County	<i>To:</i> 472 Norristown Road Blue Bell Montgomery County  <i>From:</i> 649 West Germantown Pike Plymouth Meeting Montgomery County	Approved

**SAVINGS INSTITUTIONS**

No activity.

**CREDIT UNIONS**

No activity.

A. WILLIAM SCHENCK, III,  
*Secretary*

[Pa.B. Doc. No. 05-1516. Filed for public inspection August 12, 2005, 9:00 a.m.]

**DEPARTMENT OF ENVIRONMENTAL PROTECTION****Applications, Actions and Special Notices****APPLICATIONS**

**THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT  
APPLICATIONS FOR NATIONAL POLLUTION DISCHARGE ELIMINATION  
SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM)  
PERMITS**

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

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N ?</i>
PA0055697	TAD Facilities, Ltd. 628 Telegraph Road P. O. Box 199 Coatesville, PA 19320	Chester County West Caln	West Branch Brandywine Creek	Y
PA0031666	Concord Country Club P. O. Box 68 Concordville, PA 19331	Delaware County Concord Township	UNT to West Branch Chester Creek	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA-0031917	Blue Mountain School District P. O. Box 188 Orwigsburg, PA 17961-0188	Schuylkill County North Manheim Township	Mahoney Creek CWF Watershed 3A	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N ?</i>
PA0111317	Karyn Smithbauer 618 Academy Street Boalsburg, PA 16821	Centre County Harris Township	UNT to Spring Run	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N ?</i>
PA0030686	Cross Creek Resort R. D. 3, P. O. Box 188 Titusville, PA 16354	Cherrytree Township Venango County	UNT to Cherrytree Run 16-E	Y
PA0221554	Gateway Commerce Center LP 1605 Old Route 18 Wampum, PA 16157-9802	New Beaver Borough Lawrence County	UNT to Beaver River 20-B	Y

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

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**PA0011436**, Industrial Waste, SIC 3317, **Handy & Harman Tube Company, Inc.**, 701 West Township Line Road, Norristown, PA 19403-4629. This existing facility is located in East Norriton Township, **Montgomery County**.

Description of Proposed Activity: Renewal of NPDES permit to discharge seasonal noncontact cooling water, treated groundwater from onsite recovery wells, TCE and rainwater from off-loading area, groundwater infiltration and stormwater runoff to a UNT to Stony Creek. Following treatment through an air stripper, treated groundwater and TCE and rainwater from an off-loading dock are monitored internally at Internal Monitoring Point (IMP) 101 before combining with noncontact cooling water, groundwater infiltration and additional stormwater runoff monitored at Outfall 001.

The receiving stream, Stony Creek, is in the State Water Plan watershed 3F and is classified for: TSF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for PA America Water Company is located on Schuylkill River, approximately 4.4 miles below the point of discharge.

The proposed effluent limits for IMP 101 are based on a design flow of 0.016 mgd.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum (mg/l)</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	
Chloroform			0.086		0.22
Tetrachloroethylene			0.01		
1,1,1-Trichloroethane			Monitor		0.025
Trichloroethylene			0.0097		
Zinc			Monitor		
Influent Trichloroethylene			Monitor		0.024

The proposed effluent limits for Outfall 001 are based on a design flow of 0.017 mgd.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum (mg/l)</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	
Temperature					90°F
pH (Std Units)			6.0, I-min.		
Total Dissolved Solids			Monitor		9.0

The proposed effluent limits for Outfall 001 are based on a design flow of an average storm event.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		<i>Instantaneous Maximum (mg/l)</i>
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Semi-Annual</i>	<i>Maximum Daily</i>	
CBOD <sub>5</sub>			Monitor	Monitor	
COD			Monitor	Monitor	
Oil and Grease			Monitor	Monitor	
pH (Std Units)			Monitor	Monitor	
Total Suspended Solids			Monitor	Monitor	
Trichloroethylene			Monitor	Monitor	
Zinc, Total			Monitor	Monitor	
Iron, Total			Monitor	Monitor	
Total Phosphorus			Monitor	Monitor	
Copper, Total			Monitor	Monitor	
Chromium, Total			Monitor	Monitor	
Lead, Total			Monitor	Monitor	
Cadmium, Total			Monitor	Monitor	
Arsenic, Total			Monitor	Monitor	

In addition to the effluent limits, the permit contains the following major special conditions:

1. Remedial Measures if Public Nuisance.
2. Right to Modify Permit.
3. No Chemical Addition.
4. Change of Ownership.
5. Proper Sludge Disposal.
6. Groundwater Summary Reports.
7. No Discharge of Stripper Tower Cleaning Wastewater.
8. Monitor System.
9. I-Maximum Limitations.
10. Stormwater Requirements.
11. Groundwater Monitoring.

The EPA waiver is in effect.

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

**Application No. PA 0026743**, Sewage, **City of Lancaster**, 120 North Duke Street, Lancaster, PA 17608. This facility is located in Lancaster City, **Lancaster County**.

Description of activity: The application is for renewal of an NPDES permit for existing discharge of treated sewage.

The receiving stream, Conestoga River, is in Watershed 7-J, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Holtwood Power Plant is located on the Susquehanna River, approximately 22 miles downstream. The discharge is expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 29.73 (Interim) and 32.08 (Final) mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	15	22.5	30
(11-1 to 4-30)	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	2.5		5
(11-1 to 4-30)	7.5		15
NO <sub>2</sub>		Monitor	
NO <sub>3</sub>		Monitor	
Total Kjeldahl Nitrogen		Monitor	
Total Nitrogen		619,048 lbs per year	
Total Phosphorus		77,381 lbs per year	
Total Phosphorus	2		4
Total Residual Chlorine	0.14		0.44
Dissolved Oxygen		minimum of 5.0 at all times	
pH		from 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		2,000/100 ml as a geometric average	

Individuals may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is not in effect.

**Application No. PA 0026743**, Sewage, **City of Lancaster**, 120 North Duke Street, Lancaster, PA 17608. This facility is located in Lancaster City, **Lancaster County**.

Description of activity: The application is for renewal of an NPDES permit for existing discharge of treated sewage.

The receiving stream, Conestoga River, is in Watershed 7-J, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Holtwood Power Plant is located on the Susquehanna River, approximately 22 miles downstream. The discharge is expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 29.73 (Interim) and 32.08 (Final) mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	15	22.5	30
(11-1 to 4-30)	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	2.5		5
(11-1 to 4-30)	7.5		15
NO <sub>2</sub>		Monitor	
NO <sub>3</sub>		Monitor	
Total Kjeldahl Nitrogen		Monitor	
Total Nitrogen		619,048 lbs per year	
Total Phosphorus		77,381 lbs per year	
Total Phosphorus	2		4
Total Residual Chlorine	0.14		0.44
Dissolved Oxygen		minimum of 5.0 at all times	
pH		from 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a geometric average	
(10-1 to 4-30)		2,000/100 ml as a geometric average	

Individuals may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is not in effect.

**Application No. PA 0247651**, Stormwater, SIC Code 4515, **UPS**, 1821 South 19th Street, Harrisburg, PA 17104. This facility is located in Armagh Township, **Mifflin County**.

Description of activity: The application is for issuance of an NPDES permit for a new discharge of stormwater.

The receiving stream, UNT Tea Creek, is in Watershed 12-A and classified for HQ-CWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake is Newport Borough located on the Juniata River. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 and 002:

<i>Parameter</i>	<i>Concentration (mg/l)</i>	
	<i>Instantaneous Maximum</i>	
CBOD <sub>5</sub>	Monitor and Report	
COD	Monitor and Report	
Oil and Grease	Monitor and Report	
pH	Monitor and Report	
Total Suspended Solids	Monitor and Report	
Total Iron	Monitor and Report	

In addition to the effluent limits, the permit contains the following major special condition:

- The facility may conduct an annual inspection in lieu of sampling.

Individuals may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is in effect.

**Application No. PA 0020591**, Sewage, **Mount Gretna Authority**, 101 Chautaugua Drive, Mount Gretna, PA 17064. This facility is located in South Londonderry Township, **Lebanon County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Conewago Creek, is in Watershed 7-G and classified for TSF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Elizabethtown Water Company is located on the Conewago Creek, approximately 10 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.2 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	4		8
(11-1 to 4-30)	12		24
NO <sub>2</sub>		Monitor	
NO <sub>3</sub>		Monitor	
TKN		Monitor	
Total Nitrogen	9,741 pounds per year annual average		
Total Phosphorus	1,217 pounds per year annual average		
Dissolved Oxygen	minimum of 5.0 at all times		
pH	from 6.0 to 9.0 inclusive		
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a geometric average		
(10-1 to 4-30)	4,000/100 ml as a geometric average		
Total Copper		Monitor	
Dissolved Copper		Monitor	

Individuals may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver is not in effect.

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

**PA0228931**, Residential, **Kathleen D. Weaver and Robert L. Martin**, 2495 Valley View Road, Bellefonte, PA 16823. This proposed facility is located in Benner Township, **Centre County**.

Description of Proposed Activity: Single residence system consisting of a septic tank, effluent filter, peat filter and ultraviolet disinfection.

The receiving stream, UNT to Buffalo Run, is in the State Water Plan watershed 9C and is classified for: High quality, CWF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for Pennsylvania American Water Company is located on West Branch Susquehanna River in Milton.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0004 mgd.

Parameter	Concentration (mg/l)			
	Minimum	Average Monthly	Maximum Daily	Instantaneous Maximum (mg/l)
BOD <sub>5</sub>		10		20
TSS		10		20
pH	6.0			9.0
Total Residual Chlorine (TRC)*		Monitor and Report		
Fecal Coliforms		200/100 ml		

\*If chlorine is used, it must be monitored.

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

**PA0239593**, Sewage, **Donald Ferri SFTF**, 625 Burkhart Avenue, Erie, PA 16511. This proposed facility is located at 7351 Williams Road in North East Township, **Erie County**.

Description of Proposed Activity: The applicant requests an NPDES permit for the discharge of treated domestic sewage from an SFTF serving a single dwelling. Treatment consists of a septic tank, dosing tank, sand filter, chlorine disinfection and dechlorination.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride, phenolics, sulfate and chloride, there is no downstream potable water supply to consider between the discharge and Lake Erie.

The receiving stream, Twelve Mile Creek, is in the Lake Erie watershed and classified for HQ-CWF, MF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0005 mgd.

Parameter	Concentrations		
	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Flow	monitor and report		
CBOD <sub>5</sub>	10		20
Total Suspended Solids	10		20
Total Residual Chlorine	1.4		3.3
Fecal Coliform	200/100ml as a geometric average		
pH	6.0 to 9.0 standard units at all times		

The EPA waiver is in effect.

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

**PA0020435**, Sewage, **Little Washington Wastewater Company**, 762 West Lancaster Avenue, Bryn Mawr Borough, Luzerne County. This proposed facility is located in White Haven Borough, **Luzerne County**.

Description of Proposed Activity: Expansion of the existing wastewater treatment NPDES Permit.

The receiving stream, Lehigh River, is in the State Water Plan watershed 2A and is classified for HQ and CWF. The nearest downstream public water supply intake for the City of Hazleton is located on the Lehigh River, approximately 10.4 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.600.

Parameter	Concentrations		
	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
CBOD <sub>5</sub>			
(5-1 to 10-31)	17	26	34
(11-1 to 4-30)	20	40	50
Total Suspended Solids	21	32	42
NH <sub>3</sub> -N			
(5-1 to 10-31)	3		6
(11-1 to 4-30)	9		18
Dissolved Oxygen	a minimum of 5.0 mg/l at all times		
Fecal Coliform	200/100 ml as a geometric mean		
(5-1 to 9-30)	2,000/100 ml as a geometric mean		
(10-1 to 4-30)	6.0 to 9.0 standard units at all times		
pH	6.0 to 9.0 standard units at all times		
Total Residual Chlorine	0.5		1.0

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


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*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**WQM Permit No. 0905401**, Sewerage, **Warrington Township Water & Sewer Department**, 1585 Turk Road, Warrington, PA 18976. This proposed facility is located in Warrington Township, **Bucks County**.

Description of Action/Activity: Construction and operation of a sewage grinder pump for a lot residential subdivision.

**WQM Permit No. 1505403**, Sewerage, **New Garden Township**, 299 Starr Road, Landenberg, PA 19350. This proposed facility is located in New Garden Township, **Chester County**.

Description of Action/Activity: Installation of a new force main for existing PS No. 4 to divert sewage from Shangri-LA to East End WWTP.

**WQM Permit No. 1505404**, Sewerage, **New Garden Township**, 299 Starr Road, Landenberg, PA 19350. This proposed facility is located in New Garden Township, **Chester County**.

Description of Action/Activity: Installation of new pump in the irrigation wet well at the existing East End WWTP and new a force main at the Kennett Square Treatment Plant.

**WQM Permit No. 1505410**, Sewerage, **East Fallowfield Township**, 2264 Strasburg Road, East Fallowfield, PA 19320. This proposed facility is located in East Fallowfield Township, **Chester County**.

Description of Action/Activity: Construction and operation of a sewage pump station and 4" force main for 21 single family residents.

**WQM Permit No. 1505411**, Sewerage, **Uwchlan Township**, 715 North Ship Road, Exton, PA 19341-1940. This proposed facility is located in Uwchlan Township, **Chester County**.

Description of Action/Activity: Construction and operation of a low pressure sanitary sewer system.

**WQM Permit No. 1505413**, Sewerage, **London Grove Township Municipal Authority**, 372 Rosehill Road, Suite 300, West Grove, PA 19390. This proposed facility is located in London Grove Township, **Chester County**.

Description of Action/Activity: Construction and operation of a sewage pump station and force main.

**WQM Permit No. 0905407**, Sewerage, **Warrington Township**, 1585 Turk Road, Warrington, PA 18976. This proposed facility is located in Warrington Township, **Bucks County**.

Description of Action/Activity: Construction and operation of a sewage pumping station, force main and gravity main for land development.

**WQM Permit No. 4605407**, Sewerage, **Franconia Sewer Authority**, 671 Allentown Road, Box 128, Franconia, PA 18924. This proposed facility is located in Franconia Township, **Montgomery County**.

Description of Action/Activity: Construction and operation of a sanitary pump station and force main to serve a ten lot subdivision.

**WQM Permit No. 2305404**, Sewerage, **Chadds Ford Township**, 10 Station Way Road, P. O. Box 181, Chadds Ford, PA 19317. This proposed facility is located in Chadds Ford Township, **Delaware County**.

Description of Action/Activity: Construction and operation of a wastewater treatment plant to serve Chadds Ford Village.

**WQM Permit No. 4605411**, Sewerage, **New Hanover Township Authority**, 2943 North Charlotte Street, Gilbertsville, PA 19525. This proposed facility is located in New Hanover Township, **Montgomery County**.

Description of Action/Activity: Construction and operation of a sanitary sewer interceptor.

**WQM Permit No. 4605412**, Sewerage, **Limerick Township Municipal Authority**, P. O. Box 29, Royersford, PA 19468. This proposed facility is located in Limerick Township, **Montgomery County**.

Description of Action/Activity: Construction and operation of a sanitary pump station.

**WQM Permit No. 4605413**, Sewerage, **Spring Ford Area School District**, 199 Bechtel Road, Collegeville, PA 19426-2852. This proposed facility is located in Limerick Township, **Montgomery County**.

Description of Action/Activity: Construction and operation of a pump station for Elementary School.

**WQM Permit No. 4605414**, Sewerage, **Upper Pottsgrove Township**, 1409 Farmington Avenue, Pottstown, PA 19464. This proposed facility is located in Upper Pottsgrove Township, **Montgomery County**.

Description of Action/Activity: Installation of a new 10" PVC sewer line and a 6" force main.

**WQM Permit No. 4605415**, Sewerage, **Upper Pottsgrove Township**, 1409 Farmington Avenue, Pottstown, PA 19464. This proposed facility is located in Upper Pottsgrove Township, **Montgomery County**.

Description of Action/Activity: Installation of a new 18" PVC pipe.

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

**WQM Permit No. 4805404**, Sewerage, **Palmer Township Municipal Sewer Authority**, 3 Weller Place, P. O. Box 3039, Palmer, PA 18043. This proposed facility is located in Palmer Township, **Northampton County**.

Description of Proposed Action/Activity: This project is for the construction of an extension to the Shoeneck Creek Interceptor and the elimination of the Palmer Township Municipal Sewer Authority's Danforth Drive Pumping Station.

The wastewater will be conveyed to the Easton Area Joint Sewer Authority wastewater treatment plant by means of the Palmer Township Municipal Sewer Authority's Shoeneck Creek Interceptor and downstream conveyance facilities in the City of Easton.

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

**WQM Permit No. WQM 1405404**, Sewerage, **Kathleen Weaver and Robert Martin**, 2495 Valley View Road, Bellefonte, PA, 16823. This proposed facility is located in Benner Township, **Centre County**.

Description of Proposed Action/Activity: Permit application for the construction of a Small Flows Treatment Facility incorporating a peat filter for a single residence.

**WQM Permit No. 1405403**, Sewerage 4952, **Paul S. and Leslie A. Roberts**, 265 Maurer Road, Julian, PA 16844. This proposed facility is located in Huston Township, **Centre County**.

Description of Proposed Action/Activity: The applicant proposes to construct and operate a single residence sewage plant. The sewage plant will be a septic tank, buried sand filter and chlorination.

#### **IV. NPDES Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)**

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>	<i>DEP Protocol (Y/N)</i>
PAI132244	Jessup Borough 395 Lane St. Jessup, PA 18434	Lackawanna	Jessup Borough	Lackawanna River HQ-CWF Grassy Island Creek CWF Sterry Creek CWF	Y
PAI132245	Jermyn Borough 440 Jefferson Ave. Jermyn, PA 18433	Lackawanna	Jermyn Borough	Lackawanna River HQ-CWF Rush Brook CWF Callender Gap Creek CWF Aylesworth Creek CWF	Y

#### **V. Applications for NPDES Waiver Stormwater Discharges from Municipal Separate Storm Sewer Systems (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 &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011505054	St. Peter's Pikeland United Church c/o IMC construction 9 Old Lincoln Highway Suite 300 Malvern, PA 19355	Chester	East Pikeland Township	Pigeon Run (HQ-TSF)
PAI011505053	Owen J. Robert School District 901 Ridge Road Pottstown, PA 19465-8402	Chester	West Pikeland Township	Birch Run (EV)

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

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023905023	Gateway Land Development 188 Jefferson St. Emmaus, PA 18049	Lehigh	Weisenberg Township	Jordan Creek HQ-CWF, MF
PAI023905024	Robert Bender Heritage Bldg. Group, Inc. 2500 York Rd. Jamison, PA 18929	Lehigh	Upper Macungie Township	Spring Creek HQ-CWF

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI023905025	Chris Canavan Prospect Acquis. 404 Sumneytown Pike Suite 200 North Wales, PA 19454	Lehigh	Upper Milford Township	Leibert Creek HQ-CWF

*Northampton County Conservation District: Greystone Bldg., Gracedale Complex, Nazareth, PA 18064-9211, (610) 746-1971.*

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI024805019	Nic Zawarski & Sons Attn: Martin Zawarski 1441 Linden Street Bethlehem, PA 18018	Northampton	Palmer Township	Bushkill Creek HQ-CWF

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

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI032105009	Silver Spring Square II, LLC 150 Monument Road Bala Cynwyd, PA 19004	Cumberland	Silver Spring and Hampden Townships	Trindle Spring Run/HQ and Quarry to Conodoguinet Creek/WWF
PAI033104003	Petersburg Water Authority P. O. Box 257 Petersburg, PA 16669	Huntingdon	Logan Township	Reed's Run, Tributary to Shaver Creek Tributary to Juniata River/HQ-CWF

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

*Centre County Conservation District: 414 Holmes Ave., Suite 4, Bellefonte, PA 16823 (814) 355-6817.*

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI041405005	Omar Ahmed Nittany Express, Inc. 2526 Shingleton Road State College, PA 16801	Centre	Benner Township	UNT Buffalo Run HQ-CWF

*Tioga County Conservation District: 50 Plaza Lane, Wellsboro, PA 16901, (570) 724-1801, Ext. 101.*

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI0415905001	Michael Harris 377 Landis Lane Liberty, PA 16930	Tioga	Liberty Township	Zimmerman Creek HQ-CWF

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

*Westmoreland County Conservation District: Center for Conservation Education, 211 Donohue Road, Greensburg, PA 15601, (724) 837-5271).*

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI056505005	Ed Schmidt R. R. 2, Box 164-A Route 66 N Export, PA 15632	Westmoreland	Washington Township	Beaver Run Reservoir (HQ)

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

*Conservation District: Crawford County, Woodcock Creek Nature Center; 21742 German Road, Saegertown, PA 16433.*

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI062005001	Conneaut Lake Area Youth Soccer 10915 State Highway 18 Conneaut Lake, PA 16316	Crawford	Summerhill Township	Inlet Run HQ-WWF



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

PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (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**

*Central Office: Bureau Director, Water Standards and Facility Regulation, P. O. Box 8467, Harrisburg, PA 17105-8467.*

**Permit No. 9996537, Public Water Supply.**

Applicant	<b>Alaska Beverages, Inc.</b>
Township or Borough	St. Eustache, Quebec, Canada
Responsible Official	Valerie Pedneault, Quality Control Manager
Type of Facility	Out-of-State Bottled Water System

Application Received Date	July 29, 2005
Description of Action	Applicant requests Department approval to sell bottled water in this Commonwealth under the brand names: Alaska Natural Spring Water, Brooks Natural Spring Water and Eckerd Natural Spring Water.

**Permit No. 9996536, Public Water Supply.**

Applicant	<b>Nature's Nectar Spring Water, Inc.</b>
Township or Borough	Avoca, NY
Responsible Official	William Brewer, President
Type of Facility	Out-of-State Bottled Water System
Application Received Date	July 12, 2005
Description of Action	Applicant requests Department approval to sell bottled water in this Commonwealth under the brand name Nature's Nectar Spring Water.

**WATER ALLOCATIONS**

**Applications received under the act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of this Commonwealth**

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

**WA58-210B, Water Allocations. Pennsylvania American Water Company (PAWC—Montrose District), 100 North Pennsylvania Avenue, Wilkes-Barre, PA 18701.** Service area includes the Borough of Montrose and portions of Bridgewater Township, **Susquehanna County**. PAWC is requesting the right to renew an existing allocation permit to continue to withdraw 550,000 gpd from an intake on Lake Montrose, Bridgewater Township, Susquehanna County.

*Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.*

**WA 28-631C, Water Allocations. Bear Valley Franklin County Pennsylvania Joint Authority, Franklin County.** Water allocation request for the right to purchase up to 820,000 gallons per day from the Borough of Chambersburg, based on a 30-day average. Consulting Engineer: David R Knapton, Gannett Fleming, Inc. Date Application Received: 7/5/2005.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

### PREAMBLE 1

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**Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

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Sections 302—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:

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Charles Chips Facility, West Hempfield Township, Lancaster County.** Weston Solutions, Inc., 1400 Weston Way, West Chester, PA 19380, on behalf of QVC, Inc. 1200 Wilson Drive, Studio Park, West Chester, PA 19380 and Regency V, LP, 1899 Lititz Pike, Lancaster, PA 17601, submitted a Combined Remedial Investigation and Final Report concerning remediation of site soils and groundwater contaminated with No. 2 fuel oil, diesel fuel, PAHs, chlorinated solvents and other organics. The report is intended to document remediation to the Site Specific Standard.

**Lime Springs Farm, East Hempfield and West Hempfield Townships, Lancaster County.** GCI Environmental Services, 1250 East King Street, Lancaster, PA 17602, on behalf of Marilyn Berger, 22 D East Roseville Road, Lancaster, PA 17601 and Stauffer Charitable Trust, 901 Roherstown Road, Lancaster, PA 17601, submitted a Final Report concerning remediation of site soils contaminated with No. 2 fuel oil. The report is intended to document remediation of the site to the residential Statewide Health Standard.

**PPL Pole No. 42554S35335, Heidelberg Township, Lebanon County.** PPL Services Corporation, Two North Ninth Street, Allentown, PA 18101-1179 submitted a Final Report within 90 days of a release concerning remediation of site soils contaminated with PCBs. The report is intended to document remediation of the site to the Statewide Health Standard

### INFECTIOUS AND CHEMOTHERAPEUTIC WASTE TRANSPORTER LICENSES

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**Applications received or withdrawn under the Solid Waste Management (35 P. S. §§ 6018.101—6018.1003) and the act of June 28, 1988 (P. L. 525, No. 93) (35 P. S. §§ 6019.1—6019.6) and regulations to transport infectious and chemotherapeutic waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

#### *New Application Received*

**Commodore Medical Services of Pennsylvania, LLC.,** 1941 Cement Plant Road, Nashville, TN 37208. Received on July 21, 2005.

#### *Renewal Applications Received*

**York Hospital,** 1001 S. George Street, York, PA 17405. **License No. PA-HC 0017.** Received on June 30, 2005.

**Carlucci Construction Company, Inc.,** 401 Meadow Street, Cheswick, PA 15024. **License No. PA-HC 0015.** Received on July 6, 2005.

**Abington Memorial Hospital,** 1200 Old York Road, Abington, PA 19001-3720. **License No. PA-HC 0095.** Received on July 25, 2005.

### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

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**Application received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and Regulations to Operate Solid Waste Processing or Disposal Area or Site.**

*Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Permit No. 101509, New Morgan Landfill Company, Conestoga Landfill**, New Morgan Borough, Berks County, application for expansion (Disposal Area 1). On November 19, 2002, the Department held a local municipal involvement meeting which resulted in a negotiated time frame for the review of application for expansion. Due to compliance issues, the application review was suspended until June 17, 2005, when a new local municipal involvement process meeting was held. Conestoga landfill revised the application decreasing the average daily volume from 7,210 tons/day to 5,210 tons/day, with subsequent operational and environmental assessment revisions. The Department, applicant and New Morgan Borough negotiated a new application review timeline at that meeting. The amount of time negotiated to review the revised application is 375-calendar days starting from June 17, 2005. This time period does not include the applicant's response time.

## 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 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.**

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

**56-00284B: Quecreek Mining Inc.** (1576 Stoystown Road, Friedens, PA 15541) to increase throughput for the dry-screening operation and associated sources at Quecreek No. 1 Mine in Lincoln Township, **Somerset County**.

**56-00210A: PBS Coals, Inc.** (1576 Stoystown Road, Friedens, PA 15541) to install coal processing equipment at Cambria Preparation Plant in Stonycreek Township, **Somerset County**.

**Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.**

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**40-399-024: Mission Foods—GRUMA Corp.** (15 Elmwood Avenue, Mountaintop, PA 18707) for construction of snack food processing operations at their facility in Wright Township, **Luzerne County**. The construction involves installation of several small combustion sources fired with natural gas, each having rated capacity of less than 2.5 mmBtus per hour. Six bulk storage silos equipped with a high efficiency dust collector will be installed as a part of this application. Expected NOx and CO emissions are less than 1.5 tpy. The company will operate the facility and maintain the system in accordance with the good engineering practices to assure proper operation of the system. The Plan Approval and Operating permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within applicable air quality requirements.

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

**06-03124: James Hardie Building Products, Inc.** (Excelsior Industrial Park, 318 June Avenue, Blandon, PA 19510) for installation of a surface coating (painting) line in their Maiden Creek Township, **Berks County** facility. This facility will have a potential to emit 33 tons per year of VOCs. Actual emissions are expected to be 12 tons per year of VOCs. The plan approval will include monitoring, recordkeeping and reporting requirements designed to keep the sources operating within all applicable air quality requirements.

*Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-7584.*

**AMS 05033: United States Postal Service—Philadelphia Processing and Distribution Center** (7500 Lindbergh Ave., Philadelphia, PA 19153) for installation of 2 7.32 mmBtu/hr Cleaver-Brooks natural gas fired boilers, a 3.35 mmBtu/hr Cleaver-Brooks natural gas fired boiler, a 75,000 Btu/hr Modine natural gas fired heater, 17 60,000 Btu/hr Modine natural gas fired heaters, 18 45,000 Btu/hr Modine natural gas fired heaters, 16 30,000 Btu/hr Modine natural gas fired heaters, 2 399,000 Btu/hr PVI natural gas fired hot water heaters, 3 199,000 Btu/hr PVI natural gas fired hot water heaters, a 300,000 Btu/hr Trane natural gas fired air handling unit and a 300 kW Caterpillar diesel fired emergency generator. Potential emissions from the facility are 12.78 tons of NOx per rolling 12-month period. The plan approval will contain operating and recordkeeping requirements to ensure operation within all applicable requirements.

#### OPERATING PERMITS

#### **Intent to Issue Title V Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.*

**3-00037: Sunoco Partners Marketing and Terminals, LP—Fort Mifflin Terminal** (1801 Market Street, Philadelphia, PA 19103-1699) this action is a renewal of the Title V Operating Permit located in Tinicum Township, **Delaware County**. The initial permit was issued on August 30, 2000, and was amended on November 5, 2002, for a change of ownership. The facility is a marine terminal for loading and unloading tankers and barges containing various petroleum products. No changes have taken place at this facility that were not previously permitted. The renewal contains applicable requirements including monitoring, recordkeeping and reporting. The sources at this facility are not subject to Compliance Assurance Monitoring under 40 CFR Part 64.

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

**37-00243: INMETCO** (245 Portersville, Ellwood City, PA 16117) for a Title V Operating Permit Reissuance to operate a secondary nonferrous metals recovery facility, in Ellwood City Borough, **Lawrence County**.

*Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215)-685-7584.*

**V05-007: Sun Chemical** (3301 Hunting Park Avenue, Philadelphia, PA 19132) for operation of a printing ink manufacturing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emissions' sources include 14 mixers, 6 mills, 21 mixing and storage tanks, 2 dispensing units, 1 transfer operation, a 2.5 mmBtu/hr natural gas-fired boiler, a 1.49 mmBtu/hr natural gas-fired air handling unit and a 1.44 mmBtu/hr natural gas-fired air handling unit. The facility's air emission control devices include three dust collectors.

The operating permit will be issued under the 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS,

321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener (215) 685-9426.

Persons who wish to file protests or comments on the operating permit must submit the protests or comments within 30 days from the date of this notice. Any protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least 30 days before the hearing.

#### **Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428, Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.*

**23-00105: Hanson Aggregates PA, Inc.** (523 West Forge Road, Glen Mills, PA 19342) for operation of a hot mix asphalt plant, a recycled asphalt pavement plant and a portable nonmetallic mineral processing plant, which have the potential to emit major levels of particulate matter before taking limitations in Middletown and Thornbury Townships, **Delaware County**. This is a non-Title V Facility, State-only, Synthetic Minor Operating Permit. The permit will include monitoring, recordkeeping, reporting and work practice standards designed to keep the facility operating within applicable air quality requirements.

**23-00024: Hanson Aggregates PA, Inc.** (523 West Forge Road, Glen Mills, PA 19342) for operation of an aggregate processing plant (quarry) and a portable non-metallic mineral processing plant, which have the potential to emit major levels of particulate matter before taking limitations in Middletown and Thornbury Townships, **Delaware County**. This is a non-Title V Facility, State-only, Synthetic Minor Operating Permit. The permit will include monitoring, recordkeeping, reporting and work practice standards designed to keep the facility operating within applicable air quality requirements.

**9-00182: Armoloy Co. of Philadelphia** (1105 Miller Avenue, Croydon, PA 19020) for operation of their hard chrome plating specialties facility in Bristol Township, **Bucks County**. The permit is for a non-Title V (State-only) facility. The facility's main sources include: two small hard chrome plating baths, exhausted to a Horizontal Scrubber. The source is subject to the Federal National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR Part 63). The permit will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within applicable air quality requirements.

**09-00068: Orchard Hill Memorial Park, Inc. d/b/a Abbey Glen** (80 Kelly Road, Quakertown, PA 18951) for individual and bulk animal cremation services in Richland Township, **Bucks County**. This is a non-Title V Facility, State-only, Synthetic Minor Operating Permit. The facility's major emission points are three crematoriums, from which the main pollutant emitted is NOx. To avoid being a major source of NOx emissions, the facility has proposed to limit the hours of operation for each crematorium so that the NOx emissions from the facility will not exceed 21.9 tons per year. The permit will contain

monitoring, recordkeeping, reporting and work practice standards designed to keep the facility operating within applicable air quality requirements.

**09-00019: Miller and Son Paving, Inc.** (887 Mill Creek Road, Rushland, PA 18956) to quarry and crush stone and produce hot asphalt in Wrightstown Township, **Bucks County**. This is a non-Title V Facility, State-only, Synthetic Minor Operating Permit. The company quarries stone and crushes it into different grades (sizes) for sale to various industries, and also uses it to produce hot mix asphalt (HMA) for use in road construction. The facility's major emission points are a stone crushing plant, from which the main pollutant emitted is particulate matter (PM), and a batch HMA plant, from which the main pollutants emitted are PM and NOx. To control PM emissions, the facility routes emissions from both plants to dedicated baghouses, and uses water sprays to suppress fugitive PM emissions from the stone crushing plant. To avoid being a major source of NOx emissions, the facility has proposed to limit the HMA production for the batch HMA plant such that the NOx emissions from the facility will not exceed 24.9 tons per year. The permit will contain monitoring, recordkeeping, reporting and work practice standards designed to keep the facility operating within all applicable air quality requirements.

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

**06-03011: Joseph D. Giles Funeral Home, Inc.** (21 Chestnut St, Mohnton, PA 19540) to operate two human crematories controlled by secondary combustion chambers in the Borough of Mohnton, **Berks County**. The facility is not subject to Title V State-only operating permit. The renewal will include restrictions, monitoring, work practices, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

**21-05040: Valley Quarries, Inc.** (P. O. Box J, Chambersburg, PA 17201) for renewal of their synthetic minor operating permit for their Shippensburg plant at Southampton Township, **Cumberland County**. The facility's major sources of emissions include rock crushing operations and a portable asphalt plant, which primarily emit particulate matter and VOC. The facility emissions of PM and VOC shall be limited at less than 100 and 50 tons per year respectively. The State-only operating permit will contain restrictions, work practice standards, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

**36-05137: B and S Woodcrafts** (722 Truce Road, Quarryville, PA 17566) for operation of two spray paint booths in Providence Township, **Lancaster County** facility. Actual emissions are expected to be 14 tons per year of VOCs. The operating permit will contain testing, monitoring, recordkeeping and reporting requirements, emission restrictions and work practice standards designed to keep the facility operating within all applicable air quality requirements.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.*

**17-00021: West Branch Area School District** (356 Allport Cutoff, Morrisdale, PA 16858) for operation of their junior/senior high school in Morris Township, **Clearfield County**.

The school incorporates two 9.165 million Btu per hour No. 2 fuel oil-fired boilers, two .245 million Btu per hour No. 2 fuel oil-fired boilers, two .105 million Btu per hour No. 2 fuel oil-fired water heaters and a 465 brake horsepower diesel-fired generator. The air contaminant emissions from the facility are not expected to exceed 54.23 tons of SOx, 18.67 tons of NOx, 7.83 tons of CO, 6.88 tons of VOCs and 1.41 tons of PM10 per year.

The facility is not a major (Title V) facility for any air contaminant.

The Department of Environmental Protection (Department) proposes to incorporate into the operating permit to be issued conditions requiring compliance with all applicable regulatory requirements pertaining to air contamination sources and the emission of air contaminants. The Department also plans to incorporate a condition requiring certification of the sulfur content of all No. 2 fuel oil delivered to the facility, a condition limiting the operation of the generator to no more than 1,450 hours in any 12-consecutive month period, of which no more than 600 hours shall occur between May 1 and September 30 of each year, and a condition requiring the maintenance of records of the number of hours the generator operates each month.

**55-00006: Philips Products Co.** (499 West Sassafras Street, Selinsgrove, PA 17870) for operation of a modular home window and door manufacturing facility in Penn Township, **Snyder County**.

The facility consists of a door manufacturing operation, a window manufacturing operation, a wood trim operation, cleanup operations, a solvent parts washer and numerous natural gas-fired space heaters. The particulate matter emissions, including PM10 from the wood trim operation are controlled by a fabric collector. The air contaminant emissions from this facility are not expected to exceed 12.39 tons of particulate matter, including PM10, 5.01 tons of NOx, 4.2 tons of CO, 5.0 tons of VOCs, .40 ton of volatile hazardous air pollutants, .03 ton of SOx and .25 ton of acetone per year.

The facility is not a major (Title V) facility for any air contaminant.

The Department of Environmental Protection (Department) proposes to incorporate into the operating permit to be issued conditions requiring compliance with applicable regulatory requirements pertaining to air contamination sources and the emission of air contaminants as well as the conditions previously established in Operating Permit OP-55-0004 issued on September 10, 1996. These previously-existing conditions include a requirement that the total facility-wide VOC emissions not exceed 5.0 tons per year, a requirement that the seam sealer used in the window manufacturing operation have a VOC content of no greater than .17 pound per gallon, a number of work practice requirements intended to minimize VOC compound loss to the atmosphere during cleanup operations and a requirement that accurate records be maintained of the identity and amount of all VOC-containing materials used at the facility.

The Department additionally proposes to incorporate into the operating permit to be issued conditions requiring the maintenance of records of the identity and amount of all volatile hazardous air pollutant-containing and acetone-containing materials used at the facility.

**59-00016: Pine Hill, Inc.** (Box 62, Blossburg, PA 16912) for operation of a residual waste landfill in Ward Township, **Tioga County**.

The residual waste landfill is used to dispose of foundry sand, stabilized slag and stabilized sludge from Ward Manufacturing, Inc. and ACP Manufacturing Co., LLC. The particulate matter and PM10 emissions from the landfill are not expected to exceed 6.12 and 2.24 tons per year, respectively.

The facility is not a major (Title V) facility for any air contaminant.

The Department of Environmental Protection proposes to incorporate into the operating permit to be issued conditions requiring compliance with applicable regulatory requirements pertaining to air contamination sources and the emission of air contaminants as well as the conditions previously established in Operating Permit 59-399-005A issued on April 5, 1994. These previously-existing conditions include a condition which limits the waste which can be disposed of at the landfill to water-conditioned foundry sand, stabilized slag, stabilized sludge and mixtures of stabilized slag and stabilized sludge and a condition requiring the maintenance of a water truck on site for road dust and landfill surface dust control.

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

**61-00206: Renovex, Inc.** (1028 Stevenson Road, Grove City, PA 16127) for a Natural Minor Permit to operate a surface coating operation in Barkeville Borough, **Venango County**.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-7584.*

**S04-015: Smurfit-Stone Container Corp.** (7701 Edmund Street, Philadelphia, PA 19136) for operation of a paper products manufacturing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include one 600 hp boiler, two cyclones and nine pressers and gluers.

The operating permit will be issued under the 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener at (215) 685-9426.

Persons who wish to file protest or comments on the operating permit must submit the protest or comments within 30 days from the date of this notice. Protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least 30 days before the hearing.

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### PUBLIC HEARINGS

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

**22-02004B: The Hershey Co.** (19 East Chocolate Avenue, Hershey, PA 17033) to receive comments on the proposed Reasonably Available Control Technology Plan and amendment to the State Implementation Plan (SIP) for The Hershey Company manufacturing facility in

Derry Township, **Dauphin County**. The proposed SIP revision does not adopt any new regulations. It incorporates the requirements that include emission limitations for the significant VOC sources at the plant. The Department will hold one public hearing on Wednesday September 21, 2005, at the Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA 17110, from 9 a.m. until all scheduled comments are received. Persons who wish to present testimony should contact Ronald Davis, Southcentral Regional Office at (717) 705-4862. Written comments may be submitted to the Southcentral Regional Office until October 21, 2005.

## COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

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**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).**

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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.

#### *Coal Applications Received*

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

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
PH <sup>1</sup>		greater than 6.0; less than 9.0	

Alkalinity greater than acidity<sup>1</sup>

<sup>1</sup> 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.

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

**30841316 and NPDES Permit No. PA0213535, Consol Pennsylvania Coal Company**, (1525 Pleasant Grove Road, P. O. Box J, Claysville, PA 15323), to revise the permit for the Bailey Mine and Prep Plant in Richhill Township, **Greene County** to install four South No. 4 Airshaft, boreholes, facilities and NPDES discharge point. Surface acres proposed 14.7. Receiving stream: Barney's Run, classified for the following use: WWF. Application received June 22, 2005.

*Greensburg District Mining Office: R. R. 2, Box 603C, Greensburg, PA 15601, (724) 925-5500.*

**65900403 and NPDES Permit No. PA0591866. Hanson Aggregates PMA, Inc.** (2200 Springfield Pike, Connellsville, PA 15425). Revision application for underground mining to an existing large noncoal surface mine, located in Unity and Cook Townships, **Westmoreland County**, affecting 662.5 acres. Receiving streams: UNTs to Nine Mile Run, classified for the following use: WWF. The first potable water supply intake within 10 miles downstream from the point of discharge: Municipal Authority of Westmoreland County. Revision application received: July 25, 2005.

**03990105 and NPDES Permit No. PA0202592. Seven Sisters Mining Co., Inc.** (P. O. Box 300, 200 US Route 22, Delmont, PA 15626-0300). Renewal application for reclamation only of an existing bituminous surface mine, located in South Bend and Burrell Townships, **Armstrong County**, affecting 206.2 acres. Receiving stream: UNT to Fagley Run, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: July 25, 2005.

**03050103 and NPDES Permit No. PA0250759. Duquesne Light Company** (411 Seventh Ave., P. O. Box 1930, Pittsburgh, PA 15219). Application for commencement, operation and reclamation of a bituminous surface mine, located in Monongahela Township, **Greene County**, affecting 43.1 acres. Receiving streams: Sandy Run and Monongahela River, classified for the following use: WWF. Potable water supplies that have intakes within 10 miles downstream from the point of discharge: Dunkard Valley Joint Municipal Water Authority, Masontown Borough and Carmichaels Municipal Authority. Application received: July 6, 2005.

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

**54030103C2 and NPDES Permit No. PA0224367. JETT Contracting Company**, (P. O. Box 243, Brockton, PA 17925), correction to an existing anthracite surface mine operation to add an additional NPDES discharge point in Blythe Township, **Schuylkill County**, receiving stream: Morgan's Run. Application received July 21, 2005.

**54960202C6. City of Philadelphia, Trustee**, (21 South 12th Street, Philadelphia, PA 18107), correction to an existing coal refuse reprocessing operation to include surface mining and blasting in Butler, West Mahanoy and Union Townships, **Schuylkill County** affecting 1,071.0 acres, receiving streams: Shenandoah and Mahanoy Creeks, classified for the following use: CWF. Application received July 25, 2005.

**54773006R4. Reading Anthracite Company**, (P. O. Box 1200, Pottsville, PA 17901), renewal of an anthracite surface mine operation in Cass, Foster and New Castle Townships, **Schuylkill County** affecting 7,500.0 acres, receiving stream: none. Application received July 25, 2005.

#### *Noncoal Applications Received*

##### *Effluent Limits*

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

Parameter	30-day Average	Daily Maximum	Instantaneous Maximum
suspended solids	35 mg/l	70 mg/l	90 mg/l
Alkalinity exceeding acidity <sup>1</sup>			
pH <sup>1</sup>		greater than 6.0; less than 9.0	

<sup>1</sup> The parameter is applicable at all times.

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

*Greensburg District Mining Office: R. R. 2, Box 603C, Greensburg, PA 15601, (724) 925-5500.*

**26950302 and NPDES Permit No. 0201332. Carbon Fuel Resources, Inc.** (P. O. Box 275, West Leisenring, PA 15489). Renewal application for reclamation only of an existing noncoal surface mine, located in Jefferson Township, **Fayette County**, affecting 48 acres. Receiving stream: Redstone Creek, classified for the following use: WWF. The first potable water supply intake within 10 miles downstream from the point of discharge: PA American Water, California Plant. Renewal application received: July 26, 2005.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**14050801. Robert Livergood** (P. O. Box 5, 102 Askey Road, Moshannon, PA 16859), commencement, operation and restoration of a small industrial minerals (Shale) permit in Snow Shoe Township, **Centre County** affecting 5.0 acres. Receiving streams: UNT to Moshannon Creek. Application received: July 25, 2005.

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

**58930801. Frank A. Summa** (R. R. 1 Box 1346, Hop Bottom, PA 18824), Stages I and II bond release for a quarry operation in Lathrop Township, **Susquehanna County** affecting 2.0 acres on property owned by Frank A. Summa. Application received July 20, 2005.

**06010301C2. Berks Products Corporation** (P. O. Box 421, Reading, PA 19603), boundary correction for an existing quarry operation in Maxatawny Township, **Berks County** affecting 38.4 acres, receiving stream: Maiden Creek. Application received July 26, 2005.

**58040595. William C. Burchell** (249B Harford Road, New Milford, PA 18834), Stages I and II bond release for a quarry operation in New Milford Township, **Susquehanna County** affecting 1.0 acre on property owned by David Grizzanti. Application received July 28, 2005.

## 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.*

**E15-741. Kelly Group**, 63 Chestnut Road, Paoli, PA 19301, West Goshen Township, **Chester County**, ACOE Philadelphia District.

To authorize the maintenance of the following activities, which were previously constructed with no permit, in and along the East Branch of Chester Creek (TSF) associated with the proposed Shadeland Woods Residential Subdivision. The site is located approximately 500 feet southwest of the intersection of Boot Road and Phoenixville Pike (Malvern, PA USGS Quadrangle N: 1.5 inches; W: 13.0 inches).

The authorization will include the following:

1. To maintain 94 linear feet of 10-foot by 6-foot precast concrete box culvert and associated fill in and along East Branch of Chester Creek and associated floodplain for the proposed Access Road to the Shadeland Woods Subdivision. Work also includes maintenance of the 8-inch sanitary sewer line, 8-inch water line, 18-inch



storm pipe and electric, telephone and cable conduits under the aforementioned culvert.

2. To maintain 18-inch stormwater outfall structure along the East Branch of Chester Creek located adjacent to the downstream endwall of the proposed box culvert.

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

**E67-776: Dover Township**, 2480 West Canal Road, Dover, PA 17315 in Dover Township, **York County**, ACOE Baltimore District.

To construct and maintain a 5-foot by 40-foot fabricated pedestrian footbridge using existing abutments over a UNT to Fox Run (TSF) located within Brookside Park (Dover, PA Quadrangle N: 40° 0' 7" W: 76° 49' 52") in Dover Township, York County

**E05-323A: South Woodbury Township**, 125 North Road, New Enterprise, PA 16664 in South Woodbury Township, **Bedford County**, ACOE Baltimore District.

Stream crossings c), d), i) and j) of Item 4) of the following project description are proposed to be amended and included in Item 5) to authorize the use of the dry trench method due to complications that arose during previous boring and/or directional drilling attempts:

To construct and maintain approximately 53,000 linear feet of 12-inch, 10-inch, 8-inch and 6-inch wastewater collection sewer and 4,000 linear feet of wastewater force main in South Woodbury Township, **Bedford County**, involving:

1) Three dry trench stream crossings of Yellow Creek (HQ-CWF): a) 45-foot by 8-inch (New Enterprise, PA Quadrangle N: 6.5 inches; W: 0.1 inch); b) 40-foot by 8-inch (New Enterprise, PA Quadrangle N: 6.6 inches; W: 0.2 inch); and c) 50-foot by 12-inch (New Enterprise, PA Quadrangle N: 7.0 inches; W: 0.3 inch).

2) One 60-foot by 16-inch bored stream crossing of Yellow Creek (New Enterprise, PA Quadrangle N: 11.9 inches; W: 0.2 inch).

3) One 70-foot by 12-inch dry trench stream crossing of an UNT to Yellow Creek (HQ-CWF) (New Enterprise, PA Quadrangle N: 6.6 inches; W: 0.0 inch).

4) Sixteen bored stream crossings of Three Springs Run (HQ-CWF): a) 30-foot by 16-inch (New Enterprise, PA Quadrangle N: 8.5 inches; W: 0.8 inch); b) 50-foot by 14-inch (New Enterprise, PA Quadrangle N: 8.6 inches; W: 1.0 inch); c) 30-foot by 4-inch (New Enterprise, PA Quadrangle N: 8.6 inches; W: 1.1 inches); d) 20-foot by 4-inch (New Enterprise, PA Quadrangle N: 8.6 inches; W: 1.3 inches); e) 35-foot by 14-inch (New Enterprise, PA Quadrangle N: 8.4 inches; W: 1.5 inches); f) 45-foot by 8-inch (New Enterprise, PA Quadrangle N: 8.3 inches; W: 1.5 inches); g) 40-foot by 8-inch (New Enterprise, PA Quadrangle N: 8.3 inches; W: 2.0 inches); h) 65-foot by 14-inch (New Enterprise, PA Quadrangle N: 8.4 inches; W: 2.4 inches); i) 30-foot by 12-inch (New Enterprise, PA Quadrangle N: 8.4 inches; W: 2.6 inches); j) 35-foot by 14-inch (New Enterprise, PA Quadrangle N: 8.3 inches; W: 3.1 inches); k) 25-foot by 14-inch (New Enterprise, PA Quadrangle N: 8.2 inches; W: 3.5 inches); l) 25-foot by 8-inch (New Enterprise, PA Quadrangle N: 8.2 inches; W: 4.0 inches); m) 25-foot by 8-inch (New Enterprise, PA Quadrangle N: 8.2 inches; W: 4.05 inches); n) 25-foot by 14-inch (New Enterprise, PA Quadrangle N: 8.2 inches; W: 4.3 inches); o) 20-foot by 4-inch (New Enterprise, PA Quadrangle N: 7.9 inches; W: 5.7 inches); and p) 20-foot by 4-inch (New Enterprise, PA Quadrangle N: 7.9 inches; W: 5.6 inches).

5) Two dry trench stream crossings of Three Springs Run: a) 20-foot by 8-inch (New Enterprise, PA Quadrangle N: 8.2 inches; W: 3.2 inches); and b) 10-foot by 8-inch (New Enterprise, PA Quadrangle N: 8.0 inches; W: 5.2 inches).

6) Six bored stream crossings of UNTs to Three Springs Run (HQ-CWF): a) 25-foot by 14-inch (New Enterprise, PA Quadrangle N: 8.2 inches; W: 3.7 inches); b) 5-foot by 12-inch (New Enterprise, PA Quadrangle N: 8.3 inches; W: 3.7 inches); c) 2-foot by 14-inch (New Enterprise, PA Quadrangle N: 8.9 inches; W: 4.8 inches); d) 10-foot by 14-inch (New Enterprise, PA Quadrangle N: 8.2 inches; W: 4.2 inches); e) 2-foot by 8-inch (New Enterprise, PA Quadrangle N: 8.4 inches; W: 1.9 inches); and f) 2-foot by 8-inch (New Enterprise, PA Quadrangle N: 8.5 inches; W: 2.0 inches).

7) Five dry trench stream crossings of UNTs to Three Springs Run: a) 2-foot by 6-inch (New Enterprise, PA Quadrangle N: 8.4 inches; W: 4.1 inches); b) 2-foot by 6-inch (New Enterprise, PA Quadrangle N: 8.4 inches; W: 4.1 inches); c) 2-foot by 8-inch (New Enterprise, PA Quadrangle N: 8.3 inches; W: 4.1 inches); d) 2-foot by 8-inch (New Enterprise, PA Quadrangle N: 8.4 inches; W: 4.1 inches); and e) 5-foot by 8-inch (New Enterprise, PA Quadrangle N: 8.7 inches; W: 4.6 inches);

8) One 15-foot by 8-inch stream crossing under an existing culvert on a UNT to Three Springs Run (New Enterprise, PA Quadrangle N: 7.9 inches; W: 6.0 inches);

9) One 35-foot by 16-inch bored stream crossing of Potter Creek (HQ-CWF) (New Enterprise, PA Quadrangle N: 11.7 inches; W: 0.3 inch);

10) One 40-foot by 16-inch bored stream crossing of Hickory Bottom Creek (HQ-CWF) (New Enterprise, PA Quadrangle N: 12.4 inches; W: 0.3 inch).

11) One 10-inch outfall with a 22-foot by 5-foot riprap apron on Yellow Creek (Hopewell, PA Quadrangle N: 6.3 inches; W: 17.2 inches).

12) Nine dry trench crossings of Exceptional Value PEM wetlands located on the floodplain of Yellow Creek or Three Springs Run resulting in 1.05 acres of temporary wetland impacts: a) 200-foot by 35-foot (New Enterprise, PA Quadrangle N: 6.4 inches; W: 0.2 inch); b) 265-foot by 35-foot (New Enterprise, PA Quadrangle N: 7.4 inches; W: 0.4 inch); c) 210-foot by 35-foot (New Enterprise, PA Quadrangle N: 7.7 inches; W: 0.4 inch); d) 122-foot by 35-foot (New Enterprise, PA Quadrangle N: 7.8 inches; W: 0.4 inch); e) 131-foot by 35-foot (New Enterprise, PA Quadrangle N: 8.3 inches; W: 1.7 inches); f) 250-foot by 35-foot (New Enterprise, PA Quadrangle N: 8.3 inches; W: 2.2 inches); g) 50-foot by 35-foot (New Enterprise, PA Quadrangle N: 8.3 inches; W: 3.1 inches); h) 10-foot by 35-foot (New Enterprise, PA Quadrangle N: 8.2 inches; W: 3.4 inches); and i) 83-foot by 35-foot (New Enterprise, PA Quadrangle N: 8.2 inches; W: 3.7 inches).

13) Three bored crossings of Exceptional Value PEM wetlands located on the floodplains of Yellow Creek and Hickory Bottom Creek, Three Springs Run, and a UNT to Three Springs Run resulting in less than 0.01 acre of temporary wetland impacts: a) 16-foot by 16-inch (New Enterprise, PA Quadrangle N: 12.4 inches; W: 0.3 inch); b) 10-foot by 8-inch (New Enterprise, PA Quadrangle N: 8.4; W: 1.9 inches); and c) 25-foot by 14-inch (New Enterprise, PA Quadrangle N: 8.9 inches; W: 4.8 inches).

The project includes a total of 60 linear feet of utility line stream impacts waived under 25 Pa. Code § 105.12(a)(2). The project proposes to temporarily impact

a total of 986 linear feet of stream channel and temporarily impact 1.05 acre of Exceptional Value PEM wetlands.

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

**E08-425. Department of Transportation, District 3-0**, P. O. Box 218, Montoursville, PA 17754. Culvert Replacement, in Athens Township, **Bradford County**, ACOE Baltimore District (Sayre, PA Quadrangle N: 8.45 inches; W: 14.65 inches).

1) To remove the existing 7 foot by 4.5 foot CMP arch culvert and to construct a precast concrete box culvert with a 15 foot by 3 foot hydraulic opening submerged 1 foot in the natural streambed with a curb-to-curb width of 24 feet on SR 4018, Section 10M in a UNT to Wolcott Creek; 2) place R-8 riprap for inlet and outlet scour protection 5 L. F. upstream and downstream of the culvert. The project will not impact wetlands while impacting about 75 feet of waterway. The UNT to Wolcott Creek is a WWF stream.

**E08-426. Department of Transportation, Engineering District 3-0**, P. O. Box 218 Montoursville, PA 17754-0218. Water Obstruction and Encroachment Permit Application for SR 4014 bridge replacement, in Smithfield Township, **Lycoming County**, ACOE Susquehanna River Basin District (Sayre, PA Quadrangle N: 5.50 inches; W: 7.80 inches).

To remove an existing reinforced concrete slab bridge with a clear span of 16 feet, construct and maintain a single cell precast reinforced concrete box culvert with clear span of 18 feet and a minimum under clearance of 6.5 feet with a depression of 1.0 feet on a skew of 90°, located 1.8 miles west of the intersection of SR 4014 and SR 0220 along SR 4014. This project proposes to permanently impact 60 linear feet of UNT to Bucks Creek, which is designated a WWF and does not propose to impact any jurisdictional wetlands.

**E14-471. Curtin Township**, 351 Orviston Road, Howard, PA 16841. Sayer's Hill Road Stream Crossing, in Curtin Township, **Centre County**, ACOE Baltimore District (Howard, PA Quadrangle N: 12.07 inches; W: 9.83 inches).

To maintain a 96-inch by 74.4-inch by 30.03-foot corrugated metal arch-semicircular culvert in Romola Branch as a public road crossing for Sayer's Hill Road located 600 feet north on Sayer's Hill Road from Orviston Mountain Road. This project has impacted 40 linear feet of Romola Branch, which is a CWF and has no wetland impacts.

**E18-396. Department of Transportation, Engineering District 2-0**, 1924-30 Daisy Street, Clearfield, PA 16830. Water Obstruction and Encroachment Application for SR 1010 Section A01 Bridge Replacement, in Pine Creek Township, **Clinton County**, ACOE Susquehanna River Basin District (Lock Haven, PA Quadrangle N: 12.6 inches; W: 0.1 inch).

The applicant proposes to remove the existing bridge and appurtenant substructures and construct and maintain a precast adjacent box beam bridge with a single clear span of 45'9" with a minimum underclearance of 8'6" on a skew of 75° and place R-7 riprap for scour protection at the inlet, outlet and along the abutments of the proposed bridge over Chatham Run. The proposed project will directly affect approximately 90 linear feet of Chatham Run, which is classified as a CWF, with no wetland impacts proposed.

**E19-247. Department of Transportation**, P. O. Box 215, Montoursville, PA 17754-0218. Bridge Replacement, in North Centre Township, **Columbia County**, ACOE Baltimore District (Mifflinville, PA Quadrangle N: 12.70 inches; W: 12.35 inches).

1) To remove the existing concrete filled steel deck I beam bridge which has a normal span ranging from 10.5 to 11.0 feet with a curb-to-curb width of 33.8 feet and is on a 45° skew with the roadway. The minimum existing underclearance is 5.0 feet at the outlet and 7.1 at the inlet. The existing hydraulic opening is approximately 62.48 square feet; 2) to construct and maintain a 16-foot by 6 foot precast reinforced concrete box culvert with a 16-foot opening on a 45° skew. The box will be submerged 1 foot to allow for the formation of a natural streambed in the culvert with an underclearance of 5 feet from the streambed to the low chord of the top slab. The hydraulic opening will be 80 square feet. The proposed box culvert will have a curb-to-curb width of 34.0 feet. The culvert will cross a UNT to the North Branch of Briar Creek on SR 0093 about 1.14 miles southeast of the intersection of SR 0093 with SR 1012. The project will not impact wetlands while impacting about 105 feet of waterways and 0.1 acre of earth disturbance. The UNT to North Branch Briar Creek is a CWF stream.

**E47-082. Montour County**, 29 Mill Street, Danville, PA 17821. County Line Branch Bridge Replacement, in Limestone Township, **Montour County**, ACOE Baltimore District (Washingtonville, PA Quadrangle N: 16.8 inches; W: 12.5 inches).

The proposed project is to remove the existing single span pony truss bridge structure and to construct, operate and maintain a prestressed concrete box beam bridge with a single clear span of 45.49 feet, minimum outlet underclear of 6.16 feet and a skew of 85° across County Line Branch, which is designated as a WWF. The estimated stream disturbance is 175 linear feet and a total of 896 square feet of permanent wetland impacts and no temporary wetland impacts.

**E59-468. Dennis Schmidt**, 2905 Orchard Lane, Middletown, PA 17057, Bridge Crossing, in Rutland Township, **Tioga County**, ACOE Baltimore District (Jackson Summit, PA Quadrangle N: 0.61 inch; W: 0.60 inch).

To construct and maintain a steel beam timber deck bridge with a clear span of 28 feet, a width of 12 feet and a minimum underclearance of 4 feet on reinforce concrete abutments over Bailey Creek off SR 1011 about 1.5 miles north of the intersection of SR 1011 with SR J49. The project will impact about 1,450 square feet of wetlands while impacting about 60 feet of waterway and 0.3 acre of earth disturbance. Bailey Creek is a TSF stream.

**E59-469. Liberty Area Municipal Authority**, P. O. Box 73, Liberty, PA 16930. Standard Joint Permit Application for structure at SR 0204 Section 004 replacement over Block House Creek, in Jackson Township, **Tioga County**, ACOE Susquehanna River Basin District (Liberty, PA Quadrangle N: 10.5 inches; W: 22.0 inches).

To construct, operate and maintain a total of 37,000 ft. of 3, 4, 6 and 8-inch gravity sewer, 1,600 ft. of 2-inch force main, a stepped concrete outfall measuring 16 ft. long by 3 ft. wide; construct, operate and maintain 31,600 ft.<sup>2</sup> of sand filters, 2,900 yd.<sup>3</sup> of fill in the floodplain of Block-house Creek. Construction of the new sewer lines require 7 wetland and 12 stream crossings that are as follows:

<i>Stream/Wetland</i>	<i>Stream Classification</i>	<i>Latitude</i>	<i>Longitude</i>
Blockhouse Creek	CWF	41° 33' 13"	77° 06' 33"
UNT—Blockhouse Creek	CWF	41° 33' 23"	77° 06' 27"
UNT—Blockhouse Creek	CWF	41° 33' 28"	77° 06' 16"
UNT—Blockhouse Creek	CWF	41° 33' 26"	77° 06' 06"
Blockhouse Creek	CWF	41° 33' 45"	77° 06' 14"
Blockhouse Creek	CWF	41° 33' 49"	77° 06' 11"
Blockhouse Creek	CWF	41° 33' 51"	77° 06' 11"
Blockhouse Creek	CWF	41° 33' 56"	77° 06' 11"
UNT—Blockhouse Creek	CWF	41° 34' 08"	77° 06' 17"
Blockhouse Creek (2)	CWF	41° 18' 14"	77° 07' 22"
Blockhouse Creek	CWF	41° 33' 10"	77° 06' 38"
Wetland A	EV	41° 33' 18"	77° 06' 27"
Wetland B	EV	41° 34' 01"	77° 06' 08"
Wetland C	EV	41° 33' 56"	77° 06' 08"
Wetland D	EV	41° 34' 16"	77° 06' 37"
Wetland E	EV	41° 34' 47"	77° 06' 18"
Wetland F and G	EV	41° 34' 41"	77° 06' 17"

Sewer lines shall be placed beneath streambeds so there will be a minimum of 3 feet of cover between the top of the pipe and the lowest point in the streambed. Trench plugs or clay dikes shall be used at every waterway and wetland crossing to ensure the existing hydrology is not altered. As proposed, the project temporarily impacts 0.10 acre of wetland. The project is located along the eastern and western right-of-way of SR 0414, SR 2002 and SR 2005; southern right-of-way of SR 0414 and SR 2007 in the Borough of Liberty and Liberty Township.

**E60-174. Limestone Township Supervisors**, 10655 SR 304 Hwy, Mifflinburg, PA 17844. Water Obstruction and Encroachment Application for T-380 (Thomas Road) Bridge Replacement, in Limestone Township, **Union County**, ACOE Susquehanna River Basin District °Mifflinburg, PA Quadrangle N: 6.26 inches; W: 10.68 inches).

The applicant proposes to remove the existing two 18-inch diameter culvert pipes, each 40 feet in length, one 15-inch diameter culvert pipe 35 feet in length and construct and maintain two 36-inch HDPE and one 48-inch HDPE; proposed culverts will be 40 feet in length. Proposed culvert replacements for a UNT to Buffalo Creek. The proposed project will directly affect approximately 65 linear feet of the UNT to Buffalo Creek, which is classified as a CWF, with no wetland impacts proposed.

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

**E42-317, Catalyst Energy, Inc**, 800 Cranberry Woods Drive, Cranberry Township, PA 16066. Bridge over UNT Railroad Run Moody Lot No. 65, in Lafayette Township, **McKean County**, ACOE Pittsburgh District (Lewis Run, PA Quadrangle N: 19.35 inches; W: 0.36 inch).

To construct and maintain a single span preengineered/constructed steel bridge w/concrete stub abutments hav-

ing a clear span of 18 feet a width of 10 feet and average underclearance of approximately 6 feet across an unt to Railroad Run (EV) approximately 600 feet northwest of the intersection of Baltimore Railroad and Dronery Road.

**E43-323, Prime Auto Wash LLC**, 224 Arrowhead Drive, Slippery Rock, PA 16057. Prime Auto Wash, in Springfield Township, **Mercer County**, ACOE Pittsburgh District (Grove City, PA Quadrangle N: 3.25 inches; W: 5.22 inches).

To fill a total of 0.074 acre of PEM wetlands for the construction of Prime Auto Wash on property located on the north side of Route 208 approximately 0.3 mile from the intersection of I-79 and Route 208. Project proposes creation of 0.08 acre of replacement wetland (PEM).

*Cambria District: Environmental Program Manager, 286 Industrial Pk. Rd., Ebensburg, PA 15931-4119.*

**E43-09-001. Department of Environmental Protection**, Bureau of Abandoned Mine Reclamation, Cambria Office, 286 Industrial Park Rd., Ebensburg, PA 15931. Abandoned Mine Land Reclamation Project, in Worth and Jackson Townships, **Mercer County**, Pittsburgh ACOE District.

The applicant proposes to backfill an abandoned surface mine, which includes a total of 1,500 linear feet of dangerous highwall. The project will include the backfilling of: (1) 2.06 acres of PEM wetland; (2) 1.03 acres of open water; (3) 2.06 acres of PEM replacement wetland will be constructed onsite to provide mitigation for wetland impacts; (4) 0.41 acre of open water will also be constructed onsite to mitigate for open water impacts. The project will directly impact 2.06 acres of wetland and 1.03 acres of open water; 2.06 acres of replacement wetland and 0.41 acre of open water will be utilized to compensate for wetland water body impacts. (Sandy Lake Quadrangle N: 4.25 inches, W: 13.5 inches).

## 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**

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0008591IW	NGC Industries, Inc. P. O. Box 338 Milton, PA 17847	White Deer Township Union County	West Branch Susquehanna River 10-C	Yes

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N</i>
PA0004073 Industrial Waste	U. S. Steel Corporation P. O. Box 878 Dravosburg, PA 15034	Allegheny County West Mifflin Borough	Monongahela River	N

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0025356	Mercer Borough WWTP 147 North Pitt Street Mercer, PA 16137	Mercer Borough Mercer County	Neshannock Creek 20-A	Y
PA0093301	Penn Christian Academy School 199 West Airport Road Butler, PA 16001	Penn Township Butler County	UNT to Thorn Creek 20-C	Y
PA0104213	Peaceful Rest Home, Inc. 3472 County Line Road Cochranton, PA 16314	French Township Mercer County	UNT to Foulk Run 16-C	Y

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0222933	Sharon Tube Company 20 Church Street Wheatland, PA 16161	Wheatland Borough Mercer County	Shenango River 20-A	Y
PA0103675	Miracle Mountain Ranch Mission, Inc. Eldred Hill Road R. D. 1, Box 95 Spring Creek, PA 16436	Spring Creek Township Warren County	UNT to Brokenstraw Creek 16-B	Y

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

*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

**NPDES Permit No. PA0053783**, Sewage, **Avon Grove School District**, 375 South Jennersville Road, West Grove, PA 19390. This proposed facility is located in New London Township, **Chester County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge into the West Branch White Clay Creek in Watershed 3I.

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

**PA0228834**, Sewage 4952, **River Hill Power Company, LLC.**, 94 Spruce Street, Indiana, PA 15701-8424. This proposed facility is located in Karthaus Township, **Clearfield County**.

Description of Proposed Activity: The applicant is proposing Outfall 002 from a new biological packaged sewage treatment plant to be located at the proposed facility.

The receiving stream, West Branch Susquehanna River, is in the State Water Plan watershed 8D and is classified for WWF. The nearest downstream public water supply intake is located on the West Branch Susquehanna River approximately 120 miles downstream of the proposed point of discharge, near Milton, PA.

The proposed effluent limits, based on a design flow of 0.006 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow		Report
Fecal Coliforms (5-1 to 9-30) (10-1 to 4-30)	200/100 ml 2,000/100 ml	
C-BOD <sub>5</sub>	25	50
Total Suspended Solids	30	60
Total Chlorine Residual	1.0	2.3
pH	within the range of 6.0 to 9.0	

**NPDES Permit No. PA0228826**, Industrial Wastewater (4911), **River Hill Power Company, LLC.**, 94 Spruce Street, Indiana, PA 15701-8424. This proposed facility is located in the Karthaus Township, **Clearfield County**.

Description of Proposed Action/Activity: Treated industrial wastewater discharges (Outfalls 001 and 003) from cooling tower blowdown, miscellaneous floor drains and coal pile runoff, along with two discharges (Outfalls S01 and S02) from site stormwater at the proposed Waste Coal Fired Power Plant.

The receiving stream, West Branch Susquehanna River, is in the State Water Plan watershed 8D and is classified for WWF. The nearest downstream public water supply intake is located on the West Branch Susquehanna River approximately 120 miles downstream of the proposed point of discharge, near Milton, PA.

The proposed effluent limits for Outfalls 001 and 003, based on a design flow of 1.5 mgd, are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Ph (std units)	within range of 6.0—9.0	
Oil and Grease	15	30
TSS	30	125
Total Cl <sub>2</sub> Residual	0.2	0.5
Chromium	0.2	0.25
Zinc	1.0	1.25
Iron	Monitor and Report	
TDS	Monitor and Report	

Outfalls S01 and S02 are regulated through monitoring and/or best management practices.

The EPA waiver is in effect.

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

**NPDES Permit No. PA0027570-A1**. Sewage. **Western Westmoreland Municipal Authority**, 12441 Route 993, North Huntingdon, PA 15642. This proposed facility is located in North Huntingdon Township, **Westmoreland County**.

Description of Proposed Action/Activity: NPDES permit amendment.

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

**NPDES Permit No. PA0026832**, Sewage Amendment No. 1, **Ellwood City Borough**, 525 Lawrence Avenue, Ellwood City, PA 16117. This proposed facility is located in Ellwood City Borough, **Lawrence County**.

Description of Proposed Action/Activity: This facility is authorized to discharge to Connoquenessing Creek in Watershed 20-C.

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

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

**WQM Permit No. 1405201**, Industrial Waste (SIC 2033 & 2037), **Hanover Foods Corporation**, P. O. Box 193, Centre Hall, PA 16828. This existing facility is located in Potter Township, **Centre County**.

Description of Proposed Action/Activity: Permit issued authorizing the construction and operation of improvements to the aeration system serving the aerated treatment lagoon and the addition of a chlorine contact tank for disinfection purposes.

**WQM Permit No. 1705401**, Sewerage 4952, **River Hill Power Company, LLC**, 94 Spruce Street, Indiana, PA 15701-8424. This proposed facility is located in Karthaus Township, **Clearfield County**.

Description of Proposed Action/Activity: The River Hill Power Company, LLC has been approved for a packaged wastewater treatment system utilizing extended aeration and activated sludge with a design Maximum Monthly Flow of 0.006 million gallon per day.

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

**WQM Permit No. 6505402**, Sewerage, **Greater Greensburg Sewage Authority**, P. O. Box 248, Greensburg, PA 15601. This proposed facility is located in the City of Greensburg, **Westmoreland County**.

Description of Proposed Action/Activity: Construction and operation of two equalization basins as part of Greater Greensburg Sewage Authority's LTCP.

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

**WQM Permit No. WQG018400**, Sewerage, **Marcy Allen**, 105 Lollipop Lane, Slippery Rock, PA 16057. This proposed facility is located in Brady Township, **Butler County**.

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

**WQM Permit No. WQG018393**, Sewerage, **William M. Fendya**, 12688 Forrest Drive, Edinboro, PA 16412. This proposed facility is located in Washington Township, **Erie County**.

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

**WQM Permit No. 2405401**, Sewerage, **Jay Township Authority**, 81 West Teaberry Street, P. O. Box 186, Weedville, PA 15686. This proposed facility is located in Jay Township, **Elk County**.

Description of Proposed Action/Activity: This project is for the construction of four pump stations and sewer extensions to serve the villages of Scattertown, Weedville and Caledonia.

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### IV. NPDES Stormwater Discharges from MS4 Permit Actions

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### V. NPDES Waiver Stormwater Discharges from MS4 Actions

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### VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions

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*Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.*

#### NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI011504066	Southdown Homes, LP Porter Tract 55 County Club Drive Suite 200 Downingtown, PA 19335	Chester	West Vincent Township	Pickering Creek (HQ)
PAI011505011	Wesley M. Taylor Wesley M. Taylor Site Plan 307 Aster Circle Kennett Square, PA 19348	Chester	Elverson Borough	UNT French Creek (EV)

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

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI024805004	Everson Tesla, Inc. 615 Daniels Rd. Nazareth, PA 18064	Northampton	Lower Nazareth Township	East Branch Monocacy Creek HQ-CWF
PAI024805009	Fox Funding, LLC 1 Fox Chase Drive Watchung, NJ 07069-6402	Northampton	Bushkill Township	Tributary to Bushkill Creek HQ-CWF
PAI024805003	CMC Development Corp. 4511 Falmer Drive Bethlehem, PA 18020-9796	Northampton	Bushkill Township	Tributary to Bushkill Creek HQ-CWF

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

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI033605003	Robert L. Sensenig 276 Scott Rd. Quarryville, PA 17566	Lancaster	Little Britain Township	UNT McCreary Run HQ-TSF: MF

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

## NPDES

Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI041704001	River Hill Power Co., LLC 94 Spruce St. Indiana, PA 15701	Clearfield	Karthus Township	W. Br. Susquehanna River WWF UNT Mosquito Creek HQ-CWF Dutch Hollow Run HQ-CWF
PAI041705002	Pike Township Muni. Auth. P. O. Box 27 Curwensville, PA 16833	Clearfield	Pike Township	Bear Run HQ-CWF
PAI041405004	Dr. John Corneal 1526 Martin St. State College, PA 16801	Centre	College and Harris Townships	Spring Creek 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 &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Plumstead Township Bucks County	PAG2000904044	Peter DiPalma DiPalma Tract 3546 Highgate Avenue Chalfont, PA 18916	UNT North Branch Neshaminy Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
New Britain Township Bucks County	PAG2000905060	1600 Horizon Drive, LP Highpoint Office Campus Lot 1 1200 Meetinghouse Road Gwynedd, PA 19436	UNT Neshaminy Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Falls Township Bucks County	PAG2000904048	Pennsbury Manor Visitor's Center 603 North Office Building Harrisburg, PA 17125	Delaware River (WWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Plumstead Township Bucks County	PAG2000903134	Granor Price Homes Teaberry Hill Development 721 Dresher Road Horsham, PA 19044	Tohickon Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
New Britain Township Bucks County	PAG2000905006	Antonio Bova 4365 County Line Road Chalfont, PA 18914	West Branch Neshaminy Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Hilltown Township Bucks County	PAG2000903072-1	Calvary Church 820 Route 313 Souderton, PA 18964	Mill Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Sellersville Borough Bucks County	PAG2000905042	Sellersville Court, LP Sellersville Court Subdivision 100 Correll Drive No. 600, Suite 102 Bristol, PA 19004	East Branch Perkiomen Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
New Britain Township Bucks County	PAR10D699-1	Toll Brothers Hopkins Tract 250 Gibraltar Road Horsham, PA 19044	Mill Creek (WWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
East Rockhill Township Bucks County	PAG2000905024	Beres Construction Fox Hill Subdivision 303B Airport Road Doylestown, PA 198901	Tohickon Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Milford Township Bucks County	PAG2000905022	Main Street Development Group, Inc. 1574 Easton Road Warrington, PA 18976	Morgan Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Caln Township Chester County	PAG2001505030	John Callahan 771 Highspire Road Glenmore, PA 19343	UNT Indian Spring Run (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upland Borough Delaware County	PAG2002305040	Pennrose Properties Suite 3810, 1 Liberty Place Philadelphia, PA 19103	Chester Creek (WWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900



## NOTICES

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<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Radnor Township Delaware County	PAG2002305031	Villanova University 800 Lancaster Avenue Villanova, PA 19085	Mill Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Middletown Township Delaware County	PAG2002305026	Dixon Homes, LLC 1041 Media Line Road Newtown Square, PA 19703	Chester Creek (TSF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Skippack Township Montgomery County	PAG2004605013	David Kane Muller Tract 4365 Skippack Park P. O. Box 1301 Skippack, PA 19474	UNT Skippack Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Salford Township Montgomery County	PAG2004605079	Upper Salford Township Park and Soccer Fields P. O. Box 100 Salfordville, PA 18958	UNT Perkiomen Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Cheltenham Township Montgomery County	PAG2004605051	Shelter Development, LLC Park View at Cheltenham 218 North Charles Street Baltimore, MD 21201	Tacony Creek (WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Horsham Township Montgomery County	PAG2004605107	Department of Transportation SR 463, Horsham Road 7000 Geerdes Boulevard King of Prussia, PA 19406	Tributaries of Park Creek (WWF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Marlborough Township Montgomery County	PAG2004603234	MacIntosh Builders, Inc. Candlewyck Estates Phases I and II 602 East Broad Street Souderton, PA 18960	UNT Green Lane Reservoir and Macoby Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Skippack Township Montgomery County	PAG2004603197-1	TH Properties Monroe Court 345 Main Street Harleysville, PA 19438	Skippack Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Providence Township Montgomery County	PAG2004604132	Lower Perkiomen Valley Regional Sewer Authority Oaks WTP 5 River Road P. O. Box 297 Oaks, PA 19456	Shuylkill River/Perkiomen Creek (TSF, WWF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Hanover Township Montgomery County	PAG2004605009	Hanover North Associates The Shoppes at Upper Hanover 350 Sentry Parkway Building 630 Blue Bell, PA 19422	Perkiomen Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Saucon Township Lehigh County	PAG2003905014	Dennis Benner 2005 City Line Rd. Bethlehem, PA 18034	Saucon Creek CWF	Lehigh Co. Cons. Dist. (610) 391-9583
Whitehall Township Lehigh County	PAG2003905021	Dale Dech P. O. Box 157 Northampton, PA 18067	Coplay Creek CWF	Lehigh Co. Cons. Dist. (610) 391-9583
Scott Township Lackawanna County	PAG2003505017	Bill Nish <i>The Scranton Times</i> 149 Penn Ave. Scranton, PA 18503	Kennedy Creek CWF	Lackawanna Co. Cons. Dist. (570) 281-9495

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Centre County College Township	PAG2001405010	Rob Cooper Penn State University Office of Physical Plant 101 P Physical Plant Bldg. University Park, PA 16802	UNT Spring Creek CWF	Centre County Conservation District 414 Holmes Ave. Suite 4 Bellefonte, PA 16823 (814) 355-6817
Centre County Ferguson Township	PAG2001405020-1	Sergey Maslov Russian Church of Christ 1341 Shamrock Ave. State College, PA 16801	Tributary to Slab Cabin Bald Eagle Creek CWF	Centre County Conservation District 414 Holmes Ave. Suite 4 Bellefonte, PA 16823 (814) 355-6817
Columbia County Franklin Township	PAG2001905011	Frankline Group Co. Frank Tangredi 1658 Rt. 300 Newburgh, NY 12550	Roaring Creek TSF UNT Susquehanna River CWF	Columbia County Conservation District 702 Sawmill Rd. Suite 204 Bloomsburg, PA 17815 (570) 784-1310
Northumberland County Point Township	PAG2004904007-1	Eldarado Properties Corp. P. O. Box 2621 Harrisburg, PA 17105	Susquehanna River WWF	Northumberland County R. R. 3, Box 238C Sunbury, PA 17801 (570) 286-7114, Ext. 4
Northumberland County City of Shamokin Coal Township	PAG2004905008	Cameron Bridge Project Shamokin, PA 17872	Shamokin Creek WWF	Northumberland County R. R. 3, Box 238C Sunbury, PA 17801 (570) 286-7114, Ext. 4
Snyder County Monroe Township	PAG200550509 revisions	Penns Valley Airport Auth. 100 Airport Rd. Selinsgrove, PA 17871	Penns Creek WWF	Snyder County 403 W. Market St. Middleburg, PA 17842 (570) 837-0007 Ext. 112
Tioga County Hamilton Township	PAG2005905004	David R. Thomas P. O. Box 205 Morris Run, PA 16939	Tioga River CWF	Tioga County Conservation District 50 Plaza Lane Wellsboro, PA 16901 (570) 724-1801 Ext. 101
Allegheny County Richland Township	PAG2000205022	Echo Real Estate Services, Inc. 701 Alpha Drive Pittsburgh, PA 15238	Deer Creek (CWF)	Allegheny County CD (412) 241-7645
Allegheny County Upper St. Clair Township	PAG2000205052	John Bourlogianis 2338 Southampton Dr. Pittsburgh, PA 15241	Brush Run (WWF)	Allegheny County CD (412) 241-7645
Allegheny County Pine Township	PAG2000205055	T. Hartley Construction 1660 Chapel Ridge Lane Mars, PA 16046	Pine Creek (CWF)	Allegheny County CD (412) 241-7645
Allegheny County Shaler Township	PAG2000205058	Shaler Area School Dist. 1600 Butler Plank Road Glenshaw, PA 15116	Girtys Run (WWF)	Allegheny County CD (412) 241-7645
Allegheny County Bethel Park	PAG2000205061	Echo Real Estate Services, Inc. 701 Alpha Drive Pittsburgh, PA 15238	Lick Run (WWF)	Allegheny County CD (412) 241-7645
Allegheny County Collier Township	PAG2000205064	J. West Corporation 222 Oxford Boulevard Allison Park, PA 15101	Pine Run (CWF)	Allegheny County CD (412) 241-7645

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<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Allegheny County City of Pittsburgh	PAG2000205068	University of Pittsburgh 3400 Forbes Avenue Pittsburgh, PA 15260	Monongahela River (WWF)	Allegheny County CD (412) 241-7645
Allegheny County Harmar Township	PAG2000205071	Allegheny Valley School District 300 Pearly Avenue Cheswick, PA 15024-1066	Allegheny River (WWF)	Allegheny County CD (412) 241-7645
Allegheny County Collier Township	PAG2000205072	A. R. Building Company The Walnut Mall 5541 Walnut Street Pittsburgh, PA 15232	Thoms Run (TSF)	Allegheny County CD (412) 241-7645
Cambria County Upper Yoder Township	PAG2001105014	Richard M. Kastelic, MD 311 Warren Street Johnstown, PA 15905	Stonycreek River (WWF)	Cambria County CD (814) 472-2120
Washington County Cecil Township	PAG2006305025	Joe DeNardo JND Properties 3625 Washington Pike Bridgeville, PA 15017	UNT to Millers Run (WWF)	Washington County CD (724) 228-6774
Westmoreland County North Huntingdon Township	PAG2006505032	Ron Brentzel 215 Fifth Street Irwin, PA 15642	Brush Creek (WWF)	Westmoreland County CD (724) 837-5271
Westmoreland County North Huntingdon Township	PAG2006505039	Joseph S. Veychek Traditional Land Co. 1083 Redoak Drive Harrison City, PA 15636	Little Sewickley Creek (TSF)	Westmoreland County CD (724) 837-5271
Westmoreland County Municipality of Murrysville	PAG2006505044	Jim Crowley Golden Triangle 5615 William Penn Hwy. Export, PA 15032	Turtle Creek (CWF)	Westmoreland County CD (724) 837-5271
Mercer County Jackson and Worth Townships	PAG2094305001	Bureau of Abandoned Mine Reclamation Cambria Office 286 Industrial Park Road Ebensburg, PA 15931-4119	Yellow Creek WWF-TSF	Department of Environmental Protection Cambria Office 286 Industrial Park Road Ebensburg, PA 15931-4119 (814) 472-1800
Centre County	PAG2091405002	Bureau of Abandoned Mine Reclamation Cambria Office 286 Industrial Park Road Ebensburg, PA 15931-4119	Sevenmile Run CWF	Department of Environmental Protection Cambria Office 286 Industrial Park Road Ebensburg, PA 15931-4119 (814) 472-1800

*General Permit Type—PAG-3*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Upper Augusta Township Northumberland County	PAR214812	Central Builders Supply Company P. O. Box 152 Island Park Sunbury, PA 17801-0152	Susquehanna River WWF	Water Management Program Manager 208 West Third Street Williamsport, PA 17701 (570) 327-3664

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Point Township Northumberland County	PAR214810	Central Builders Supply Company Island Park P. O. Box 152 Sunbury, PA 17801-0152	UNT To Susquehanna River CWF	Water Management Program Manager 208 West Third Street Williamsport, PA 17701 (570) 327-3664
Bradford Township Clearfield County	PAR604827	Ogden's Auto Wrecking 6982 Shiloh Rd. Woodland, PA 16881	UNT to Valley Fork Run CWF	Water Management Program Manager 208 West Third Street Williamsport, PA 17701 (570) 327-3664
Mt. Pleasant Borough Westmoreland County	PAR216149	Klocek Burial Vaults Company 153 Quarry Street Mt. Pleasant, PA 15666	Sherrick Run to Jacobs Creek	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
St. Marys Elk County	PAR118334	SGL Carbon, LLC 900 Theresia Street St. Marys, PA 15857	Elk Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
<i>General Permit Type—PAG-4</i>				
<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Bradford Township Clearfield County	PAG045195	Cindy Reed-Lauer P. O. Box 0142 Shawville, PA 16873	UNT to Millstone Run CWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3664
Brady Township Butler County	PAG049192	Marcy Allen 105 Lollipop Lane Slippery Rock, PA 16057	UNT to Slippery Rock Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Washington Township Erie County	PAG049185	William M. Fendya 12688 Forrest Drive Edinboro, PA 16412	UNT to Little Conneautee Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-10*

*Facility Location:*

*Municipality & County*  
 Eastern Shore  
 Natural Gas  
 Highland Township  
 Pipeline  
 Highland Township  
 Chester County

*Permit No.*  
 PAG100013

*Applicant Name & Address*  
 Eastern Shore Natural Gas Co.  
 417 Bank Lane  
 Dover, DE 19904

*Receiving Water/Use*  
 Valley Creek and  
 Knight Run

*Contact Office & Phone No.*  
 Southeast  
 Regional Office  
 2 East Main Street  
 Norristown, PA 19401  
 (484) 250-5970

**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.*

**Operations Permit** issued to: **Asbury Pointe LTD**, 7670137, East Manchester Township, **York County** on 7/25/2005 for the operation of facilities approved under Construction Permit No. 6704512.

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

**Permit No. M.A.—Operation Public Water Supply.**

**Applicant** **Pennsylvania American Water Company**  
**Township or Borough** White Deer Township  
**County** **Union**  
**Responsible Official** Edward Russell  
 Pennsylvania-American Water Company  
 800 West Hersheypark Drive  
 Hershey, PA 17033  
**Type of Facility** Public Water Supply—Operation  
**Consulting Engineer** Scott Thomas, P. E.  
 Pennsylvania-American Water Company  
 800 West Hersheypark Drive  
 Hershey, PA 17033  
**Permit Issued Date** 8/2/05  
**Description of Action** Operation of purification unit No. 2.

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

**Permit No. 2504502, Public Water Supply**

**Applicant** **Millcreek Township Water Authority**  
**Borough or Township** Millcreek Township  
**County** **Erie**  
**Type of Facility** PWS  
**Permit to Construct Issued** 07/29/2005

**WATER ALLOCATIONS**

**Actions taken on applications received under the act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the acquisition of rights to divert waters of this Commonwealth**

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

**WA 25-726A. Water Allocation Permit.** The Department grants **Millcreek Township Water Authority's** request for modification of the existing water allocation permit to expand the service area to include portions of McKean Township along Grubb Road, Bargain Road and Colonial Village. This request does not increase the existing allocation capacity. Consulting Engineer: Clayton J. Fails, P. E., Hill Engineering, Inc., 8 Gibson Street, North East, PA 16428. Modification Order issued July 29, 2005.

## 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 Saucon Township	5500 Camp Meeting Road Center Valley, PA 18034	Lehigh

*Plan Description:* The approved plan provides for a 375 unit multiresidential community on a 65 acre tract. The proposed development, Liberty Village, is located on Liberty Road in Upper Saucon Township, Lehigh County. The 375 new residential units will consist of the following:

14 Single Family Dwellings × 226 gpd	=	3,164 gpd
131 Townhouse Dwellings × 226 gpd	=	29,606 gpd
230 Multi-family Dwellings × 226 gpd	=	<u>51,980 gpd</u>

Total Proposed Sewage Flows = 84,750 gpd

The developer will construct a new 8" PVC collection system within the project which will be dedicated to the Upper Saucon Township Municipal Authority. The new collection system will connect to the South Branch Interceptor directly downstream of MH No. 81 for conveyance to the public wastewater facility. All the sewage facilities will be owned, operated and maintained by the Upper Saucon Township Municipal Authority. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995

#### PREAMBLE 2

**The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of 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 act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. 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.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports 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.*

**ThyssenKrupp-Budd Co.**, City of Philadelphia, **Philadelphia County**. Thomas Nowlan, O'Brien & Gere Engineers, Inc., 512 Township Line Rd., Two Valley Sq., Suite 210, Blue Bell, PA 19422 on behalf of Charles Payne, ThyssenKrupp-Budd Co., 3155 W. Big Beaver Rd., Troy, MI 48084 has submitted a Remedial Investigation Report concerning remediation of site soil and groundwater contaminated with diesel fuel, inorganics, leaded and unleaded gasoline, lead, MTBE, other organics and PAH. The report is intended to document remediation of the site to meet the Site-Specific Standard.

**Glasgow Prop**, Montgomery Township, **Montgomery County**. Mark Fortna, DelVal Soil & Env. Consultants, Inc., Sky Run II, Suite A1, 4050 Skyron Dr., Doylestown, PA 18901 on behalf of Glasgow, Inc., Willow Grove Ave. and Limekiln Pike, Glenside, PA 19038 has submitted a Final Report concerning remediation of site soil contaminated with PCB and inorganics. The report is intended to document remediation of the site to meet the Statewide Health Standard.

**318 W. Lancaster Ave. Prop.**, Lower Merion Township, **Montgomery County**. Darryl D. Borrelli, Manko, Gold, Katcher & Fox, LLP, 401 City Ave., Suite 500, Bala Cynwyd, PA 19004 on behalf of Andrew Talone, 318 W. Lancaster Ave. Corp., 202 Grouse Lane, Radnor, PA 19087 has submitted a Remedial Investigation Report, Risk Assessment Report and Cleanup Plan concerning remediation of site soil and groundwater contaminated with No. 2 fuel oil. The report is intended to document remediation of the site to meet the Site-Specific Standard.

**719-725 N. 24th St. Site**, City of Philadelphia, **Philadelphia County**. Greg Hill, Hill Env. Group, Inc., has submitted a Final Report concerning remediation of site soil contaminated with No. 2 fuel oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**Charles Chips Facility**, West Hempfield Township, **Lancaster County**. Weston Solutions, Inc., 1400 Weston Way, West Chester, PA 19380, on behalf of QVC, Inc. 1200 Wilson Drive, Studio Park, West Chester, PA 19380 and Regency V, LP, 1899 Lititz Pike, Lancaster, PA 17601, submitted a Combined Remedial Investigation and Final Report concerning remediation of site soils and groundwa-

ter contaminated with No. 2 fuel oil, diesel fuel, PAHs, chlorinated solvents and other organics. The report is intended to document remediation to the Site-Specific Standard.

**Lime Springs Farm**, East Hempfield and West Hempfield Townships, **Lancaster County**. GCI Environmental Services, 1250 East King Street, Lancaster, PA 17602, on behalf of Marilyn Berger, 22 D East Roseville Road, Lancaster, PA 17601 and Stauffer Charitable Trust, 901 Rotherstown Road, Lancaster, PA 17601, submitted a Final Report concerning remediation of site soils contaminated with No. 2 fuel oil. The report is intended to document remediation of the site to the residential Statewide Health Standard.

**PPL Pole No. 42554S35335**, Heidelberg Township, **Lebanon County**. PPL Services Corporation, Two North Ninth Street, Allentown, PA 18101-1179 submitted a Final Report within 90 days of a release concerning remediation of site soils contaminated with PCBs. The report is intended to document remediation of the site to the Statewide Health Standard.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

### PREAMBLE 3

**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), 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.*

**Marks Res.**, Solebury Township, **Bucks County**. Van Wagenen, Coventry Env. Assoc., Inc., 991 Ridge Rd., Bucktown, PA 19465 on behalf of Bernard Marks, 1063 Hillsboro Mile No. 508, Hillsboro Beach, FL 33062 has submitted a Low Risk Property Final Report concerning the remediation of site soil contaminated with No. 2 fuel oil. The Low Risk Property Final report was approved by the Department on June 1, 2005.

**Philadelphia Gas Works Richmond**, City of Philadelphia, **Philadelphia County**. Lisa Popovics, Philadelphia Gas Works, 800 W. Montgomery Ave., Philadelphia, PA 19122 on behalf of Michael Handwerk, Philadelphia Gas Works/City of Philadelphia has submitted a Remedial Investigation Report concerning the remediation of site soil and groundwater contaminated with VOC and semi-VOC. The Remedial Investigation Report was approved by the Department on July 12, 2005.

**Levy United News**, City of Philadelphia, **Philadelphia County**. Dean Jeffery Telego, Risk Mgmt Technologies, Inc., 110 N. Royal St., Suite 301, Alexandria, VA 22314 on behalf of Clifford Risell, PCCBC, 725 E. Erie Ave., Philadelphia, PA has submitted a Remedial Investigation, Risk Assessment Reports and Cleanup Plan concerning the remediation of site soil and groundwater contaminated with chlorinated solvents, diesel fuel, No. 2 fuel oil, No. 6 fuel oil, MTBE, other organics and PAH. The Remedial Investigation, Risk Assessment Reports and Cleanup Plan were approved by the Department on June 6, 2005.

**Tube City, Inc. Fac.**, City of Philadelphia, **Philadelphia County**. Donald A. Coleman, PG, Penn E & R, Inc., 2755 Bergey Rd., Hatfield, PA 19440 on behalf of Parker Adams, U. S. Steel Corp., 600 Grant St., Pittsburgh, PA 15219 has submitted a Final Report concerning the remediation of site soil contaminated with inorganics and lead. The Final report demonstrated attainment of the Statewide Health Standard and was approved by the Department on June 15, 2005.

*Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**American Eagle Paper Plant**, Tyrone Borough, **Blair County**. Mountain Research, LLC, 825 25th Street, Altoona, PA 16601, on behalf of Blair County Development Corporation, 3900 Industrial Park Road, Altoona, PA 16602, submitted a Baseline Environmental Report concerning remediation of site soils and groundwater contaminated with metals, solvents, VOCs and SVOCs. The site is being remediated as a Special Industrial Area. The report was approved by the Department on July 25, 2005.

**Weigle Residence**, Huntington Township, **Adams County**. Marshal Miller and Associates, Inc., on behalf of Mr. and Mrs. Ron Weigle, 3509 Carlisle Road, Idaville, PA 17337 submitted a Final Report concerning the remediation of site soils contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the residential Statewide Health Standard and was approved by the Department on July 26, 2005.

**Stutzman Farm**, South Heidelberg Township, **Berks County**. Aquaterra Technologies, Inc., 122 South Church Street, West Chester, PA 19381, on behalf of Sunoco, Inc., (R & M), Post Road and Blue Ball Avenue, P. O. Box 1135, Marcus Hook, PA 19061, submitted a Final Report concerning the remediation of groundwater and surface water contaminated with No. 2 fuel oil, leaded and unleaded gasoline. The final report demonstrated attainment of the nonresidential Statewide Health Standard, and was approved by the Department on July 28, 2005. Site soils will be addressed in a separate report.

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

**Potter County Redevelopment Authority—Arch Street Property**, Coudersport Borough, **Potter County**. Moody & Associates, Inc, 11548 Cotton Road, Meadville, PA 16335 has submitted a Baseline Environmental Report concerning soil and groundwater contamination resulting from historic use as a vegetable tanning facility. This area is served by a municipal water supply. The Final Report demonstrated attainment of the Special Industrial Area Standard and was approved by the Department on May 20, 2005.

**Donald McGahan Property**, 111 Gregg Street, Spring Mills, PA, 16875, Gregg Township, **Centre County**. Chambers Environmental Group, Inc. 629 East Rolling Ridge Drive, Bellefonte, PA 16823 has submitted a Final Report concerning soils contamination resulting from a gasoline release. The Final Report demonstrated attainment of the Statewide Health Standard-Residential and was approved by the Department on July 26, 2005.

**CPO2, Inc. Site**, 200 Chestnut Street, Mifflinburg, PA 17844, Mifflinburg Borough, **Union County**. Molesevich Environmental, P. O. Box 654, Lewisburg, PA 17837, has submitted a Final Report concerning soils contamination resulting from a heating oil release. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on July 26, 2005.

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

**Castle Brand Former**, City of New Castle, **Lawrence County**. Scott Whipkey, RAR Eng. Group, 1135 Butler Ave., New Castle PA 16101 on behalf of Leonard L. Lastoria, New Castle Area Transit Authority, 311 Mahoning Ave., New Castle, PA 16101 has submitted a Baseline Remedial Investigation Report concerning the remediation of site soil contaminated with Boron and Lead and groundwater contaminated with dissolved Lead, Pentachlorophenol and Trichlorethene. The Report demonstrated attainment of the special industrial area requirements and was approved by the Department on August 1, 2005.

**International Paper**, City of Erie, **Erie County**. Patrick Arneault, Presque Isle Downs, Inc., Rt. 2, P. O. Box 358, Chester, WV 26034 on behalf of Jason K. Kronenwetter, GES, 290 Executive Drive, Suite 200, Cranberry Township, PA 16066, has submitted a Final Report concerning the remediation of site soil and

groundwater contaminated with VOCs, semi-VOCs, diesel fuel, No. 2 fuel oil, inorganics, leaded and unleaded gasoline, PAHs and PCBs. The report is intended to document remediation of the site to meet the Statewide Health, Site Specific Standards.

#### HAZARDOUS WASTE TRANSPORTER LICENSE

#### Actions on applications for Hazardous Waste Transporter License received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to transport hazardous waste.

*Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

#### *Hazardous Waste Transporter License Renewed*

**Barr Transportation Corporation**, 805 Spencer Stree, Syracuse, NY 13204. License No. PA-AH 0571. Effective June 17, 2005.

**Barnett Transportation, Inc.**, 1547 51st Avenue, Tuscaloosa, AL 35401. License No. PA-AH 0700. Effective June 20, 2005.

**First Piedmont Hauling, Inc.**, P. O. Box 1069, Chatham, VA 24531. License No. PA-AH S212. Effective June 28, 2005.

**Quality Carriers, Inc.**, 3802 Corporex Park Drive, Tampa, FL 33619-1109. License No. PA-AH 0630. Effective July 5, 2005.

**Waste Recovery Solutions, Inc.**, 343 King Street, Myerstown, PA 17067. License No. PA-AH 0683. Effective July 6, 2005.

**Fred Pugliese DBA Plainfield Motor Services**, 724 W. Route 126, Plainfield, IL 60544. License No. PA-AH 0573. Effective July 6, 2005.

**Sumter Transport Company**, P. O. Box 1060, Sumter, SC 29151-1060. License No. PA-AH 0439. Effective July 8, 2005.

**Beelman Truck, Company**, 1 Racehorse Drive, East St. Louis, IL 62205. License No. PA-AH 0363. Effective July 19, 2005.

**Safety-Kleen Systems, Inc.**, 5400 Legacy Drive, Cluster II B 3, Plano, TX 75024. License No. PA-AH 0172. Effective July 22, 2005.

**T. F. Boyle Transportation, Inc.**, 15 Riverhurst Road, Billerica, MA 01821. License No. PA-AH 0572. Effective July 25, 2005.

**AEG Environmental Products & Services**, P. O. Box 286, Westminster, MD 21158. License No. PA-AH 0701. Effective July 28, 2005.

#### *Hazardous Waste Transporter License Voluntarily Terminated*

**Sanford Motors, Inc.**, 1307 S. Pennsylvania Avenue, Morrisville, PA 19067-1275. License No. PA-AH S178. Effective June 1, 2005.

#### *Hazardous Waste Transporter License Expired*

**M. C. Tank Transport, Inc.**, 10134 Mosteller Lane, West Chester, OH 45069. License No. PA-AH 0489. Effective June 30, 2005.

**Reifsneider Transportation, Inc.**, 223 Fellowship Road, Eagle, PA 19480. License No. PA-AH 0486. Effective June 30, 2005.



## INFECTIOUS AND CHEMOTHERAPEUTIC WASTE TRANSPORTER LICENSE

**Actions on applications for Infectious and Chemotherapeutic Waste Transporter License received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the act of July 13, 1988 (P. L. 525, No. 93) (35 P. S. §§ 6019.1—6019.6) and regulations to transport infectious and chemotherapeutic waste.**

*Central Office: Bureau of Land Recycling and Waste Management, Division of Hazardous Waste Management, P. O. Box 8471, Harrisburg, PA 17105-8471.*

*Infectious and Chemotherapeutic Waste Transporter License Issued*

**Commodore Medical Services of Pennsylvania, LLC.**, 1941 Cement Plant Road, Nashville, TN 37208. Received on July 21, 2005.

*Infectious and Chemotherapeutic Waste Transporter License Renewed*

**York Hospital**, 1001 S. George Street, York, PA 17405. License No. PA-HC 0017. Effective July 6, 2005.

**Carlucci Construction Company, Inc.**, 401 Meadow Street, Cheswick, PA 15024. License No. PA-HC 0015. Effective July 11, 2005.

**Abington Memorial Hospital**, 1200 Old York Road, Abington, PA 19001-3720. License No. PA-HC 0095. Effective July 28, 2005.

*Infectious and Chemotherapeutic Waste Transporter License Voluntarily Terminated*

**Sanford Motors, Inc.**, 1307 S. Pennsylvanice, Avenue, Morrisville, PA 19067-1275. License No. PA-HC 0122. Effective June 1, 2005.

## 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.**

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

**GP1-22-03007: Pinnacle Health System—Polyclinic Hospital** (2501 North Third Street, Harrisburg, PA 17110) June 30, 2005, to operate small gas and No. 2 oil fired combustion units under GP1 in the City of Harrisburg, **Dauphin County**.

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

**GP5-32-00386A: Phillips Production Co.** (502 Keystone Drive, Warrendale, PA 15086) on July 28, 2005, to install and operate one 225 bhp Caterpillar natural gas-fired Compressor Engine, Model No. G342NA, equipped with a DCL International Catalytic Converter, Model No. DC47-4, at the Malone Compressor Site in Conemaugh Township, **Indiana County**.

**Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.*

**15-0027G: Johnson Matthey, Inc.** (456 Devon Park Drive, Wayne, PA 19087) on August 1, 2005, to operate a catalyst coating equipment system in Tredyffrin Township, **Chester County**.

**23-0014F: Kimberly Clark PA LLC** (Front St. and Avenue of the States, Chester, PA 19013) on July 29, 2005, to operate a ventilation system in City of Chester, **Delaware County**.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**48-304-033: Victaulic Co. of America** (4901 Kesslersville Road, Easton, PA 18040) on July 18, 2005, to install an air cleaning device to capture particulate emissions from a sand handling and casting finishing area at their facility in Forks Township, **Northampton County**.

**40-303-020B: Reading Materials, Inc.** (P. O. Box 1467, 2052 Lucon Road, Skippack, PA 19474) on July 12, 2005, to modify a batch asphalt plant to utilize alternate fuels including Nos. 2 and 4 fuel oils, and waste derived liquid fuel at their Pikes Creek Asphalt Plant in Lehman Township, **Luzerne County**.

**Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Thomas McGinley, New Source Review Chief, (484) 250-5920.*

**09-0110B: Riverside Construction Materials, Inc.** (355 Newbold Road, Fairless Hills, PA 19030) on July 27, 2005, to operate a material handling system in Bristol Township, **Bucks County**.

**23-0089: FPL Energy Marcus Hook, LP** (P. O. Box 426 Delaware Avenue and Green Street, Marcus Hook, PA 19061) on July 28, 2005, to operate a 750 megawatt (MW) combined cycle in Marcus Hook Borough, **Delaware County**.

**09-0027E: Fres-Co Systems—USA, Inc.** (3005 State Road, Telford, PA 18969) on August 1, 2005, to operate a thermal oxidizer in West Rockhill Township, **Bucks County**.

**15-0039: Highway Materials, Inc.** (1750 Walton Road, Blue Bell, PA 19422) on August 1, 2005, to operate a dryer burner in East Caln Township, **Chester County**.

**23-0012: Epsilon Product Co., LLC** (Post Road and Blueball Avenue, P. O. Box 432, Marcus Hook, PA 19061) on August 1, 2005, to operate a plant 2 and thermal oxidizer in Marcus Hook Borough, **Delaware County**.

**46-0037N: Cabot Supermetals** (P. O. Box 1608, County Line Road, Boyertown, PA 19512) on August 1,

2005, to operate a 4th tantalum production line in Douglass 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.*

**39-313-045: Carpenter Co.** (P. O. Box 519, 57 Olin Way, Fogelsville, PA 18051) on July 25, 2005, to modify and expand polystyrene manufacturing process at their facility in Upper Macungie Township, **Lehigh 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.*

**30-00099A: Allegheny Energy Supply Co., LLC** (800 Cabin Hill Drive, Greensburg, PA 15601) on July 21, 2005, for units 1, 2 and 3 boilers at Hatfield Power Station in Monongahela Township, **Greene County**. The plan approval has been extended.

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**Title V Operating Permits Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter G.**

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

**28-05002: Letterkenny Army Depot** (AMSAM-LE-EE-S, Chambersburg, PA 17201-4150) on July 26, 2005, the Depot Systems Command installation primarily emits VOCs, NO<sub>x</sub>, SO<sub>x</sub> and particulate matter in Greene/Letterkenny Townships, **Franklin County**. This is a renewal of the Title V Operating Permit.

**36-05081: Lancaster County Solid Waste Management Authority** (1299 Harrisburg Pike, Lancaster, PA 17604-4425) on July 28, 2005, for landfill operations at their Frey Farm-Creswell landfill in Manor Township, **Lancaster County**. This is a renewal of the Title V Operating Permit.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.*

**04-00471: Marathon Petroleum Co.** (539 South Main Street, Findlay OH 45849) July 26, 2005, for their Midland Terminal in Industry Borough, **Beaver County**. As a result of the potential levels of VOC emitted from this facility, it is a major stationary source as defined in Title I, Part D of the Clean Air Amendments. The facility is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code, Chapter 127, Subchapter G. This is a Title V renewal.

**65-00207: OMNOVA Solutions, Inc.** (1001 Chambers Avenue, Jeannette, PA 15644-3207) on July 26, 2005, for their vinyl plastic film manufacturing facility in Jeannette, **Westmoreland County**. As a result of the potential levels of VOC emitted from this facility it is a major stationary source as defined in Title I, Part D of the Clean Air Amendments. The facility is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. This is a Title V renewal.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Thomas Huynh, Chief, (215) 685-7584.*

**V04-010: Arbill Industries, Inc.** (2270 West Glenwood Avenue, Philadelphia, PA 19132) on July 26, 2005, to operate an industrial laundry and petroleum based dry-

cleaning facility in the City of Philadelphia, **Philadelphia County**. The Title V facility's air emission sources include 2 5.5 mmBtu/hr boilers, 2 heavy-duty petroleum solvent dry cleaning washer, 10 textile dryers with built-in condensers, 3 vacuum stills for petroleum solvent recovery and 26 hampers used to convey textiles.

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**Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.**

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*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.*

**46-00247: Universal Concrete Products Corp.** (1513 Ben Franklin Highway, Stowe, PA 19518) on July 29, 2005, to operate a Natural Minor Operating Permit in West Pottsgrove Township, **Montgomery County**.

**46-00159: United States Chrome Corp.** (750 West Washington Street, P. O. Box 603, Norristown, PA 19401) on August 1, 2005, to operate a Natural Minor Operating Permit in Norristown Borough, **Montgomery County**.

**23-00063: Department of Corrections** (500 East 4th Street, Chester, PA 19013) On July 29, 2005, to operate a Synthetic Minor Operating Permit in City of Chester, **Delaware County**.

**23-00098: SAP America, Inc.** (3999 West Chester Pike, Newtown Square, PA 19073) on August 1, 2005, to operate a Synthetic Minor Operating Permit in Newtown Township, **Delaware County**.

*Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790; Mark Wejkszner, New Source Review Chief, (570) 826-2531.*

**40-00041: Back Mountain Veterinary Hospital,** (732 Center Hill Road, Dallas, PA 18612) on June 30, 2005, to operate their facility in Dallas Township, **Luzerne County**.

**40-00088: Pennsy Supply Inc.** (1 Clear Spring Road, Annville, PA 17003) on July 1, 2005, to operate a quarry/stone crushing plant in Salem Township, **Luzerne County**.

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

**06-03104: Bean Funeral Homes and Cremation Services, Inc.** (129 East Lancaster Avenue, Shillington, PA 19607-2613) on July 27, 2005, to operate a human crematory controlled by a secondary afterburner chamber in the Borough of Sinking Spring, **Berks County**. This is a renewal of their operating permit.

**06-05094: Reading Alloys, Inc.** (Old West Penn Avenue, P. O. Box 53, Robeson, PA 19551) on July 28, 2005, to operate a specialty alloy manufacturing facility controlled by various fabric collectors, a wet scrubber and three venturi scrubbers in South Heidelberg Township, **Berks County**.

**22-05048: Amerigas Propane, LP** (5400 Paxton Street, Harrisburg, PA 17111-2527) on July 25, 2005, to operate their propane cylinder filling facility in Swatara Township, **Dauphin County**.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.*

**03-00192: Equitable Gas Co.** (225 North Shore Drive, 2nd Floor, Pittsburgh, PA 15212) on July 27, 2005, for a state only operating permit for an internal combustion engines at their Village Compressor Station in Cowanshannock Township, **Armstrong County**.

**65-00817: IA Construction Corp.** (158 Lindsay Road, Zelenople, PA 16063) on July 27, 2005, to operate a hot mix asphalt plant, which is controlled by a fabric collector to in City of Lower Burrell, **Westmoreland County**.

**56-00199: Shade-Central City District** (P. O. Box 7, 203 McGregor Avenue, Cairnbrook, PA 15924) on July 29, 2005, for the district's sources of emissions include steam two boilers and two emergency generators in Shade Township, **Somerset County**.

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

**16-00003: State System of Higher Education—Clarion State University** (840 Wood Street, Clarion, PA 16214-1240) on July 27, 2005, the Department issued Natural Minor Operating Permit Number to operate the boiler plant at the university in Clarion Borough, **Clarion County**. The facility's primary emission sources include three boilers and various emergency power generators. The emissions of criteria pollutants from this facility are below major source levels.

**20-00293: Meadville Sandblasting, Inc.** (15921 South Mosiertown Rd., Meadville, PA 16335) on July 27, 2005 for a Natural Minor Permit for shot blast and surface coating operations in Hayfield Township, **Crawford County**.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104; Edward Braun, Chief, (215) 685-7584.*

**S04-009: Saint Joseph's University** (5930 City Avenue, Philadelphia, PA 19131-1395) on July 29, 2005, to operate a university in the City of Philadelphia, **Philadelphia County**. The facility's major air emission sources include three boilers; two rated at 13.4 mmBtu/hr and one rated at 20.7 mmBtu/hr.

**Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.**

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401; Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.*

**15-00010: ISG Plate LLC** (139 Modena Road, Coatesville, PA 19320) on July 29, 2005, to amend to process a change of ownership and responsible official for a facility Title V Operating Permit in City of Coatesville, **Chester County**.

**46-00011: ISG Plate LLC** (900 Conshohocken Road, Conshohocken, PA 19428) on July 29, 2005, to amend to process a change of ownership and responsible official for a facility Title V Operating Permit in Plymouth Township, **Montgomery County**.

*Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701; David Aldenderfer, Program Manager, (570) 327-3637.*

**59-399-005A: Pine Hill, Inc.** (P. O. Box 62, Blossburg, PA 16912) on July 21, 2005, via the minor operating permit modification requirements of 25 Pa. Code Section

127.462, to authorize the disposal of foundry waste from ACP Manufacturing Co., LLC at a residual waste landfill in Ward Township, **Tioga County**.

**60-399-002: Ritz-Craft Corp.** (15 Industrial Park Road, Mifflinburg, PA 17844) on July 22, 2005, to operate two mobile/modular home assembly plants and a surface coating operation on a temporary basis until November 19, 2005, in Mifflinburg Borough, **Union County**. The plan approval has been extended.

*Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745; Mark Wayner, Facilities Permitting Chief, (412) 442-4174.*

**56-00232: Shade Landfill, Inc.** (Waste Management, Cherrington Corporate Center, 625 Cherrington Parkway, Moon Township, PA 15108) on July 20, 2005, for their Shade landfill in Shade Township **Somerset County**. The Department of Environmental Protection (Department) has administratively amended the Operating Permit to incorporate the names of the new Responsible Official, permit contact, corrections to Plan Approval PA-56-232B, Condition No. 4, and the conditions of Plan Approval PA-56-00232B. Through a minor permit modification the Department has revised the permit to incorporate specific alternatives to the collection and control system operation. The proposed methods are acceptable and conform with language allowing such a change in the Operating Permits and also mirror language found in 40 CFR 60.752(b)(2)(i)(B) and 40 CFR 60.753 that allow for alternatives to operational standards for collection and control systems.

The Department has approved this minor operating permit modification in accordance with 25 Pa. Code § 127.462. This is a Title V Facility.

## 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 Permits Actions

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

**02891701 and NPDES Permit No. PA0215571, Consolidation Coal Company** (1800 Washington Road, Pittsburgh, PA 15241), to renew the industrial waste permit for the Harmer Mine in Harmer and Indiana Townships, Fox Chapel Borough, **Allegheny County** and related NPDES permit. No additional discharges. Permit issued July 27, 2005.

**03901304. NPDES Permit No. PA0214531, TJS Mining, Inc.** (2340 Smith Road, Shelocta, PA 15774), to revise the permit for the Darmac No. 3 Deep Mine in Plumcreek Township, **Armstrong County** to use coal ash for mine reclamation. No additional discharges. Permit issued July 29, 2005.

*Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.*

**32980111 and NPDES Permit No. PA0234885, Kraynak Coal Company,** 3124 Firetower Road, Mahaffey, PA 15757, permit revision—land use change on Thomas A. and Helen L. Green and Bernard and Donna J. Green property from Forest to Pasture or land occasionally cut for hay, in Green Township, **Indiana County**, affecting 97.6 acres. Receiving stream: UNTs to Dixon Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received: May 4, 2005. Permit revision issued: July 21, 2005.

**Permit No. 56900104 and NPDES No. PA0598780. Windber High Standard Coal Company,** 1210 Graham Ave. Windber, PA 15963 permit renewal for reclamation only of a bituminous surface mine in Shade Township, **Somerset County**, affecting 37.7 acres. Receiving streams: Beaverdam Creek and UNTs to Beaverdam Creek, classified for the following uses: CWF. There are no potable water supply intakes within 10 miles downstream. Application received May 31, 2005. Permit issued July 25, 2005.

**Permit No. 56000103 and NPDES No. PA0235245. Hoffman Mining, Inc.,** 118 Runway Road, Friedens, PA 15541, permit renewal for reclamation only of a bituminous surface mine in Quemahoning Township, **Somerset County**, affecting 111.4 acres. Receiving streams: UNTs to Oven Run to Stony Creek River, classified for the following uses: CWF and WWF. There are no potable water supply intakes within 10 miles downstream. Application received June 1, 2005. Permit issued July 25, 2005.

**Permit No. 32000106 and NPDES No. PA0235334. P & N Coal Company, Inc.,** permit renewal for reclamation only of a bituminous surface mine in Banks Township, **Indiana County**, affecting 43.8 acres. Receiving stream: UNTs to Cush Creek, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received June 10, 2005. Permit issued July 25, 2005.

**Permit No 56900105 and NPDES No PA0598852. Cooney Brothers Coal Company,** P. O. Box 246, Cresson, PA 16630, permit renewal for reclamation only of a bituminous surface mine in Paint Township, **Somerset County**, affecting 295 acres. Receiving streams: UNTs to and Shade Creek, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received May 4, 2005. Permit issued July 27, 2005.

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

**33900105. Hepburnia Coal Company** (P. O. Box I, Grampian, PA 16838). Renewal of an existing bituminous strip and auger operation in Snyder Township, **Jefferson County**, affecting 650.2 acres. Receiving streams: UNTs to Little Toby Creek and UNTs to Mill Creek. Application received May 8, 2000. Permit issued July 21, 2005.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17880126 and NPDES No. PA0116599. Waroquier Coal Company** (P. O. Box 128, Clearfield, PA 16830). Renewal of an existing bituminous surface-auger permit in Lawrence Township, **Clearfield County** affecting 290.4 acres. Receiving streams: UNTs to the West Branch of the Susquehanna River. Application received: January 31, 2005. Permit issued July 11, 2005.

#### *Noncoal Permits Actions*

*Greensburg District Mining Office: R. R. 2, Box 603-C, Greensburg, PA 15601, (724) 925-5500.*

**26900306 and NPDES Permit No. PA0591483. Hanson Aggregates PMA, Inc.** (2200 Springfield Pike, Connellsville, PA 15425). NPDES permit renewal issued for continued operation and reclamation of a noncoal surface mining site located in Connellsville Township, **Fayette County**, affecting 51.4 acres. Receiving stream: UNT to Connell Run. Application received: June 17, 2005. NPDES renewal issued: July 25, 2005

**03010407 and NPDES Permit No. PA0250040. Stitt Coal Company, Inc.** (R. D. 1, Box 197A, Ford City, PA 16226). Permit revised to reconfigure 0.9 acre of the permit area and add a coal preparation area at an existing noncoal surface mining site located in Kittanning Township, **Armstrong County**, affecting 285.2 acres. Receiving stream: Garrets Run. Application received: January 10, 2005. Revised permit issued: July 28, 2005.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**08040807. Kim L. Mapes** (622 Second Street, Towanda, PA 18848), commencement, operation and restoration of a small industrial mineral (Bluestone) surface mine permit in Standing Stone Township, **Bradford County** affecting 2.0 acres. Receiving stream: UNT to the Susquehanna River. Application received: June 10, 2004. Permit issued July 20, 2005.

**59040801. Richard N. Smith Excavating, Inc.** (R. R. 2, Box 116, Millerton, PA 16936), commencement, operation and restoration of a small industrial minerals (Sand and Gravel) surface mine permit in Jackson Township, **Tioga County** affecting 3.0 acres. Receiving streams: Seeley Creek and Chemung River. Application received December 27, 2004. Permit issued July 19, 2005.

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

**7174SM1C5 and NPDES Permit No. PA0009407.** (205 Creek Road, Camp Hill, PA 17011), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Swatara Township, **Dauphin County**, receiving stream: Susquehanna River. Application received April 20, 2005. Renewal issued July 26, 2005.

**58050811. Richard Luce,** (R. R. 1 Box 1652, Hallstead, PA 18822), commencement, operation and restoration of a bluestone quarry operation in Liberty Township, **Susquehanna County** affecting 5.0 acres. Receiving streams: Dubois Creek. Application received March 2, 2005. Permit issued July 26, 2005.

**58040827. Jeffrey C. Bennett** (P. O. Box 442, New Milford, PA 18834), commencement, operation and restoration of a Bluestone Quarry operation in Gibson Township, **Susquehanna County** affecting 5.0 acres. Receiving stream: Tributary to Butler Creek. Application received May 3, 2004. Permit issued July 26, 2005.

**58050814. Bluerock Natural Resources, LLC** (R. R. 7 Box 7022, Montrose, PA 18801), commencement, opera-

tion and restoration of a Bluestone Quarry operation in Middletown Township, **Susquehanna County** affecting 5.0 acres. Receiving stream: Middle Branch Wyalusing Creek. Application received April 4, 2005. Permit issued July 28, 2005.

**58050815. Harold Jay Luther** (R. R. 3 Box 3727, Nicholson, PA 18446), commencement, operation and restoration of a quarry operation in Springville Township, **Susquehanna County** affecting 5.0 acres. Receiving stream: Meshoppen Creek. Application received April 7, 2005. Permit issued July 28, 2005.

#### 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.**

*Greensburg District Mining Office: R. R. 2, Box 603-C, Greensburg, PA 15601, (724) 925-5500.*

**65054004. John J. Brentzel, Inc.** (1070 Morris Avenue, North Huntingdon, PA 15642). Permit issued for construction related blasting at a site located in North Huntingdon Township, **Westmoreland County**, with an expected duration of 6 months. Permit issued on July 25, 2005.

**26054006. DT Construction** (1107 University Drive, Dunbar, PA 15431). Blasting permit issued for abandoned mine land reclamation project, located in Luzerne Township, **Fayette County**, with an expected duration of 180 days. Permit issued: July 28, 2005.

**2054004. Lomik Construction** (15 Rock Springs Road, Delmont, PA 15626). Blasting permit issued for the Beaver grade drop zone, located in Leetsdale Borough, **Allegheny County**, with an expected duration of 180 days. Permit issued: July 28, 2005.

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

**16054002. Glen Gery Corporation** (Route 28, P. O. Box 68, Summerville, PA 15864). Blasting activity permit to blast for clay exploration in Monroe Township, **Clarion County**. This blasting activity permit will expire on August 22, 2005. Application received: July 21, 2005. Application Issued: July 22, 2005.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**08050801. William C. Pickett** (R. R. 2 Box 2951, Laceyville, PA 18623). Addition to an existing small noncoal permit in Tuscarora Township, **Bradford County**. Permit issued: July 21, 2005.

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

**28054136. Newville Construction Services, Inc.** (408 Mohawk Road, Newville, PA 17241), construction blasting for Allison Atrium Museum in Greencastle Borough, **Franklin County** with an expiration date of July 30, 2006. Permit issued July 25, 2005.

**28054137. Newville Construction Services, Inc.** (408 Mohawk Road, Newville, PA 17241), construction blasting for Young Subdivision in Antrim Township, **Franklin County** with an expiration date of July 30, 2006. Permit issued July 25, 2005.

**28054138. Newville Construction Services, Inc.** (408 Mohawk Road, Newville, PA 17241), construction blasting for Scott Green Estates in Chambersburg Borough, **Franklin County** with an expiration date of July 30, 2006. Permit issued July 25, 2005.

**28054139. Newville Construction Services, Inc.** (408 Mohawk Road, Newville, PA 17241), construction blasting for Scotland Meadows in Greene Township, **Franklin County** with an expiration date of July 30, 2006. Permit issued July 25, 2005.

**48054111. Austin Powder Company** (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for Florey Farms in Upper Nazareth Township, **Northampton County** with an expiration date of July 20, 2006. Permit issued July 25, 2005.

**48054112. Austin Powder Company** (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for Posh Job in Forks Township, **Northampton County** with an expiration date of July 31, 2006. Permit issued July 25, 2005.

**67054123. M & J Explosives, Inc.** (P. O. Box 608, Carlisle, PA 17013), construction blasting for West Manchester Sewer in West Manchester Township, **York County** with an expiration date of January 13, 2006. Permit issued July 25, 2005.

**67054033. J. Roy's, Inc.** (Box 125, Bowmansville, PA 17507), construction blasting for Dauberton Subdivision in Manchester Borough, **York County** with an expiration date of June 30, 2006. Permit issued July 27, 2005.

**67054034. Warren's Excavating & Drilling, Inc.** (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting for Winter Ridge Housing Development in Lower Windsor Township, **York County** with an expiration date of June 30, 2006. Permit issued July 27, 2005.

**67054035. J. Roy's, Inc.** (Box 125, Bowmansville, PA 17507), construction blasting for Colonial Crossings Subdivision in Codorus Township, **York County** with an expiration date of July 15, 2006. Permit issued July 27, 2005.

**7054036. J Roy's, Inc.** (Box 125, Bowmansville, PA 17507), construction blasting at Lot 15 on Arnold Road (New Subdivision) in Manheim Township, **York County** with an expiration date of July 15, 2006. Permit issued July 27, 2005.

**09054011. Eastern Blasting Company, Inc.** (1292 Street Road, New Hope, PA 18938), construction blasting at Poets Walk Housing Development in Northampton Township, **Pike County** with an expiration date of July 1, 2006. Permit issued July 27, 2005.

**38054007. Warren's Excavating & Drilling, Inc.** (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting at Fox Hill Estates in South Londonderry Township, **Lebanon County** with an expiration date of July 31, 2006. Permit issued July 27, 2005.

**21054006. Brubacher Excavating, Inc.** (P. O. Box 528, 825 Reading Road, Bowmansville, PA 17507), construction blasting for Summerhill in Silver Spring Township, **Cumberland County** with an expiration date of July 31, 2006. Permit issued July 27, 2005.

**09054012. Eastern Blasting Company, Inc.** (1292 Street Road, New Hope, PA 18938), construction blasting at New Britain Business Park in New Britain Township, **Bucks County** with an expiration date of November 1, 2005. Permit issued July 27, 2005.

**67054037. J. Roy's, Inc.** (Box 125, Bowmansville, PA 17507) construction blasting at Delco Plaza Shopping Mall in West Manchester Township, **York County** with an expiration date of July 15, 2006. Permit issued July 27, 2005.

**67054038. ABEL Construction Co., Inc.** (P. O. Box 476, Mountville, PA 17554), construction blasting at Delta Ridge Subdivision in Peach Bottom Township, **York County** with an expiration date of August 31, 2006. Permit issued July 27, 2005.

**22054005. Warren's Excavating & Drilling, Inc.** (P. O. Box 189, Bowmansville, PA 17507), construction blasting for Charter Homes Winslett in West Hanover Township, **Dauphin County** with an expiration date of July 31, 2006. Permit issued July 27, 2005.

**15054117. American Rock Mechanics, Inc.** (7531 Chestnut Street, Zionsville, PA 18092), construction blasting for Atwater Development in Tredyffrin Township, **Chester County** with an expiration date of December 30, 2006. Permit issued July 27, 2005.

**21054149. M & J Explosives, Inc.** (P. O. Box 608, Carlisle, PA 17013), construction blasting for High Meadows in Lower Allen Township, **Cumberland County** with an expiration date of August 31, 2006. Permit issued July 27, 2005.

**21054150. Newville Construction Services, Inc.** (408 Mohawk Road, Newville, PA 17241), construction blasting for High Meadows in Upper Allen Township, **Cumberland County** with an expiration date of July 30, 2006. Permit issued July 27, 2005.

**28054145. David H. Martin Excavating, Inc.** (4961 Cumberland Highway, Chambersburg, PA 17201), construction blasting for Heritage Estates in Greencastle Borough, **Franklin County** with an expiration date of July 26, 2006. Permit issued July 27, 2005.

**46054124. Austin Powder Company** (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for South View in Lower Pottsgrove Township, **Montgomery County** with an expiration date of July 31, 2006. Permit issued July 27, 2005.

**46054125. Austin Powder Company** (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for The Court at Upper Providence in Upper Providence Township, **Montgomery County** with an expiration date of August 1, 2006. Permit issued July 27, 2005.

**21054007. Warren's Excavating & Drilling, Inc.** (P. O. Box 189, Bowmansville, PA 17507-0189), construction blasting at Towns on the Meadow in Upper Allen Township, **Cumberland County** with an expiration date of July 31, 2006. Permit issued July 28, 2005.

**67054039. J. Roy's, Inc.** (Box 125, Bowmansville, PA 17507), construction blasting at New Brittney Subdivision in Manchester Township, **York County** with an expiration date of December 31, 2005. Permit issued July 28, 2005.

**15054118. Allan A. Myers, Inc.** (P. O. Box 98, Worcester, PA 19490), construction blasting for Sawmill Subdivision in West Bradford Township, **Chester County** with an expiration date of July 28, 2006. Permit issued July 28, 2005.

**15054119. Horst Drilling & Blasting, Inc.** (141 Rancks Church Road, New Holland, PA 17557), construction blasting for Sawmill Subdivision in West Bradford Township, **Chester County** with an expiration date of July 28, 2006. Permit issued July 28, 2005.

**22054110. Hall Explosives, Inc.** (2981 Elizabethtown Road, Hershey, PA 170330), construction blasting for Milton Hershey School in Derry and South Londonderry Township, **Dauphin and Lebanon Counties** with an expiration date of July 30, 2006. Permit issued July 28, 2005.

**38054117 and 38054118. Keystone Blasting Service** (381 Reifsnnyder Road, Lititz, PA 17543), construction blasting for Tri-Valley Contractor Project in South Lebanon Township, **Lebanon County** with an expiration date of December 30, 2005. Permit issued July 28, 2005.

**40054113. Holbert Explosives, Inc.** (237 Mast Hope Plank Road, Lackawaxen, PA 18435), construction blasting for Linde Enterprises in Pittston Township, **Luzerne County** with an expiration date of August 1, 2006. Permit issued July 28, 2005.

**01054112. Hall Explosives, Inc.** (2981 Elizabethtown Road, Hershey, PA 170330), construction blasting for Cedar Ridge in Hamilton Township, **Adams County** with an expiration date of July 30, 2006. Permit issued July 29, 2005.

**40054114. Holbert Explosives, Inc.** (237 Mast Hope Plank Road, Lackawaxen, PA 18435), construction blasting for Saddle Ridge in Dallas Township, **Luzerne County** with an expiration date of August 1, 2006. Permit issued July 29, 2005.

**67054124. M & J Explosives, Inc.** (P. O. Box 608, Carlisle, PA 17013), construction blasting for Pleasant View in Fairview Township, **York County** with an expiration date of August 31, 2006. Permit issued July 29, 2005.

## 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**

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

**E38-136: Ronald Sniegocki**, 360 Palmyra-Bellegrove Road, Annville, PA 17003 in North Londonderry Township, **Lebanon County**, ACOE Baltimore District

To remove an existing 22-foot long 42-inch diameter corrugated metal pipe culvert and then to construct and maintain a 16-foot wide by 5.58-foot depth concrete box culvert at the channel of an UNT to the Quittapahilla Creek (TSF) to construct Carson Lane of the proposed Tiffany's Equine Estates residential development, located on the east side of Palmyra-Bellegrove Road (SR 4008) about 1,200 feet south of its intersection with Snyder Road (T-864) (Palmyra, PA Quadrangle N: 16.1 inches; W: 8.87 inches) in North Londonderry Township, Lebanon County.

**E50-229: Department of Transportation, Engineering District 8-0**, 2140 Herr Street, Harrisburg, PA 17103-1699 in Southwest Madison Township, **Perry County**, ACOE Baltimore District.

To rehabilitate and maintain the Bistline Covered Bridge over Sherman Creek (HQ-CWF) on SR 3005, Section 003, Segment 0020, Offset 2314 (Madison Road) by replacing the abutments thereby increasing the span to 96.2 feet, replacing the steel girders and beams thereby providing a minimum underclearance of 9 feet, removing the steel piers, replacing the timber decking and other associated improvements in order to improve the traffic

safety condition located about 1.1 miles south of Andersonburg Village (Andersonburg, PA Quadrangle N: 15.24 inches; W: 13.38 inches) in Southwest Madison township, Perry County.

**E50-230: Department of Transportation, Engineering District 8-0**, 2140 Herr Street, Harrisburg, PA 17103-1699 in Southwest Madison Township, **Perry County**, ACOE Baltimore District.

To rehabilitate and maintain the Adairs Covered Bridge over Sherman Creek (WWF) on SR 3008, Section 005, Segments 0110, Offset 1236 (Couchtown Road) by repairing the abutments and the middle pier, replacing the steel girders, beams, and timber decking, removing the two steel piers and other associates improvements to improve the traffic safety conditions located ear Cisna School (Andersonburg, PA Quadrangle N: 18.26 inches; W: 6.85 inches) in Southwest Madison township, Perry County.

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

**E14-473. David Greenaway**, 2105 Runville Road, Bellefonte, PA 16823. Bank Protection, in Boggs Township, **Centre County**, ACOE Baltimore District (Bellefonte, PA Quadrangle N: 21.07 inches; W: 13.35 inches).

To construct and maintain a total of 43 linear feet of stream bank protection located within a 235 feet reach downstream of a culvert pipe that is next to Mr. Greenaway's parking area and in the right bank of a UNT to Wallace Run located 3,100 feet upstream of the intersection of Gum Stump Road and Runville Road (SR 144) (Bellefonte, PA Quadrangle N: 21.07 inches; W: 13.35 inches) in Boggs Township, Centre County. This permit was issued under Section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

**E17-404. River Hill Power Company LLC**, 94 Spruce Street, Indiana, PA 15701-8424. River Hill Power Waste Coal Electric Generating Facility and Appurtenances, Karthaus Township, **Clearfield County**, ACOE Baltimore District (Devils Elbow, PA Quadrangle N: 1.6 inches; W: 0.8 inch).

To construct, operate and maintain six water obstruction and encroachments in association with the construction and operation of a 290-megawatt waste coal electric generating power plant and its appurtenances. The following table lists the specific structure, structure dimensions, waterway impacted, Chapter 93 water quality designation, latitude and longitude.

<i>Structure</i>	<i>Structure Dimension</i>	<i>Waterway Impacted</i>	<i>Water Quality</i>	<i>Latitude</i>	<i>Longitude</i>
Water Make-up Intake	20-inch Diameter × 275-foot Length	West Branch, Susquehanna River	WWF	41° 02' 06"	78° 06' 33"
Wastewater Outfall	12-inch Diameter × 220-foot Length	West Branch, Susquehanna River	WWF	41° 02' 06"	78° 06' 33"
Access Road Arch Culvert	20-foot Span × 6-foot Rise × 54-foot Length	Dutch Hollow Run	CWF-Wild Trout	41° 08' 00"	77° 07' 50"
Access Road Arch Culvert	57-inch Span × 38-inch Rise × 136-foot Length	UNT-Dutch Hollow Run	CWF-Wild Trout	41° 07' 56"	78° 07' 49"

<i>Structure</i>	<i>Structure Dimension</i>	<i>Waterway Impacted</i>	<i>Water Quality</i>	<i>Latitude</i>	<i>Longitude</i>
Access Road Arch Culvert	57-inch Span × 38-inch Rise × 373-foot Length	UNT-Mosquito Creek	HQ-CWF	41° 07' 47"	78° 07' 3.7"
Access Road Arch Culvert	57-inch Span × 38-inch Rise × 221-foot Length	UNT-Mosquito Creek	HQ-CWF	41° 07' 46"	78° 06' 40"

Since Dutch Hollow Run is a wild trout stream, no construction or future repair work shall be done in or along the stream channel between October 1 and December 31 without the prior written approval of the Fish and Boat Commission. The northern access road for the River Hill Power waste coal electric generating facility is located along the eastern right-of-way of SR 1001 approximately 2,300 feet north of SR 0879 and SR 1011 intersection. This permit will also authorize construction, operation, maintenance and removal of temporary construction crossings, causeways, stream diversions and cofferdams. Temporary structures shall be constructed of clean rock that is free of fines; and upon completion of construction activities, temporary structures shall be removed with disturbed areas being restored to original contours and elevations. Construction of the listed structures will permanently impact a total of 0.32 acre of wetland and 1,079 feet of waterway. For mitigation of the permanent wetland and waterway impacts, the permittee shall construct 0.60 acre of replacement wetland and 2,950 feet of stream mitigation by constructing operating and maintaining an alkaline addition system for Dutch Hollow Run.

**E57-106. Joseph M. Chaklos, Sr.**, 79 Washington Street, Port Carbon, PA 16965. Floodway Construction in Cherry Township, **Sullivan County**, ACOE Baltimore District (Dushore, PA Quadrangle N: 1.33 inches; W: 14.03 inches).

To construct and maintain a 1,000-gallon sewage holding tank, strapped to a concrete pad and faced with a concrete wall on the stream side 8 feet above the 100-year flood level of the Little Loyalsock Creek off the north side of SR 87 about 1 mile south of the intersection of Black Creek Road with SR 87. The project will not impact wetlands or waterways with negligible earth disturbance impacts. Little Loyalsock Creek is a CWF stream. This permit was issued under Section 105.13(e) "Small Projects."

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

**E63-570. Washington County Commissioners**, 100 West Beau Street, Washington, PA 15301. To construct a bridge in the City of Monongahela, **Washington County**, Pittsburgh ACOE District (Monongahela, PA Quadrangle N: 12.6 inches; W: 7.7 inches and Latitude: 40° 11' 40"—Longitude: 79° 55' 49"). To remove the existing structure (Pigeon Creek Bridge No. 2) and to construct and maintain a new 2-span bridge having a total span of 105.16 feet with an average underclearance of 5.42 feet across the channel of Pigeon Creek (WWF) for the purpose of improving highway safety. The project is located on Wall Street approximately 100 feet southeast from the intersection of Wall Street and SR 431, and will impact approximately 250 feet of stream channel. The permit also authorizes the construction and maintenance of a temporary road crossing consisting of four 72-inch diameter CM pipes.

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

**E25-689, Department of Transportation, District 1-0**, 255 Elm Street, P. O. Box 398 Oil City, PA 16301-1412. SR 0006, Segment 0060, Offset 0252 Bridge over French Creek, in LeBoeuf Township, **Erie County**, ACOE Pittsburgh District (Waterford, PA Quadrangle N: 1.3 inches; W: 16.9 inches).

The applicant proposes to remove the existing structure and to construct and maintain a steel span plate girder bridge having a clear span of 158.5 feet and a minimum underclearance of 13.42 feet on a 90° skew across French Creek (Waterford, PA Quadrangle N: 1.3 inches; W: 16.9 inches) in LeBoeuf Township, Erie County on SR 0006, Segment 0060, Offset 0252 approximately 250 feet E of the intersection of SR 0006 and SR 0019. French Creek is a perennial stream classified as a WWF.

### STORAGE TANKS SITE-SPECIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permits, under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504, 6021.1101—6021.1102) and under 25 Pa. Code Chapter 245, Subchapter C, have been issued by the Bureau of Land Recycling and Waste Management, Director, P. O. Box 8763, Harrisburg, PA 17105-8763.

<i>SSIP Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Tank Type</i>	<i>Tank Capacity</i>
04-05-006	Francis H. Kelly BASF Corporation 370 Frankfort Road Monaca, PA 15061	Beaver	Potter Township	1 AST storing Methyl-Methacrylate	75,000 gallons



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**SPECIAL NOTICES**


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**Request for Proposals for Municipal Solid Waste Capacity**

The following notice(s) is placed through the Department of Environmental Protection as required by section 502(d) of Act 101 of 1988: the Municipal Waste Planning, Recycling and Waste Reduction Act.

Montgomery County is revising its Municipal Waste Management Plan in accordance with Act 101 for the purpose of including additional waste processing and disposal capacity for the county. The waste facilities to be considered in the plan revision must be permitted and fully available for use prior to January 1, 2006. Currently about 750,000 tons per year of municipal waste is generated in the county. For detailed information, interested facility owners should write to Drew Shaw, Environmental Planning Section Chief, Montgomery County Planning Commission, Courthouse, Norristown, PA 19404-0311. Inquiries should be in writing and made no later than 30-calendar days from the date this notice is published.

**Certification to Perform Radon-Related Activities in this Commonwealth**

In the month of July 2005 the Department of Environmental Protection, under the Radon Certification Act (63 P. S. §§ 2001—2014) and regulations promulgated thereunder at 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>
Advantage Radon Control Centers	626 Jacksonville Road Suite 200 Warminster, PA 18974	Mitigation
Harold Beers H. E. Beers Company	2421 Fishing Creek Valley Road Harrisburg, PA 17112	Mitigation
Matthew Beinhaur Harris Environmental, Inc.	600 Stone House Road Clarion, PA 16214	Testing
Jeffrey Calta	P. O. Box T Chicora, PA 16025	Laboratory
George Corkdale	R. R. 7, Box 7669 Saylorsburg, PA 18353	Testing
Scott Coslett	332 East 11th Street Berwick, PA 18603	Testing
D-Tech	P. O. Box 902 Blue Bell, PA 19422	Testing
Delta Inspection Services, Inc.	P. O. Box 586 Yardley, PA 19067	Testing
Joseph Dunlap	115 Heather Drive Monaca, PA 15061	Testing
Fidelity Inspection & Consulting Services	626 Jacksonville Road Suite 200 Warminster, PA 18974	Testing
Stephen Gazzo	780 Pierson Run Road Pittsburgh, PA 15239	Testing
Stephen Genzale, P. E.	417 East Beil Avenue Nazareth, PA 18064	Testing
Patrick Kelly	601 South Irving Avenue Scranton, PA 18505	Testing
George Kerr	325 Noblestown Road Pittsburgh, PA 15205	Testing
Kevin Kerwood	1341 North Delaware Avenue Suite 205 Philadelphia, PA 19125	Testing
Robert Krause	P. O. Box 184 208 Depot Street Clarks Summit, PA 18411	Testing
David Lanzer Clean Air Pro	174 Penn Lear Drive Monroeville, PA 15146	Mitigation

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
James Makara	146 South Marmic Drive Holland, PA 18966	Testing
Luke Marsh	2500 Eldo Road Suite 2 Monroeville, PA 15146	Testing
Joseph Miloser, Jr.	160 Rustic Ridge Fombell, PA 16123	Testing
Joseph Molony	220 Dotterer Road Lenhardtsville, PA 19534	Testing
Lewis Nelson, IV First Choice Radon Testing Co., Inc.	Box 830 Huntingdon Valley, PA 19006	Testing
Rachelle Painter	780 Pierson Run Road Pittsburgh, PA 15239	Testing
Emanuel Posluszny	8123 Bear Creek Boulevard Bear Creek Township, PA 18702	Testing and Mitigation
Christian Radomicki	1341 North Delaware Avenue Suite 205 Philadelphia, PA 19125	Testing
David Robertson	345 West Rose Tree Road Media, PA 19063	Testing
Val Sarko	317 Melrose Avenue Reading, PA 19606	Testing
Rodney Williams	4296 Limeport Pike Coopersburg, PA 18036	Testing
Sharon Young	1 Old Mill Road Tannersville, PA 18372	Testing

[Pa.B. Doc. No. 05-1517. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Proposed Revisions to General Plan Approval and General Operating Permit

The Department of Environmental Protection (Department) proposes to revise the following general plan approval and operating permit: BAQ-GPA/GP-3 (GP-3) for portable nonmetallic processing plants.

The primary purpose of this revision is to reflect the way general permit conditions have evolved since GP-3 was issued initially. These changes clarify that the general permit may be used either as a general plan approval or as a general operating permit for a portable nonmetallic processing plant in a facility, as outlined under Condition 2 or, Applicability/Source Coverage Limitations. In addition, diesel fired internal combustion engines powering portable nonmetallic processing plants are now a separate source category requiring separate authorization through BAQ-GPA/GP-9 or BAQ-GPA/GP-11. Therefore, affected Conditions 2, 3, 8 and 17, that is, "applicability/source coverage limitation," "application for use," "monitoring, recordkeeping and reporting" and "emission limitations" respectively have been modified to reflect this separate source category. Among the other changes, Condition 2 now contains a definition of "portable plants" as defined in 40 CFR § 60.671; a new requirement concerning change of locations for nonmetallic processing plants has been added under Condition 12; and previous "malfunctions" requirements now have been rephrased and moved under "notice requirements" in Condition 6. Several requirements have been added for dust suppression system, baghouse and scrubber in Conditions 18, 22 and 24. Also, Conditions 3, 4, 5—11, 14, 15,

21 and 25 in the current general permit document were changed due to routine internal evaluations. Conditions 1, 4, 13, 16, 19, 20 and 23 of this document remain unchanged from the last revision and are not reproduced here.

The following are the conditions affected by this revision. The condition numbers listed here reflect how they appear in this current revision.

#### *Proposed Permit Conditions*

#### **2. Applicability/Source Coverage Limitations**

This General Permit is limited to the erection, operation, and modification of portable nonmetallic mineral processing plants

a. that are temporarily (no longer than 24 months) located at construction sites; or,

b. that are located at sites for which a valid mining permit or an air quality permit exists for the operation of a nonmetallic mineral processing plant.

"Nonmetallic mineral processing plants," as defined in 40 CFR § 60.671, means any combination of equipment that is used to crush or grind any nonmetallic mineral. Nonmetallic mineral processing plants are designed to process nonmetallic minerals, and consist of affected units like crushers, grinders, screening operations, belt conveyors, bucket elevators, storage bins, bagging operations, and enclosed truck and rail car loading stations.

"Portable plant" means any of the nonmetallic mineral processing plants that are mounted on any chassis or skids and may be moved by the application of a lifting or

pulling force. In addition, there shall be no cable, chain, turn-buckle, bolt or other means (except electrical connections) by which any piece of equipment is attached or clamped to any anchor, slab, or structure, including bedrock that must be removed prior to the application of a lifting or pulling force for the purpose of transporting the unit.

Diesel-fired internal combustion engine(s) required to operate nonmetallic mineral processing plants are not covered by this General Permit. Internal combustion engine(s) may be covered by general plan approval and general operating permit for a diesel or No. 2 fuel-fired internal combustion engines (BAQ-GPA/GP 9) or nonroad engines (BAQ-GPA/GP 11) as applicable.

This General Permit has been established in accordance with the provisions described in 25 Pa. Code Chapter 127, Subchapter H (relating to general plan approvals and general operating permits). If the portable nonmetallic mineral processing plant at the facility cannot be regulated by the requirements of this General Permit, a plan approval and/or an operating permit issued in accordance with 25 Pa. Code Chapter 127, Subchapter B (relating to plan approval requirements) and/or F (relating to operating permit requirements) will be required, or, if the facility is a Title V facility, a Title V operating permit issued in accordance with Subchapters F and G (relating to Title V Operating Permits) will be required.

"Nonmetallic mineral" means any of the following minerals or any mixture of which the majority is any of the following minerals:

- a. Crushed and broken stone, including limestone, dolomite, granite, traprock, sandstone, quartz, quartzite, marl, marble, slate, shale, oil shale, and shell;
- b. Sand and gravel;
- c. Clay including kaolin, fireclay, bentonite, Fuller's earth, ball clay, and common clay;
- d. Rock salt;
- e. Gypsum;
- f. Sodium compounds, including sodium carbonate, sodium chloride, and sodium sulfate;
- g. Pumice;
- h. Gilsonite;
- i. Talc and pyrophyllite;
- j. Boron, including borax, kernite, and colemanite;
- k. Barite;
- l. Flourospar;
- m. Feldspar;
- n. Diatomite;
- o. Perlite;
- p. Vermiculite;
- q. Mica; and
- r. Kyanite, including andalusite, sillimanite, topaz, and dumortierite.

Nonmetallic minerals do not include coals of any type.

This General Permit is designed to serve as both a general plan approval and a general operating permit for one or more portable nonmetallic mineral processing plant located in a facility. The specific use of the General Permit will depend upon permit status, emission levels and location of the facility as outlined below.

#### *Plan Approval*

This General Permit authorizes the construction of portable nonmetallic mineral processing plants that meet the best available technology (BAT) required under 25 Pa. Code §§ 127.1 and 127.12(a)(5), provided the respective construction is not subject to the requirements of 25 Pa. Code Chapter 127, Subchapter D (relating to prevention of significant deterioration), or 25 Pa. Code Chapter 127, Subchapter E (relating to new source review). For the purpose of this General Permit, BAT shall include the installation of water spray dust suppression systems, fabric collectors, combinations of these or other measures capable of meeting the emission limitations described in Condition No. 21.

#### *Operating Permit*

This General Permit authorizes the operation of portable nonmetallic mineral processing plants for a period of no longer than twenty four (24) months for plants located at a construction site and maximum up to five (5) years for plants located at a site for which a valid mining permit or an air quality permit exists for the operation of a nonmetallic mineral processing plant.

A facility that is subject to the requirements of 25 Pa. Code Chapter 127, Subchapter F (relating to Operating Permit Requirements), or 25 Pa. Code Chapter 127, Subchapters F and G (relating to Title V Operating Permits Requirements) may use this General Permit as a plan approval to construct and an operating permit to operate a qualifying portable nonmetallic mineral processing plant on a temporary basis until such time as the operating permit required pursuant to 25 Pa. Code Chapter 127, Subchapter F, or 25 Pa. Code Chapter 127, Subchapters F and G, has been obtained or amended to include the terms and conditions of this General Permit.

Once authorization to use this General Permit is granted, operation may proceed provided that the permittee notifies DEP in accordance with Condition 6.

Any portable nonmetallic mineral processing plant located at a "Title V facility" as defined in 25 Pa. Code § 121.1, shall comply with the requirements of 25 Pa. Code § 127.514 (relating to general operating permits at Title V facilities).

### **3. Application for Use**

Any person proposing to install, operate or modify under this General Permit shall notify DEP using the Portable Nonmetallic Mineral Processing Plant General Permit Application provided by DEP. In accordance with 25 Pa. Code § 127.641 (relating to application for use of general plan approvals and general operating permits for portable sources), the applicant shall receive written authorization from DEP prior to installing, operating or modifying under this General Permit.

Portable nonmetallic mineral processing plant driven by internal combustion engine(s) must also apply for General Plan Approval and/or General Operating Permit for Diesel or No. 2 Fuel-Fired Internal Combustion Engines (BAQ-GPA/GP 9) or, General Plan Approval and/or General Operating Permit for Nonroad Engines (BAQ-GPA/GP 11), in conjunction with the portable nonmetallic mineral plant general permit application.

### **4. Compliance**

Any portable nonmetallic mineral processing plant operating under this General Permit must comply with the terms and conditions of the General Permit. The portable nonmetallic mineral processing plant and any associated air cleaning devices shall be

a. operated in such a manner as not to cause air pollution, as the term is defined in 25 Pa. Code § 121.1;

b. operated and maintained in a manner consistent with good operating and maintenance practices; and

c. operated and maintained in accordance with the manufacturer's specifications and the applicable terms and conditions of this General Permit.

### 5. Permit Modification, Suspension and Revocation

This General Permit may be modified, suspended, or revoked if DEP determines that affected nonmetallic mineral processing plants cannot be adequately regulated under this General Permit. Authorization to use this General Permit shall be suspended or revoked if the permittee fails to comply with applicable terms and conditions of the General Permit.

Authorization to operate the portable nonmetallic mineral processing plant shall be suspended, if, at any time, the permittee causes, permits or allows any modification without DEP approval (as defined in 25 Pa. Code § 121.1) of the portable nonmetallic mineral processing plant and any associated air pollution control device covered by this General Permit. Upon suspension of the General Permit, the permittee may not continue to operate or use said nonmetallic mineral processing plant. If warranted, DEP will require that the nonmetallic mineral processing plant be permitted under the state operating permit or Title V operating permit requirements in 25 Pa. Code Chapter 127, as appropriate.

### 6. Notice Requirements

The applications and notifications required by 25 Pa. Code § 127.621 shall be submitted to the appropriate Regional Office responsible for authorizing the use of General Permits in the county in which the portable nonmetallic mineral processing plant is, or will be located. As required under § 127.621(b) the application shall be either hand delivered or transmitted by certified mail with a return receipt.

The permittee shall notify DEP, in writing, of the permittee's intent to commence operation of source(s) authorized by the General Plan Approval at least five (5) working days prior to the completion of construction. The notice shall specify the expected date of completion of construction and date of commencement of operation for the source(s).

The permittee shall notify DEP, by telephone, within 24 hours of the discovery of any malfunction of a portable nonmetallic mineral processing plant operating pursuant to this General Permit, or any malfunction of an associated air cleaning device, which results in, or may possibly be resulting in, the emission of air contaminants in excess of any applicable limitation specified herein or in excess of the limitations specified in any applicable rule or regulation contained in 25 Pa. Code Chapters 121 through 145 or which otherwise results in, or may possibly be resulting in, noncompliance with the requirements specified in any applicable condition of this General Permit (if the permittee is unable to provide notification within 24 hours of discovery due to a weekend or holiday, the notification shall be made to DEP by no later than 4 p.m. on the first DEP business day following the respective weekend or holiday). The permittee shall additionally provide whatever subsequent written report DEP may request regarding any reported malfunction.

### 7. Sampling and Testing

No later than one hundred and eighty (180) days after initial start-up, the permittee shall demonstrate compliance with the emission limitations for particulate matters established in Condition 21.

If, at any time, DEP has cause to believe that air contaminant emissions from a nonmetallic mineral processing plant covered by this General Permit are in excess of the limitations specified in, or established pursuant to, any applicable regulation contained in 25 Pa. Code, Subpart C, Article III, the permittee shall conduct tests deemed necessary by DEP to determine the actual emission rate(s).

The permittee shall perform such testing in accordance with applicable provisions of 25 Pa. Code Chapter 139 (relating to sampling and testing) and in accordance with any restrictions or limitations established by DEP at the time the permittee is notified, in writing, of the testing requirement.

### 8. Monitoring, Recordkeeping and Reporting

The permittee shall comply with applicable monitoring, recordkeeping and reporting requirements set forth in 25 Pa. Code Chapter 139 (relating to sampling and testing), the Air Pollution Control Act (35 P. S. § 4001 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), and the applicable regulations under the acts.

Records maintained under this General Permit shall be kept for a period of five (5) years and shall be made available to DEP upon its request.

### 9. Term of Permit

Authority to use this General Permit is granted for a fixed period of five years.

The authority to operate the portable nonmetallic mineral processing plants at one location would be allowed for

a. no longer than twenty-four (24) months for plants that are temporarily located at construction sites; or

b. a maximum up to five (5) years for plants that are located at sites for which a valid mining permit or an air quality permit exists for the operation of nonmetallic mineral processing plant.

Authority to operate the portable nonmetallic mineral processing plants beyond the stipulated periods in 9a and 9b above at one location would require a new authorization from DEP.

DEP will notify each applicant, in writing, when authority to construct and/ or operate under this General Permit is granted.

### 10. Permit Fees

This General Permit establishes the following application fee for a new authorization:

a. One thousand (\$1000) dollars.

b. The following additional fee is applicable each time a change in location of the nonmetallic mineral processing plant along with its diesel fired or nonroad engine(s), which may be used to operate it occurs:

Three hundred seventy five (\$375) dollars.

A new plan approval application and fee as indicated in Condition 10.a is required each time the permittee installs or modifies a portable nonmetallic mineral processing plant. The installation or modification of a portable nonmetallic mineral processing plant must be conducted

according to the terms and conditions of this General Permit and only after written authorization is received from DEP.

#### 11. Expiration and Renewal of Authorization

The permittee's authority to use this General Permit terminates after a fixed term of five years from the date of issuance of the authorization and cannot be renewed for another term.

#### 12. Change of Location

In advance of each change in location without any modification of the nonmetallic mineral processing plant, the permittee shall, in accordance with 25 Pa. Code § 127.641, notify both DEP and the municipality where the operation will take place. The notice to DEP shall require an application and appropriate fees required by Condition 10.b.

#### 14. Prohibited Use

Any stationary air contamination source that is subject to the requirements of 25 Pa. Code Chapter 127, Subchapter D (relating to prevention of significant deterioration), 25 Pa. Code Chapter 127, Subchapter E (relating to new source review), or 25 Pa. Code Chapter 127, Subchapter G (relating to Title V operating permits), may not operate under this General Permit. Title V facilities may use this General Permit as a general plan approval when major new source review and prevention of significant deterioration requirements are not applicable.

#### 15. Transfer of Ownership or Operation

The permittee may not transfer authorization to operate under this General Permit. New owner shall submit a new application and fees as described in Condition 10.a.

#### 17. Emission Limitations

The operation of a portable nonmetallic mineral processing plant shall not at any time result in the emission of any of the following:

a. Fugitive air contaminants in excess of the limitations specified in 25 Pa. Code §§ 123.1 and 123.2. All reasonable actions shall be taken to prevent particulate matter from becoming airborne. These actions include, but are not limited to, the following:

i. Proper installation of a water spray dust suppression system and operation in accordance with Condition 18 or proper design, installation, and operation of a fabric collector.

ii. Application of asphalt, water or suitable chemicals on dirt roads, material stockpiles and other surfaces that may give rise to airborne dusts.

iii. Paving and maintenance of plant roadways.

iv. Prompt removal of earth or other material from paved streets onto which earth or other material has been transported by trucking or earth moving equipment, erosions by water, or other means.

b. Particulate matter emissions from air pollution control devices in excess of 0.04 gr/dscf as specified in 25 Pa. Code § 123.13(c).

c. Visible emissions from air pollution control devices in excess of the following limitations:

i. Equal to or greater than 20% for a period or periods aggregating more than three minutes in any one (1) hour.

ii. Equal to or greater than 60% at any time.

#### 18. Air Pollution Control Device Specifications

##### a. Water Spray Dust Suppression Systems.

Water spray dust suppression systems on portable nonmetallic mineral processing plants shall be operated on any and all occasions that the respective plant is operated. Operation without simultaneous operation of the water spray dust suppression system can take place only in those unusual instances where processed materials contain sufficient moisture so as not to create air contaminant emissions in excess of the limitations and standards of this General Permit. If, however, the water spray dust suppression system is incapable of operation due to weather conditions or any other reason, the permittee may not operate the plant. A pressure gauge will be installed to indicate a normal operation of the dust suppression system.

##### b. Fabric Collectors

Fabric collectors shall be equipped with pressure drop measuring instrumentation and operated in accordance with manufacturer's specifications. Compressed air sources for fabric collectors shall be equipped and operated with air dryers and oil traps.

##### c. Scrubbers

Scrubbers shall be equipped with pressure drop and flow measuring instrumentation for water and gas streams and operated in accordance with manufacturer's specifications.

#### 21. Standard for particulate matter

a. The operation of a portable nonmetallic mineral processing plant shall not cause to be discharged into the atmosphere from any transfer point on belt conveyors or from any other affected facility any stack emissions that

i. contain particulate matter in excess of 0.05 g/dscm (0.022 gr/dscf); and

ii. exhibit greater than 7 percent opacity, unless the stack emissions are discharged, from an affected facility using a wet scrubber control device. Facilities using a wet scrubber must comply with the reporting provisions of Conditions 23.c., d. and e.

b. On and after the sixtieth (60th) day after achieving the maximum production rate at which the processing plant will be operated, but not later than one hundred eighty (180) days after initial startup as required under 40 CFR § 60.11, the operation of nonmetallic mineral processing equipment shall not cause to be discharged into the atmosphere from any transfer point on belt conveyors or from any other affected facility any fugitive emissions which exhibit greater than 10 percent opacity, except as provided in Condition 21.c. or d.

c. On and after the sixtieth (60th) day after achieving the maximum production rate at which the processing equipment will be operated, but not later than one hundred eighty (180) days after initial startup as required under 40 CFR § 60.11, the operation of a nonmetallic mineral processing plant shall not cause to be discharged into the atmosphere from any crusher, at which a capture system is not used, fugitive emissions which exhibit greater than 15 percent opacity.

d. If any transfer point on a conveyor belt or any affected facility is enclosed in a building, then each enclosed affected facility must comply with the emission limits in Paragraphs 21.a. b. and c., or the building enclosing the affected facility or facilities must comply with the following limits:

i. Operation of nonmetallic mineral processing equipment shall not cause to be discharged into the atmosphere from any building enclosing any other affected emissions unit any visible fugitive emissions except from a vent.

ii. Operation of nonmetallic mineral processing equipment shall not cause to be discharged into the atmosphere from any vent of any building enclosing any transfer point on a conveyor belt or any other affected facility emissions, which exceed the stack emissions limits in Paragraph 21.a.

e. On and after the sixtieth (60th) day after achieving the maximum production rate at which the processing plant will be operated, but not later than one hundred eighty (180) days after initial startup as required under 40 CFR § 60.11, the operation of nonmetallic mineral processing equipment shall not cause to be discharged into the atmosphere from any baghouse that controls emissions from only an individual, enclosed storage bin, stack emissions that exhibit greater than 7 percent opacity.

f. The operation of multiple storage bins with combined stack emissions shall comply with the emission limits in paragraph a.i. and a.ii. of this condition.

g. On and after the sixtieth (60th) day after achieving the maximum production rate at which the processing plant will be operated, but not later than one hundred eighty (180) days after initial startup, the operation of nonmetallic mineral processing equipment shall not cause to be discharged into the atmosphere from either of the following:

i. Wet screening operations and subsequent screening operations, bucket elevators, and belt conveyors that process saturated material in the production line up to the next crusher, grinding mill or storage bin.

ii. Screening operations, bucket elevators, and belt conveyors in the production line downstream of wet mining operations, where such screening operation, bucket elevator, and belt conveyors process saturated materials up to the first crusher, grinding mill, or storage bin in the production line.

## 22. Monitoring

Any permittee which uses a wet scrubber, baghouse or dust suppression system to control emissions shall install, calibrate, maintain and operate the following monitoring devices:

a. A device for the continuous measurement of the pressure loss of the gas stream through the scrubber. The monitoring device must be certified by the manufacturer to be accurate within  $\pm 1$  inch water gauge pressure and must be calibrated on an annual basis in accordance with manufacturer's instructions.

b. A device for the continuous measurement of the scrubbing liquid flow rate to the wet scrubber. The monitoring device must be certified by the manufacturer to be accurate within  $\pm 5$  percent of design scrubbing liquid flow rate and must be calibrated on an annual basis in accordance with manufacturer's instructions.

c. A device for measurement of pressure drop across the baghouse. Monitoring must be performed daily to ensure pressure drop is within manufacturer's recommended pressure drop range for normal operations. In cases of deviations, the permittee shall take corrective actions to return the operations of the baghouse to within

the recommended operating range. The monitoring device must be calibrated on an annual basis in accordance with manufacturer's instructions.

d. A pressure gauge to monitor recommended line pressure for normal operation of a dust suppression system on a daily basis.

## 24. Reporting and Recordkeeping

a. This General Permit allows the replacement of existing nonmetallic mineral processing plant equipment with equipment of equal or smaller size and having the same function as described in 40 CFR § 60.671. Each permittee shall submit the following information about the existing unit being replaced and the replacement piece of equipment.

i. For a crusher, grinding mill, bucket elevator, bagging operation or enclosed truck or railcar loading station

1. the rated capacity in tons per hour of the existing equipment being replaced; and

2. the rated capacity in tons per hour of the replacement equipment.

ii. For a screening operation

1. the total surface area of the top screen of the existing screening operation being replaced; and

2. the total surface area of the top screen of the replacement screening operation.

iii. For a conveyor belt

1. the width of the existing belt being replaced; and

2. the width of the replacement conveyor belt.

iv. For a storage bin

1. the rated capacity in tons of the existing storage bin being replaced; and

2. the rated capacity in tons of replacement storage bins.

b. Each permittee shall also submit the following data to the Director of the Emissions Standards and Engineering Division (MD-13), U. S. Environmental Protection Agency (EPA), Research Triangle Park, NC, 27711

i. the information described in Condition 24.a.,

ii. a description of the control device used to reduce particulate matter emissions from the existing facility and a list of all other pieces of equipment controlled by the same control device; and

iii. the estimated age of the existing facility.

c. During the initial performance test of a wet scrubber, and daily thereafter, the permittee shall record the measurements of both the change in pressure of the gas stream across the scrubber and the scrubbing liquid flow rate.

d. After the initial performance test of a wet scrubber, the permittee shall submit semiannual reports of such occurrences when the measurements of the scrubber pressure low (or gain) and liquid flow rate differ by more than  $\pm 30$  percent from the averaged determined during the most recent performance test.

e. The permittee shall record the measurements of pressure drop for the gas stream across the baghouse daily.

f. The permittee shall submit semiannual reports of such occurrences when the measurements of the pressure

drop for the gas stream across the baghouse deviate from manufacturer's suggested operating range.

g. The semiannual reports required under Paragraph d. and f. shall be postmarked within thirty (30) days following end of the second and fourth calendar quarters.

h. The permittee shall submit written reports of the results of all performance tests conducted to demonstrate compliance with the standards set forth in Condition 21, including reports of opacity observations made using Method 9 to demonstrate compliance with Conditions 21.b., c., and e. and reports of observations using Method 22 to demonstrate compliance with Condition 21.d.

i. A permittee who operates any screening operation, bucket elevator, or belt conveyor that processes saturated material and is subject to Condition 21.g. and subsequently processes unsaturated materials, shall submit a report of this change within thirty (30) days following such change. This screening operation, bucket elevator, or belt conveyor is then subject to the 10 percent opacity limit in Condition 21.b. and the emission test requirements of 40 CFR § 60.11.

Likewise, a screening operation, bucket elevator, or belt conveyor that processes unsaturated material but subsequently processes saturated material shall submit a report of this change within thirty (30) days following such change. This screening operation, bucket elevator, or belt conveyor is then subject to the no visible emission limit in Condition 21.g.

j. The notification requirement under 40 CFR § 60.7(a)(2), for the anticipated date of initial startup of portable nonmetallic mineral processing plant equipment shall be waived for a permittee operating under this General Permit.

k. A notification of the actual date of initial startup of each affected facility shall be submitted to DEP and EPA.

i. For a combination of affected facilities in a production line that begin actual initial startup on the same day, a single notification of start may be submitted by the permittee to DEP and EPA. The notification shall be postmarked within fifteen (15) days after such date and shall include a description of each affected facility, equipment manufacturer, and serial number of the equipment, if available.

ii. The notification of the actual date of initial startup shall include both the home office and the current address or location of the portable plant.

## 25. Additional Requirement

Pursuant to the federal New Source Performance Standards under 40 CFR § 60.4, the permittee shall submit copies of all requests, reports, applications, submittals, and other communications to both EPA and the appropriate DEP Regional Office. Copies of all the documents shall be submitted to:

Air Enforcement Branch, Mail Code 3AP12  
U. S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

### *Opportunity to Comment*

A copy of the draft revised general plan approval and general operating permit is available on DEP's website: [www.dep.state.pa.us](http://www.dep.state.pa.us) (DEP Keyword: Participate; scroll down to "Proposals Open for Comment" and choose "Regulations & Other Proposals"). A copy of the draft revised general plan approval and general operating permit may also be obtained by contacting Jeanette Van Skike, Division of Permits, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4325. TDD users may telephone DEP through the AT&T Relay Service, (800) 654-5984.

DEP requests written comments on the proposed revisions to the general permits. Notice and opportunity for comment will also be provided to the United States Environmental Protection Agency and Delaware, Maryland, New Jersey, New York, Ohio, Virginia and West Virginia. Interested persons may submit written comments, suggestions or objections to Craig A. Evans, Chief, Title V/NSR Section, Division of Permits, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4325. DEP will also consider written requests that a public hearing be held concerning this proposed general plan approval and operating permit. Public comments must be submitted to DEP within 45 days of the date of this notice in the *Pennsylvania Bulletin*. Comments received by facsimile will not be accepted.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 05-1518. Filed for public inspection August 12, 2005, 9:00 a.m.]

## Stream Redesignation Evaluation; Water Quality Standards Review

Under 25 Pa. Code § 93.4d (relating to public notice of receipt of petitions, evaluations or assessments of waters for High Quality (HQ) or Exceptional Value (EV) Waters redesignation), the Department of Environmental Protection (Department) gives notice that an evaluation will be conducted on the stream sections listed to determine the proper aquatic life use designation in the Commonwealth's Water Quality Standards.

<i>Stream Name</i>	<i>County</i>	<i>Tributary To</i>	<i>Current &amp; Requested Designated Use</i>
Buck Hill Creek—A 0.28-mile portion of the Buck Hill Creek basin (from the confluence of UNT 05028 to the confluence of UNT 05026)	Monroe	Brodhead Creek	HQ-CWF/EV
Pickering Creek—Basin, source to Philadelphia Suburban Water Company Dam	Chester	French Creek	HQ-TSF/EV
Tunkhannock Creek—Basin, source to confluence with Tobyhanna Creek	Monroe and Carbon	Tobyhanna Creek	HQ-CWF/EV

Persons who have technical data concerning the water quality, instream habitat or biological condition of this stream section are encouraged to make it available to the Department for consideration in the assessment. This assessment may lead to a recommendation to the Environmental Quality Board (Board) for redesignation.

Data should be submitted to Tony Shaw, Division of Water Quality Standards, Bureau of Water Standards and Facility Regulation, P. O. Box 8467, Harrisburg, PA 17105-8467, tshaw@state.pa.us. Data should be submitted no later than 30 days following publication of this notice. Questions concerning this evaluation should be directed to Tony Shaw at (717) 787-9637.

These assessments are being conducted in response to three rulemaking petitions submitted to the Board by the Buck Hill Conservation Foundation, Green Valleys Association and the Tobyhanna Creek/Tunkhannock Creek Watershed and Tunkhanna Fishing Associations, respectively. The portions of the Buck Hill Creek and Tunkhannock Creek basin to be evaluated are currently designated HQ-Cold Water Fishes. The portion of Pickering Creek to be evaluated is currently designated HQ-Trout Stocking. The petitioners for all three petitions are requesting redesignation to EV.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Tony Shaw directly at (717) 787-9637 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,  
Secretary

[Pa.B. Doc. No. 05-1519. Filed for public inspection August 12, 2005, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Application of Albert Einstein Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Albert Einstein Medical Center has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards) which requires compliance with minimum standards contained in *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standards contained in this publication: 7.2.B17 (relating to equipment storage room).

The 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 listed previously.

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 require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 05-1520. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Application of Ephrata Community Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Ephrata Community 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 listed previously.

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 require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care, (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 05-1521. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Application of Eynon Surgery Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Eynon Surgery Center has requested an exception to the requirements of 28 Pa. Code § 555.31 (relating to principle).



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.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care, (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 05-1522. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Application of Hazleton Endoscopy Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Hazleton Endoscopy Center has requested an exception to the requirements of 28 Pa. Code §§ 555.31 and 555.33 (relating to principle; and anesthesia policies and procedures).

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.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care, (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 05-1523. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Application of John Heinz Institute of Rehabilitation Medicine for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that John Heinz Institute of Rehabilitation Medicine has requested an exception to the requirements of 28 Pa. Code § 101.31 (relating to hospital requirements).

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 listed previously.

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 require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care, (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 05-1524. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Application of Memorial Hospital, Inc. for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Memorial Hospital, Inc. has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards) which requires compliance with minimum standards contained in *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standards contained in this publication: 7.2.B19 (relating to showers and bathtubs).

The 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 listed previously.

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 require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care, (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 05-1525. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Application of Plastic Surgical Associates of Johnstown, Inc. for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Plastic Surgical Associates of Johnstown, Inc. has requested an exception to the requirements of 28 Pa. Code § 571.1 (relating to minimum standards), which requires compliance with minimum standards contained in *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standards contained in this publication: 9.5.E1, 9.5.F3, 9.5.F5i and 9.5.H.2(a)(3).

The 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 listed previously.

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 require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care, (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 05-1526. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Application of The Skin Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that The Skin Center has requested an exception to the requirements of 28 Pa. Code § 571.1 (relating to minimum standards) which requires compliance with minimum standards contained in *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standards contained in this publication: 9.5.F2.c, 9.5.F5j, 9.5.F5.k and 9.5.H1.a.

The 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 listed previously.

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 require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care, (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 05-1527. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Application of Surgery Center at Limerick for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Surgery Center at Limerick has requested an exception to the requirements of 28 Pa. Code § 551.21(d) (relating to criteria for ambulatory surgery).

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 listed previously.

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 require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care, (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 05-1528. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Application of 20/20 Surgery Center LLC for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that 20/20 Surgery Center LLC has requested an exception to the requirements of 28 Pa. Code § 555.31 (relating to principle).

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 listed previously.

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 require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care, (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 05-1529. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Application of UPMC Northwest for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that UPMC Northwest has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards) which requires compliance with minimum standards contained in *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standards contained in this publication: 7.2.A3 (relating to windows in extended recovery center).

The 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 listed previously.

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 require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care, (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 05-1530. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Application of West Chester Rehabilitation Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that West Chester Rehabilitation Hospital has requested an exception to the requirements of 28 Pa. Code § 107.2 (relating to medical staff membership).

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 listed previously.

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 require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care, (717) 783-8980 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT).

CALVIN B. JOHNSON, M.D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 05-1531. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Governor's Council on Physical Fitness and Sports Meeting

The Governor's Council on Physical Fitness and Sports will hold a meeting on Wednesday, September 14, 2005, from 2 p.m. to 4 p.m. Members of the public who wish to attend this meeting should report to the Governor's Residence, 2035 North Front Street, Harrisburg, PA, 17102.

For additional information or persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodations to do so, contact Kevin Alvarnaz, Chief, Cardiovascular Health Section, Room 1011, Health and Welfare Building, Harrisburg, PA at (717) 787-5876 or 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. 05-1532. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Health Policy Board Meeting

The Health Policy Board is scheduled to hold a meeting on Wednesday, September 21, 2005, at 10 a.m. in Room 812, Health and Welfare Building, Seventh and Forster Streets, Harrisburg, PA 17108.

For additional information or persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so, contact Cynthia Trafton, Bureau of Health Planning at (717) 772-5298, ctrafton@state.pa.us or for speech and/or hear-

ing impaired persons, V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT).

This meeting is subject to cancellation without notice.

CALVIN B. JOHNSON, M.D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 05-1533. Filed for public inspection August 12, 2005, 9:00 a.m.]

## DEPARTMENT OF PUBLIC WELFARE

### 1115 Demonstration Waiver for Medicaid for Children with Special Needs

The Department of Public Welfare (Department) announces its intent to establish a demonstration waiver under section 1115 of the Social Security Act (42 U.S.C.A. § 1315), for children with disabilities. The waiver will apply only to children under the age of 18 who meet the Social Security Administration's (SSA) definition of disability. The determination of disability must be established either by an SSA assessment or an assessment completed by the Department's medical review team.

The waiver will not apply to children who receive Supplemental Security Income. Under the waiver, custodial parents with a child who has an SSA level of disability will be assessed a premium receive Medicaid for the child with a disability. The premium will be based on the family's income, that is the income of the custodial parents and the child's own income. Premiums will not be charged to a family with income below 200% of the Federal Poverty Income Guidelines.

The Department will establish premiums based on a sliding scale which will consider household income and household size. Families with higher income will pay a higher premium. The family will be assessed only one premium per household even if there is more than one child in the family who is receiving Medicaid as a child with a disability.

The premium will not exceed the average monthly expenditure that the Department pays for children in this category of assistance. Families will be informed of the premium amount at least 30 days prior to the due date of the first premium payment. The premiums will be payable monthly. Premiums will be adjusted annually based on changes in the household's circumstances and changes in the Department's Medical Assistance costs. Premiums will be adjusted prior to the annual update if there is a decrease in the household's income or an increase in household size.

This notice takes effect upon publication in the *Pennsylvania Bulletin*.

#### *Fiscal Impact*

The Department estimates net savings of \$23.642 million (\$10.590 million in State funds) in Fiscal Year (FY) 2005-2006. The Department estimates an annual net savings of \$31.768 million (\$14.379 million in State funds) in FY 2006-2007.

#### *Public Comment*

Interested person are invited to submit written comments regarding this notice to the Department at the following address: Department of Public Welfare, Office of

Income Maintenance, Edward J. Zogby, Director, Bureau of Policy, Room 431 Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081. Comments received within 30 calendar days will be reviewed and considered for any subsequent revision of the notice.

Persons with a disability who require auxiliary aid or service may submit comments using the AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users)

ESTELLE B. RICHMAN,  
Secretary

**Fiscal Note:** 14-NOT-438. (1) General Fund; (2) Implementing Year 2005-06 is \$367,000; (3) 1st Succeeding Year 2006-07 is \$367,000; 2nd Succeeding Year 2007-08 is \$367,000; 3rd Succeeding Year 2008-09 is \$367,000; 4th Succeeding Year 2009-10 is \$367,000; 5th Succeeding Year 2010-11 is \$367,000; (4) 2004-05 Program—\$34,257,000; 2003-04 Program—\$41,030,000; 2002-03 Program—\$56,835,000; (7) County Administration—Statewide; (8) recommends adoption. The cost that this action will generate to the Count Administration—Statewide line item is included in the 2005-2006 budget. The net affect of this action will be a General Fund savings of \$10 million due to savings generated in the Medical Assistance—Outpatient line item.

[Pa.B. Doc. No. 05-1534. Filed for public inspection August 12, 2005, 9:00 a.m.]

## DEPARTMENT OF REVENUE

### Pennsylvania Pure Gold 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 Pure Gold.

2. *Price:* The price of a Pennsylvania Pure Gold instant lottery game ticket is \$5.

3. *Play Symbols:* Each Pennsylvania Pure Gold instant lottery game ticket will contain one play area featuring a "GOLD NUMBERS" area and a "YOUR NUMBERS" area. The play symbols and their captions located in the "GOLD NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR) and 24 (TWYFOR). The play symbols and their captions located in the "YOUR NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR) and a Gold Bar symbol (GOLDBAR).

4. *Prize Symbols:* The prize symbols and their captions located in the "YOUR NUMBERS" area are: \$2<sup>00</sup> (TWO DOL), \$5<sup>00</sup> (FIV DOL), \$6<sup>00</sup> (SIX DOL), \$10<sup>00</sup> (TEN

DOL), \$15\$ (FIFTN), \$25\$ (TWY FIV), \$50\$ (FIFTY), \$100 (ONE HUN), \$250 (TWOHUNFTY), \$2,500 (TWYFIVHUN), \$50,000 (FTY THO) and \$100,000 (ONEHUNTHO).

5. *Prizes:* The prizes that can be won in this game are \$2, \$5, \$6, \$10, \$15, \$25, \$50, \$100, \$250, \$2,500, \$50,000 and \$100,000. A player can win up to ten times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 6,000,000 tickets will be printed for the Pennsylvania Pure Gold 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 "GOLD NUMBERS" play symbols and a prize symbol of \$100,000 (ONEHUNTHO) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100,000.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "GOLD NUMBERS" play symbols and a prize symbol of \$50,000 (FTY THO) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$50,000.

(c) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "GOLD NUMBERS" play symbols and a prize symbol of \$2,500 (TWYFIVHUN) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$2,500.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar symbol (GOLDBAR), and a prize symbol of \$250 (TWOHUNFTY) appears under the Gold Bar symbol (GOLDBAR) on a single ticket, shall be entitled to a prize of \$250.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "GOLD 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.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar symbol (GOLDBAR), and a prize symbol of \$100 (ONE HUN) appears under the Gold Bar symbol (GOLDBAR) on a single ticket, shall be entitled to a prize of \$100.

(g) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "GOLD 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.

(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar symbol (GOLDBAR), and a prize symbol of \$50\$ (FIFTY) appears under the Gold Bar symbol (GOLDBAR) on a single ticket, shall be entitled to a prize of \$50.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "GOLD 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.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar symbol (GOLDBAR), and a prize symbol of \$25\$ (TWY FIV) appears under the Gold Bar symbol (GOLDBAR) on a single ticket, shall be entitled to a prize of \$25.

(k) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "GOLD 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.

(l) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar symbol (GOLDBAR), and a prize symbol of \$15\$ (FIFTN) appears under the Gold Bar symbol (GOLDBAR) on a single ticket, shall be entitled to a prize of \$15.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "GOLD 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.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar symbol (GOLDBAR), and a prize symbol of \$10<sup>00</sup> (TEN DOL) appears under the Gold Bar symbol (GOLDBAR) on a single ticket, shall be entitled to a prize of \$10.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "GOLD NUMBERS" play symbols and a prize symbol of \$10<sup>00</sup> (TEN DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar symbol (GOLDBAR), and a prize symbol of \$6<sup>00</sup> (SIX DOL) appears under the Gold Bar symbol (GOLDBAR) on a single ticket, shall be entitled to a prize of \$6.

(q) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "GOLD NUMBERS" play symbols and a prize symbol of \$6<sup>00</sup> (SIX DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$6.

(r) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar symbol (GOLDBAR), and a prize symbol of \$5<sup>00</sup> (FIV DOL) appears under the Gold Bar symbol (GOLDBAR) on a single ticket, shall be entitled to a prize of \$5.

(s) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "GOLD NUMBERS" play symbols and a prize symbol of \$5<sup>00</sup> (FIV DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5.

(t) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "GOLD NUMBERS" play symbols and a prize symbol of \$2<sup>00</sup> (TWO DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$2.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

<i>When Any of Your Numbers Match Any of the Gold Numbers, Win With Prize(s) of:</i>	<i>Win:</i>	<i>Approximate Odds 1 In:</i>	<i>Approximate No. of Winners Per 6,000,000 Tickets</i>
\$5	\$5	30	200,000
\$5 w/GOLD BAR	\$5	12.24	490,000
\$6	\$6	60	100,000
\$6 w/GOLD BAR	\$6	60	100,000
\$2 × 5	\$10	120	50,000
\$5 × 2	\$10	600	10,000
\$10	\$10	600	10,000
\$10 w/GOLD BAR	\$10	46.15	130,000
\$5 × 3	\$15	600	10,000
\$10 + \$5	\$15	300	20,000
\$15	\$15	600	10,000
\$15 w/GOLD BAR	\$15	120	50,000
\$5 × 5	\$25	75	80,000
\$25	\$25	200	30,000
\$25 w/GOLD BAR	\$25	66.67	90,000
\$25 × 2	\$50	300	20,000
\$15 × 3 + \$5	\$50	600	10,000
\$5 × 10	\$50	300	20,000
\$10 × 5	\$50	300	20,000
\$50	\$50	300	20,000
\$50 w/GOLD BAR	\$50	600	10,000
\$10 × 10	\$100	1,200	5,000
\$50 × 2	\$100	1,200	5,000
\$100	\$100	1,200	5,000
\$100 w/GOLD BAR	\$100	1,200	5,000
\$25 × 10	\$250	30,000	200
\$50 × 5	\$250	30,000	200
\$250	\$250	30,000	200
\$250 w/GOLD BAR	\$250	30,000	200
\$250 × 10	\$2,500	600,000	10
\$2,500	\$2,500	600,000	10
\$50,000	\$50,000	1,200,000	5
\$100,000	\$100,000	1,200,000	5

GOLD BAR = Win prize shown under it automatically.

Prizes, including the top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Pure Gold instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Pure Gold, prize money from winning Pennsylvania Pure Gold 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 Pure Gold instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law, 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote

Pennsylvania Pure Gold or through normal communications methods.

GREGORY C. FAJT,  
Secretary

[Pa.B. Doc. No. 05-1535. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Pennsylvania Run the Table Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—761-314) 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 Run the Table.

2. *Price:* The price of a Pennsylvania Run the Table instant lottery game ticket is \$10.

3. *Play Symbols:*

(a) Each Pennsylvania Run the Table instant lottery game ticket will contain five play areas known as Game

1, Game 2, Game 3, Game 4 and Game 5. Each game is played separately.

(b) The play symbols and their captions located in the play area for Game 1 are: 1 symbol (ONE), 2 symbol (TWO), 3 symbol (THREE), 4 symbol (FOUR), 5 symbol (FIVE) and 6 symbol (SIX).

(c) The play symbols and their captions located in the play area for Game 2 are: 15 symbol (FTN), 16 symbol (SXT), 17 symbol (SVT), 18 symbol (EGN), 19 symbol (NIT), 20 symbol (TWY) and 21 symbol (TTO).

(d) The play symbols and their captions located in the "YOUR CARD" areas for Game 3 are: 3 (THR), 4 (FOR), 5 (FIV), 6 (SIX), 7 (SVN), 8 (EGT), 9 (NIN), 10 (TEN), Jack (JCK), Queen (QUN), King (KNG) and Ace (ACE) playing card symbols. The play symbols and their captions located in the "THEIR CARD" areas for Game 3 are: 2 (TWO), 3 (THR), 4 (FOR), 5 (FIV), 6 (SIX), 7 (SVN), 8 (EGT), 9 (NIN), 10 (TEN), Jack (JCK), Queen (QUN) and King (KNG) playing card symbols.

(e) The play symbols and their captions located in the "HAND 1," "HAND 2," "HAND 3" and "HAND 4" areas for Game 4 are: 2 (TWO), 3 (THR), 4 (FOR), 5 (FIV), 6 (SIX), 7 (SVN), 8 (EGT), 9 (NIN), 10 (TEN), Jack (JCK), Queen (QUN), King (KNG) and Ace (ACE) playing card symbols. The play symbols and their captions located in the "DEALER'S HAND" area for Game 4 are: 6 (SIX), 7 (SVN), 8 (EGT), 9 (NIN), 10 (TEN), Jack (JCK), Queen (QUN), King (KNG) and Ace (ACE) playing card symbols.

(f) The play symbols and their captions located in the "HAND 1," "HAND 2" and "HAND 3" areas for Game 5 are: 2 (TWO), 3 (THR), 4 (FOR), 5 (FIV), 6 (SIX), 7 (SVN), 8 (EGT), 9 (NIN), 10 (TEN), Jack (JCK), Queen (QUN), King (KNG) and Ace (ACE) playing card symbols.

4. *Prize Symbols:* The prize symbols and their captions located in the prize area for Game 1, Game 3, Game 4 and Game 5 are: \$5<sup>00</sup> (FIV DOL), \$10<sup>00</sup> (TEN DOL), \$15\$ (FIFTN), \$20\$ (TWENTY), \$50\$ (FIFTY), \$100 (ONE HUN), \$250 (TWOHUNFTY), \$500 (FIV HUN), \$1,000 (ONE THO), \$10,000 (TEN THO) and \$210,000 (TWHNTNTHO).

5. *Prizes:* The prizes that can be won in Game 1, Game 3, Game 4 and Game 5 are: \$5, \$10, \$15, \$20, \$50, \$100, \$250, \$500, \$1,000, \$10,000 and \$210,000. The prize that can be won in Game 2 is \$50. A player can win up to 15 times on a ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 6,000,000 tickets will be printed for the Pennsylvania Run the Table instant lottery game.

7. *Determination of Prize Winners:*

(a) Determination of prize winners for Game 1 are:

(1) Holders of tickets where the sum of "YOUR ROLLS" play symbols totals 7 or 11 in the same "ROLL," and a prize play symbol of \$210,000 (TWHNTNTHO) appears in the prize area to the right of that "ROLL," on a single ticket, shall be entitled to a prize of \$210,000.

(2) Holders of tickets where the sum of "YOUR ROLLS" play symbols totals 7 or 11 in the same "ROLL," and a prize play symbol of \$10,000 (TEN THO) appears in the prize area to the right of that "ROLL," on a single ticket, shall be entitled to a prize of \$10,000.

(3) Holders of tickets where the sum of "YOUR ROLLS" play symbols totals 7 or 11 in the same "ROLL," and a prize play symbol of \$1,000 (ONE THO) appears in the prize area to the right of that "ROLL," on a single ticket, shall be entitled to a prize of \$1,000.

(4) Holders of tickets where the sum of "YOUR ROLLS" play symbols totals 7 or 11 in the same "ROLL," and a prize play symbol of \$500 (FIV HUN) appears in the prize area to the right of that "ROLL," on a single ticket, shall be entitled to a prize of \$500.

(5) Holders of tickets where the sum of "YOUR ROLLS" play symbols totals 7 or 11 in the same "ROLL," and a prize play symbol of \$250 (TWOHUNFTY) appears in the prize area to the right of that "ROLL," on a single ticket, shall be entitled to a prize of \$250.

(6) Holders of tickets where the sum of "YOUR ROLLS" play symbols totals 7 or 11 in the same "ROLL," and a prize play symbol of \$100 (ONE HUN) appears in the prize area to the right of that "ROLL," on a single ticket, shall be entitled to a prize of \$100.

(7) Holders of tickets where the sum of "YOUR ROLLS" play symbols totals 7 or 11 in the same "ROLL," and a prize play symbol of \$50\$ (FIFTY) appears in the prize area to the right of that "ROLL," on a single ticket, shall be entitled to a prize of \$50.

(8) Holders of tickets where the sum of "YOUR ROLLS" play symbols totals 7 or 11 in the same "ROLL," and a prize play symbol of \$20\$ (TWENTY) appears in the prize area to the right of that "ROLL," on a single ticket, shall be entitled to a prize of \$20.

(9) Holders of tickets where the sum of "YOUR ROLLS" play symbols totals 7 or 11 in the same "ROLL," and a prize play symbol of \$15\$ (FIFTN) appears in the prize area to the right of that "ROLL," on a single ticket, shall be entitled to a prize of \$15.

(10) Holders of tickets where the sum of "YOUR ROLLS" play symbols totals 7 or 11 in the same "ROLL," and a prize play symbol of \$10<sup>00</sup> (TEN DOL) appears in the prize area to the right of that "ROLL," on a single ticket, shall be entitled to a prize of \$10.

(11) Holders of tickets where the sum of "YOUR ROLLS" play symbols totals 7 or 11 in the same "ROLL," and a prize play symbol of \$5<sup>00</sup> (FIV DOL) appears in the prize area to the right of that "ROLL," on a single ticket, shall be entitled to a prize of \$5.

(b) Determination of prize winners for Game 2 are:

(1) Holders of tickets with a 21 (TTO) play symbol in the "Hit Me" game play area, on a single ticket, shall be entitled to a prize of \$50.

(c) Determination of prize winners for Game 3 are:

(1) Holders of tickets where the "YOUR CARD" play symbol is higher than "THEIR CARD" play symbol in the same "HAND," and a prize symbol of \$210,000 (TWHNTNTHO) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$210,000.

(2) Holders of tickets where the "YOUR CARD" play symbol is higher than "THEIR CARD" play symbol in the same "HAND," and a prize symbol of \$10,000 (TEN THO) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$10,000.

(3) Holders of tickets where the "YOUR CARD" play symbol is higher than "THEIR CARD" play symbol in the same "HAND," and a prize symbol of \$1,000 (ONE THO) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$1,000.

(4) Holders of tickets where the "YOUR CARD" play symbol is higher than "THEIR CARD" play symbol in the same "HAND," and a prize symbol of \$500 (FIV HUN)

appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$500.

(5) Holders of tickets where the "YOUR CARD" play symbol is higher than "THEIR CARD" play symbol in the same "HAND," and a prize symbol of \$250 (TWOHUNFTY) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$250.

(6) Holders of tickets where the "YOUR CARD" play symbol is higher than "THEIR CARD" play symbol in the same "HAND," and a prize symbol of \$100 (ONE HUN) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$100.

(7) Holders of tickets where the "YOUR CARD" play symbol is higher than "THEIR CARD" play symbol in the same "HAND," and a prize symbol of \$50\$ (FIFTY) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$50.

(8) Holders of tickets where the "YOUR CARD" play symbol is higher than "THEIR CARD" play symbol in the same "HAND," and a prize symbol of \$20\$ (TWENTY) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$20.

(9) Holders of tickets where the "YOUR CARD" play symbol is higher than "THEIR CARD" play symbol in the same "HAND," and a prize symbol of \$15\$ (FIFTN) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$15.

(10) Holders of tickets where the "YOUR CARD" play symbol is higher than "THEIR CARD" play symbol in the same "HAND," and a prize symbol of \$10<sup>00</sup> (TEN DOL) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$10.

(11) Holders of tickets where the "YOUR CARD" play symbol is higher than "THEIR CARD" play symbol in the same "HAND," and a prize symbol of \$5<sup>00</sup> (FIV DOL) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$5.

(d) Determination of prize winners for Game 4 are:

(1) Holders of tickets where the sum of the playing card symbols for "YOUR HAND" is greater than the sum of the playing card symbols for the "DEALER'S HAND," and a prize symbol of \$210,000 (TWHNTNTHO) appears in the "PRIZE" area under that "YOUR HAND," on a single ticket, shall be entitled to a prize of \$210,000.

(2) Holders of tickets where the sum of the playing card symbols for "YOUR HAND" is greater than the sum of the playing card symbols for the "DEALER'S HAND," and a prize symbol of \$10,000 (TEN THO) appears in the "PRIZE" area under that "YOUR HAND," on a single ticket, shall be entitled to a prize of \$10,000.

(3) Holders of tickets where the sum of the playing card symbols for "YOUR HAND" is greater than the sum of the playing card symbols for the "DEALER'S HAND," and a prize symbol of \$1,000 (ONE THO) appears in the "PRIZE" area under that "YOUR HAND," on a single ticket, shall be entitled to a prize of \$1,000.

(4) Holders of tickets where the sum of the playing card symbols for "YOUR HAND" is greater than the sum of the playing card symbols for the "DEALER'S HAND," and a prize symbol of \$500 (FIV HUN) appears in the "PRIZE" area under that "YOUR HAND," on a single ticket, shall be entitled to a prize of \$500.

(5) Holders of tickets where the sum of the playing card symbols for "YOUR HAND" is greater than the sum of the playing card symbols for the "DEALER'S HAND," and a prize symbol of \$250 (TWOHUNFTY) appears in the "PRIZE" area under that "YOUR HAND," on a single ticket, shall be entitled to a prize of \$250.

(6) Holders of tickets where the sum of the playing card symbols for "YOUR HAND" is greater than the sum of the playing card symbols for the "DEALER'S HAND," and a prize symbol of \$100 (ONE HUN) appears in the "PRIZE" area under that "YOUR HAND," on a single ticket, shall be entitled to a prize of \$100.

(7) Holders of tickets where the sum of the playing card symbols for "YOUR HAND" is greater than the sum of the playing card symbols for the "DEALER'S HAND," and a prize symbol of \$50\$ (FIFTY) appears in the "PRIZE" area under that "YOUR HAND," on a single ticket, shall be entitled to a prize of \$50.

(8) Holders of tickets where the sum of the playing card symbols for "YOUR HAND" is greater than the sum of the playing card symbols of the "DEALER'S HAND," and a prize symbol of \$20\$ (TWENTY) appears in the "PRIZE" area under that "YOUR HAND," on a single ticket, shall be entitled to a prize of \$20.

(9) Holders of tickets where the sum of the playing card symbols for "YOUR HAND" is greater than the sum of the playing card symbols of the "DEALER'S HAND," and a prize symbol of \$15\$ (FIFTN) appears in the "PRIZE" area under that "YOUR HAND," on a single ticket, shall be entitled to a prize of \$15.

(10) Holders of tickets where the sum of the playing card symbols for "YOUR HAND" is greater than the sum of the playing card symbols for the "DEALER'S HAND," and a prize symbol of \$10<sup>00</sup> (TEN DOL) appears in the "PRIZE" area under that "YOUR HAND," on a single ticket, shall be entitled to a prize of \$10.

(11) Holders of tickets where the sum of the playing card symbols for "YOUR HAND" is greater than the sum of the playing card symbols of the "DEALER'S HAND," and a prize symbol of \$5<sup>00</sup> (FIV DOL) appears in the "PRIZE" area under that "YOUR HAND," on a single ticket, shall be entitled to a prize of \$5.

(e) Determination of prize winners for Game 5 are:

(1) Holders of tickets with three matching playing card play symbols in the same "HAND," and a prize symbol of \$210,000 (TWHNTNTHO) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$210,000.

(2) Holders of tickets with three matching playing card play symbols in the same "HAND," and a prize symbol of \$10,000 (TEN THO) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$10,000.

(3) Holders of tickets with three matching playing card play symbols in the same "HAND," and a prize symbol of \$1,000 (ONE THO) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$1,000.

(4) Holders of tickets with three matching playing card play symbols in the same "HAND," and a prize symbol of \$500 (FIV HUN) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$500.



(5) Holders of tickets with three matching playing card play symbols in the same "HAND," and a prize symbol of \$250 (TWOHUNFTY) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$250.

(6) Holders of tickets with three matching playing card play symbols in the same "HAND," and a prize symbol of \$100 (ONE HUN) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$100.

(7) Holders of tickets with three matching playing card play symbols in the same "HAND," and a prize symbol of \$50 (FIFTY) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$50.

(8) Holders of tickets with three matching playing card play symbols in the same "HAND," and a prize symbol of \$20 (TWENTY) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$20.

(9) Holders of tickets with three matching playing card play symbols in the same "HAND," and a prize symbol of \$15 (FIFTEEN) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$15.

(10) Holders of tickets with three matching playing card play symbols in the same "HAND," and a prize symbol of \$10 (TEN DOL) appears to the right of that "HAND," on a single ticket, shall be entitled to a prize of \$10.

(11) Holders of tickets with three matching playing card play symbols in the same "HAND," and a prize symbol of \$5 (FIV DOL) appears to the right of that "HAND," 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, amount of prizes and approximate odds of winning:

<i>Win With Prize(s) of:</i>	<i>Win:</i>	<i>Approximate Odds of 1 In:</i>	<i>Approximate No. of Winners Per 6,000,000 Tickets</i>
\$5 × 2	\$10	20	300,000
\$10	\$10	20	300,000
\$5 × 3	\$15	30	200,000
\$15	\$15	30	200,000
\$5 × 4	\$20	60	100,000
\$10 × 2	\$20	60	100,000
\$20	\$20	60	100,000
\$5 × 10	\$50	150	40,000
\$15 × 3 + \$5	\$50	150	40,000
\$20 × 2 + \$10	\$50	150	40,000
\$50 (HIT ME)	\$50	150	40,000
\$50	\$50	150	40,000
\$5 × 8 + \$10 × 6	\$100	800	7,500
\$10 × 10	\$100	800	7,500
\$20 × 5	\$100	800	7,500
\$50 × 2	\$100	800	7,500
\$50 + \$50 (HIT ME)	\$100	480	12,500
\$100	\$100	800	7,500
\$5 × 10 + \$50 × 3 + \$50 (HIT ME)	\$250	1,714	3,500
\$20 × 2 + \$5 × 10 + \$100 + \$10 + \$50 (HIT ME)	\$250	1,714	3,500
\$50 × 5	\$250	1,846	3,250
\$50 × 4 + \$50 (HIT ME)	\$250	1,846	3,250
\$100 × 2 + \$50	\$250	1,846	3,250
\$250	\$250	1,846	3,250
\$50 × 10	\$500	8,571	700
\$100 × 5	\$500	9,231	650
\$50 × 9 + \$50 (HIT ME)	\$500	8,571	700
\$250 × 2	\$500	9,231	650
\$500	\$500	8,571	700
\$100 × 10	\$1,000	24,000	250
\$250 × 4	\$1,000	24,000	250
\$500 × 2	\$1,000	24,000	250
\$1,000	\$1,000	24,000	250
\$1,000 × 10	\$10,000	120,000	50
\$10,000	\$10,000	120,000	50
\$210,000	\$210,000	600,000	10

HIT ME = GAME 2—Reveal a "21" symbol and win \$50 automatically.

GAME 1—When any of YOUR ROLLS total 7 or 11 in the same ROLL, win prize shown to the right of that ROLL.

GAME 2—Reveal a "21" symbol and win \$50 automatically.

GAME 3—When YOUR CARD is higher than THEIR CARD in the same HAND, win prize shown to the right of that HAND. Aces are high.

GAME 4—When the total for any HAND is higher than the total of the DEALER'S HAND, win prize shown under that HAND. J, Q, K = 10; A = 11.

GAME 5—Get 3 of a kind in the same HAND, win prize shown to the right of that HAND.

Prizes, including the top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Run the Table instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Run the Table, prize money from winning Pennsylvania Run the Table 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 Run the Table instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law, 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Run the Table or through normal communications methods.

GREGORY C. FAJT,  
*Secretary*

[Pa.B. Doc. No. 05-1536. Filed for public inspection August 12, 2005, 9:00 a.m.]

## ENVIRONMENTAL HEARING BOARD

**Hatfield Township Municipal Authority v. DEP; EHB  
Doc. No. 2003-085-K**

The Department of Environmental Protection (Department) and Hatfield Township Municipal Authority (Authority) have agreed to a settlement of the previously captioned matter. This appeal challenged the NPDES Permit No. PA0026247 issued by the Department to the Authority on March 11, 2003.

The parties have agreed to a settlement, the major provisions of which include:

1. The parties have agreed that:

a. The Authority will not have to develop a Compliance Plan with respect to the Neshaminy TMDL until all appeals of the Neshaminy TMDL are fully adjudicated or otherwise resolved between the Department and the Authority.

b. The Stipulation and Settlement in this appeal shall not be construed to expand the Authority's appeal of the Neshaminy TMDL, which is docketed at EHB Docket No. 2004-046-K (consolidated with 2004-045-K and 2004-112-K).

The Department agreed that:

a. The Authority's future submission of the Compliance Plan is not a waiver of its right to appeal any future action related to the development or implementation of the Neshaminy TMDL.

b. The Authority's withdrawal of the appeal is without prejudice to the Authority's right to challenge any future action of the Department regarding development or implementation of the Neshaminy TMDL.

c. It will not assert the doctrine of administrative finality in any appeal by the Authority of a future Department action related to the development or implementation of the Neshaminy TMDL.

The parties requested that the Environmental Hearing Board (Board) attach the Stipulation of Settlement to its order dismissing the appeal subject to the rights set forth in the Stipulation of Settlement. Copies of the full Stipulation of Settlement are in the hands of Gina M. Thomas, Esquire, Department of Environmental Protection, Southeast Regional Counsel, 2 East Main Street, Norristown, PA 17401, (484) 250-5861 and Steven A. Hann, Esquire, Hamburg, Ruben, Mullin, Maxwell & Lupin, 375 Morris Road, Lansdale, PA 19446, (215) 661-0400. Copies of the full Stipulation of Settlement are also available at the office of the Board and may be reviewed by interested parties on request during normal business hours. Interested members of the public may comment to the Board on the Stipulation of Settlement for a period of 30 days from the date of this notice.

MICHAEL L. KRANCER,  
*Chairperson*

[Pa.B. Doc. No. 05-1537. Filed for public inspection August 12, 2005, 9:00 a.m.]

## FISH AND BOAT COMMISSION

**Change to List of Class A Wild Trout Waters;  
Removal of Cross Fork, Section 03, Potter  
County**

The Fish and Boat Commission (Commission) has removed Cross Fork, Section 03, Potter County, from its list of Class A Wild Trout Streams as set forth in 35 Pa.B. 3477 (June 18, 2005). The section of Cross Fork that is affected extends for a distance of 5.4 miles from the confluence with Rhulo Hollow downstream to 440 yards downstream of the T-416 Bridge.

For a water to be removed from the Commission's list of Class A Wild Trout Streams, total trout biomass must be documented below set criteria for two consecutive stream examinations. Commission staff conducted time series monitoring of the trout population within Cross Fork, Section 03, on an annual basis from 1996 to 2003. Overall, the trout failed to meet the minimum biomass criteria for Class A Wild Trout Waters during each of these surveys. Although this section was identified in the past as a Class A Wild Trout Water, eight consecutive surveys have confirmed that the section now supports a Class B wild trout biomass. Accordingly, the Commission took action to remove Cross Fork, Section 03, from the list of Class A Wild Trout Streams. This change will allow for stocking to occur at a low rate and encourage more angling activity on the stream.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

[Pa.B. Doc. No. 05-1538. Filed for public inspection August 12, 2005, 9:00 a.m.]

**Proposed Special Regulation Redesignations**

The Fish and Boat Commission (Commission) has approved guidelines with regard to encouraging public participation on possible changes to the designation of streams, stream sections or lakes for special regulation programs. Under 58 Pa. Code Chapter 65 (relating to special fishing regulations), the Commission designates certain streams, stream sections and lakes as being subject to special fishing regulations. These designations are effective after Commission approval when they are posted at the site and a notice is published in the *Pennsylvania Bulletin*. Under the Commission's guidelines, a notice concerning the proposed designation or redesignation of a stream, stream section or lake under special regulations ordinarily will be published in the *Pennsylvania Bulletin* before the matter is reviewed by the Commissioners.

Prior to the end of the year, the Commission will consider redesignating the following river sections that are currently regulated and managed under 58 Pa. Code § 65.4a (relating to all-tackle trophy trout) and placing them under regulation and management under 58 Pa. Code § 65.15 (relating to catch and release all-tackle areas), a new regulatory program that will go into effect on January 1, 2006. If adopted, these redesignations will go into effect on January 1, 2006:

<i>County</i>	<i>Water on which located</i>	<i>Description</i>
Blair/ Huntingdon	Little Juniata River	From the railroad bridge at the east (downstream) border of Ironville downstream to the mouth, a distance of 13.5 miles
Elk	Clarion River	From the confluence of the East and West branches downstream to the confluence with Elk Creek, a distance of 8.5 miles

The Commission is soliciting public input concerning these redesignations. Persons with comments, objections or suggestions concerning the redesignations are invited to submit comments in writing 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 by completing the form at [www.state.pa.us/Fish/regcomments](http://www.state.pa.us/Fish/regcomments). 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*

[Pa.B. Doc. No. 05-1539. Filed for public inspection August 12, 2005, 9:00 a.m.]

# PENNSYLVANIA PUBLIC UTILITY COMMISSION

## Natural Gas Service

**A-120000F2000. CRG, Inc.** Application of CRG, Inc. for approval of the abandonment or discontinuance of natural gas service to the public in this Commonwealth.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before August 29, 2005. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

*Applicant:* CRG, Inc.

*Through and By Counsel:* Henry Ray Pope, III, Esquire,  
Pope and Drayer, Ten Grant Street, Clarion, PA 16214  
JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1540. Filed for public inspection August 12, 2005, 9:00 a.m.]

### Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest 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 6, 2005. 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-00121975. Forks Township Emergency Squad** (P. O. Box 284, Easton, Northampton County, PA 18044), a corporation of the Commonwealth—persons, in paratransit service, between points in the Counties of Northampton, Lehigh and Monroe.

**Application of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of persons by transfer of rights as described under the application.**

**A-00120554, Folder 2. A & D Limousine Service, Inc.** (3237 Bristol Road, Bensalem, Bucks County, PA 19020), a Pennsylvania corporation—persons in limousine service, between points in Pennsylvania, which is a transfer of the rights authorized to Gail A. Segal Enterprises, Inc., at A-00112576, subject to the same limitations and conditions. *Attorney:* David P. Temple, Esquire, 1760 Market Street, Suite 1100, Philadelphia PA 19103.

**Application of the following for approval of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under the application.**

**A-00121976. Kyle Bryan Day** (1409 Cemetery Street, Jersey Shore, Lycoming County, PA 17740)—persons upon call or demand, in the Boroughs of Jersey Shore and Salladasburg and the Townships of Cummings, Mifflin, Watson, Piatt, Porter, Nippenose and Limestone, all located in Lycoming County, and the Townships of Dunnstable, Wayne, Pine Creek and Crawford and the Borough of Avis, all located in Clinton County; subject to the following conditions: (1) that no right, power or privilege is granted to transport to or from the Williamsport-Lycoming Municipal Airport in the Borough of Montoursville, Lycoming County; and (2) that service rendered in Cummings Township, Lycoming County, must fall within an airline distance of 10 statute miles of the limits of the Borough of Jersey Shore, Lycoming County; which is to be a transfer of all the right authorized under the certificate issued at A-00116843 to Jersey Shore Taxi, LLC, subject to the same limitations and conditions.

**Application of the following for approval of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of household goods as described under the application.**

**A-00121974. Theresa P. Ammon t/d/b/a Penn Valley Moving Company** (505 Gordon Avenue, Narberth, Montgomery County, PA 19072)—household goods in use, between points in the City and County of Philadelphia, and the Counties of Montgomery, Delaware, Chester and Bucks.

**Application of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of household goods in use as described under the application.**

**A-00114256, Folder 2. Shannon Transport, Inc. t/a Shannon Moving & Storage** (25 Roland Avenue, Mt. Laurel NJ 08054) a New Jersey corporation—household goods in use, between points in the Counties of Philadelphia, Delaware, Chester, Montgomery, Bucks, Berks, Lehigh and Northampton.

**Complaint**

*Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Jagdip Singh; Doc. No. A-00116726C0501*

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth

of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Jagdip Singh, respondent, maintains a principal place of business at 183 Marlboro Rd., Upper Darby, PA 19082.

2. That respondent was issued a Certificate of Public Convenience by this Commission on May 2, 2000 at Application Docket No. A-00116726.

3. That respondent has failed to maintain evidence of bodily injury and property damage liability insurance on file with this Commission.

4. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

*Wherefore*, unless respondent causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission issue a Secretarial Letter which (1) cancels the Certificate of Public Convenience held by respondent at Docket No. A-00116726, for failure to maintain evidence of current insurance on file with the Commission, (2) orders such other remedy as the Commission may deem to be appropriate, which may include a fine and the suspension of a vehicle registration and (3) imposes an additional fine on the respondent.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services & Enforcement Division  
Bureau of Transportation and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_  
Wendy J. Keezel

NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code § 1.56(a). The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint.

Your answer must be verified and the original and three copies sent to:

James J. McNulty, Secretary  
 Pennsylvania Public Utility Commission  
 P. O. Box 3265  
 Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, Contract Carrier Permit, or Brokerage license, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations within twenty days of the date of service of this Complaint. The proof of insurance must be filed with the Secretary of the Commission at the address set forth in Paragraph A. Upon receipt of the evidence of insurance from your insurer, the complaint proceeding shall be closed. ACORD CERTIFICATES OF INSURANCE ARE UNACCEPTABLE AS EVIDENCE OF INSURANCE.

D. If you file an answer which either admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission enter an order imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The judge is not bound by the optional penalty set forth in Paragraph B.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Insurance/Filing Unit at (717) 783-5933.

### **Complaint**

*Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Elize Cab Co.; Doc. No. A-00111567C0501*

### COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Elize Cab Co., respondent, maintains a principal place of business at 815 Marlyn Road, Philadelphia, PA 19151.

2. That respondent was issued a Certificate of Public Convenience by this Commission on January 17, 1995 at Application Docket No. A-00111567.

3. That respondent has failed to maintain evidence of bodily injury and property damage liability insurance on file with this Commission.

4. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission issue a Secretarial Letter which (1) cancels the Certificate of Public Convenience held by respondent at Docket No. A-00111567, for failure to maintain evidence of current insurance on file with the Commission, (2) orders such other remedy as the Commission may deem to be appropriate, which may include a fine and the suspension of a vehicle registration and (3) imposes an additional fine on the respondent.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement  
 Motor Carrier Services & Enforcement Division  
 Bureau of Transportation and Safety  
 P. O. Box 3265  
 Harrisburg, PA 17105-3265

### VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_  
 Wendy J. Keezel

### NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code § 1.56(a). The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original and three copies sent to:

James J. McNulty, Secretary  
 Pennsylvania Public Utility Commission  
 P. O. Box 3265  
 Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, Contract Carrier Permit, or Brokerage license, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current

insurance in accordance with the Commission's regulations within twenty days of the date of service of this Complaint. The proof of insurance must be filed with the Secretary of the Commission at the address set forth in Paragraph A. Upon receipt of the evidence of insurance from your insurer, the complaint proceeding shall be closed. ACORD CERTIFICATES OF INSURANCE ARE UNACCEPTABLE AS EVIDENCE OF INSURANCE.

D. If you file an answer which either admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission enter an order imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The judge is not bound by the optional penalty set forth in Paragraph B.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Insurance/Filing Unit at (717) 783-5933.

### Complaint

*Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Shadi A. Adams; Doc. No. A-00121077C0501*

### COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Shadi A. Adams, respondent, maintains a principal place of business at 613 Heritage Ct., Mechanicsburg, PA 17050.
2. That respondent was issued a Certificate of Public Convenience by this Commission on September 24, 2004 at Application Docket No. A-00121077.
3. That respondent has failed to maintain evidence of bodily injury and property damage liability insurance on file with this Commission.
4. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission issue a Secretarial Letter which (1) cancels the Certificate of Public Convenience held by respondent at Docket No. A-00121077, for failure to maintain evidence of current insurance on file with the Commission, (2) orders such other remedy as the Commission may deem to be appropriate, which may include a fine and the suspension of a vehicle registration and (3) imposes an additional fine on the respondent.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services & Enforcement Division  
Bureau of Transportation and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

### VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_

Wendy J. Keezel

### NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code § 1.56(a). The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original and three copies sent to:

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, Contract Carrier Permit, or Brokerage license, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations within twenty days of the date of service of this Complaint. The proof of insurance must be filed with the Secretary of the Commission at the address set forth in Paragraph A. Upon receipt of the evidence of insurance from your insurer, the complaint proceeding shall be closed. ACORD CERTIFICATES OF INSURANCE ARE UNACCEPTABLE AS EVIDENCE OF INSURANCE.

D. If you file an answer which either admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission enter an order imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The judge is not bound by the optional penalty set forth in Paragraph B.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Insurance/Filing Unit at (717) 783-5933.

**Complaint**

*Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Family Connection Transportation Services, Inc.; Doc. No. A-00112997C0501*

**COMPLAINT**

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Family Connection Transportation Services, Inc., respondent, maintains a principal place of business at 438 South 57th Street 1st Floor, Philadelphia, PA 19143-1421.

2. That respondent was issued a Certificate of Public Convenience by this Commission on May 20, 1998, at Application Docket No. A-00112997.

3. That respondent has failed to maintain evidence of cargo insurance on file with this Commission.

4. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission issue a Secretarial Letter which (1) cancels the Certificate of Public Convenience held by respondent at Docket No. A-00112997, for failure to maintain evidence of current insurance on file with the Commission, (2) orders such other remedy as the Commission may deem to be appropriate, which may include a fine and the suspension of a vehicle registration and (3) imposes an additional fine on the respondent.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services & Enforcement Division  
Bureau of Transportation and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

**VERIFICATION**

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_  
Wendy J. Keezel

**NOTICE**

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code

§ 1.56(a). The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original and three copies sent to:

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, Contract Carrier Permit, or Brokerage license, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations within twenty days of the date of service of this Complaint. The proof of insurance must be filed with the Secretary of the Commission at the address set forth in Paragraph A. Upon receipt of the evidence of insurance from your insurer, the complaint proceeding shall be closed. ACORD CERTIFICATES OF INSURANCE ARE UNACCEPTABLE AS EVIDENCE OF INSURANCE.

D. If you file an answer which either admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission enter an order imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The judge is not bound by the optional penalty set forth in Paragraph B.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Insurance/Filing Unit at (717) 783-5933.

**Complaint**

*Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Northern Limousine, Inc.; Doc. No. A-00120108C0501*

**COMPLAINT**

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Northern Limousine, Inc., respondent, maintains a principal place of business at 626 W. Lackawanna Avenue, Scranton, PA 18503.

2. That respondent was issued a Certificate of Public Convenience by this Commission on August 31, 2004, at Application Docket No. A-00120108.

3. That respondent has failed to maintain evidence of bodily injury and property damage liability insurance on file with this Commission.

4. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission issue a Secretarial Letter which (1) cancels the Certificate of Public Convenience held by respondent at Docket No. A-00120108, for failure to maintain evidence of current insurance on file with the Commission, (2) orders such other remedy as the Commission may deem to be appropriate, which may include a fine and the suspension of a vehicle registration and (3) imposes an additional fine on the respondent.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services & Enforcement Division  
Bureau of Transportation and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

#### VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_  
Wendy J. Keezel

#### NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code § 1.56(a). The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original and three copies sent to:

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, Contract Carrier Permit, or Brokerage license, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations within twenty days of the date of service of this Complaint. The proof of insurance must be filed with the Secretary of the Commission at the address set forth in Paragraph A. Upon receipt of the evidence of insurance from your insurer, the complaint proceeding shall be closed. ACORD CERTIFICATES OF INSURANCE ARE UNACCEPTABLE AS EVIDENCE OF INSURANCE.

D. If you file an answer which either admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission enter an order imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The judge is not bound by the optional penalty set forth in Paragraph B.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Insurance/Filing Unit at (717) 783-5933.

#### Complaint

*Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. A. Penza, Inc.; Doc. No. A-00085271C0501*

#### COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That A. Penza, Inc., respondent, maintains a principal place of business at 3301 S. Galloway Street, Philadelphia, PA 19148.

2. That respondent was issued a Certificate of Public Convenience by this Commission on July 7, 1958, at Application Docket No. A-00085271.

3. That respondent has failed to maintain evidence of cargo insurance and bodily injury and property damage liability insurance on file with this Commission.

4. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission issue a Secretarial Letter which (1) cancels the Certificate of Public Convenience held by respondent at Docket No. A-00085271, for failure to maintain evidence of current insurance on file with the Commission, (2) orders such other remedy as the Commission may deem to be appro-



appropriate, which may include a fine and the suspension of a vehicle registration and (3) imposes an additional fine on the respondent.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services & Enforcement Division  
Bureau of Transportation and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

#### VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_  
Wendy J. Keezel

#### NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code § 1.56(a). The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original and three copies sent to:

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, Contract Carrier Permit, or Brokerage license, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations within twenty days of the date of service of this Complaint. The proof of insurance must be filed with the Secretary of the Commission at the address set forth in Paragraph A. Upon receipt of the evidence of insurance from your insurer, the complaint proceeding shall be closed. ACORD CERTIFICATES OF INSURANCE ARE UNACCEPTABLE AS EVIDENCE OF INSURANCE.

D. If you file an answer which either admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission enter an order imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the complaint, the matter will be assigned to an Administrative Law

Judge for hearing and decision. The judge is not bound by the optional penalty set forth in Paragraph B.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Insurance/Filing Unit at (717) 783-5933.

#### Complaint

*Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Grover C. Walker, t/a Walker Trucking; Doc. No. A-00117739C0501*

#### COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Grover C. Walker, t/a Walker Trucking respondent, maintains a principal place of business at 5816 Rippley Street, Pittsburgh, PA 15206.

2. That respondent was issued a Certificate of Public Convenience by this Commission on February 2, 2004 at Application Docket No. A-00117739, F.3.

3. That respondent has failed to maintain evidence of bodily injury and property damage liability insurance on file with this Commission.

4. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission issue a Secretarial Letter which (1) cancels the Certificate of Public Convenience held by respondent at Docket No. A-00117739, for failure to maintain evidence of current insurance on file with the Commission, (2) orders such other remedy as the Commission may deem to be appropriate, which may include a fine and the suspension of a vehicle registration and (3) imposes an additional fine on the respondent.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services & Enforcement Division  
Bureau of Transportation and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

#### VERIFICATION

I, Wendy J. Keezel, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_  
Wendy J. Keezel

NOTICE

A. You must file an answer within twenty days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code § 1.56(a). The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your answer must be verified and the original and three copies sent to:

James J. McNulty, Secretary  
 Pennsylvania Public Utility Commission  
 P. O. Box 3265  
 Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty days of the date of service, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, Contract Carrier Permit, or Brokerage license, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current insurance in accordance with the Commission's regulations within twenty days of the date of service of this Complaint. The proof of insurance must be filed with the Secretary of the Commission at the address set forth in Paragraph A. Upon receipt of the evidence of insurance from your insurer, the complaint proceeding shall be closed. ACORD CERTIFICATES OF INSURANCE ARE UNACCEPTABLE AS EVIDENCE OF INSURANCE.

D. If you file an answer which either admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission enter an order imposing a penalty (see Paragraph B). Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

E. If you file an answer which contests the complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The judge is not bound by the optional penalty set forth in Paragraph B.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Insurance/Filing Unit at (717) 783-5933.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1541. Filed for public inspection August 12, 2005, 9:00 a.m.]

**Telecommunications**

**A-311124F7002. The United Telephone Company of Pennsylvania d/b/a Sprint and KMC Data, LLC.** Joint petition for approval of a master interconnection, resale and collocation agreement between The United Telephone Company of Pennsylvania d/b/a Sprint and KMC Data, LLC, under section 252(e) of the Telecommunications Act of 1996.

The United Telephone Company of Pennsylvania d/b/a Sprint and KMC Data, LLC, by its counsel, filed on July 25, 2005, at the Pennsylvania Public Utility Commission (Commission) a joint petition for approval of a master interconnection, resale and collocation agreement under section 252(e) of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the United Telephone Company of Pennsylvania d/b/a Sprint and KMC Data, LLC joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1542. Filed for public inspection August 12, 2005, 9:00 a.m.]

**Telecommunications**

**A-310957F7002. The United Telephone Company of Pennsylvania d/b/a Sprint and KMC Telecom V, Inc.** Joint petition for approval of a master interconnection, resale and collocation agreement between The United Telephone Company of Pennsylvania d/b/a Sprint and KMC Telecom V, Inc. under section 252(e) of the Telecommunications Act of 1996.

The United Telephone Company of Pennsylvania d/b/a Sprint and KMC Telecom V, Inc., by its counsel, filed on July 27, 2005, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of a master interconnection, resale and collocation agreement under section 252(e) of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the United Telephone Company of Pennsylvania d/b/a Sprint and KMC Telecom V, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1543. Filed for public inspection August 12, 2005, 9:00 a.m.]

**Telecommunications**

**A-310580F7001. Verizon North, Inc. and MCI WorldCom Communications, Inc. (as successor to Rhythms Links, Inc.).** Joint petition for approval of amendment number 3 to the interconnection agreement between Verizon North, Inc. and MCI WorldCom Communications, Inc. (as successor to Rhythms Links, Inc.).

Verizon North, Inc. and MCI WorldCom Communications, Inc. (as successor to Rhythms Links, Inc.), by its

counsel, filed on July 25, 2005, at the Pennsylvania Public Utility Commission (Commission) a joint petition for approval of amendment number 3 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the joint petition for amendment with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon North, Inc. and MCI WorldCom Communications, Inc. (as successor to Rhythms Links, Inc.) joint petition for amendment are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1544. Filed for public inspection August 12, 2005, 9:00 a.m.]

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### Telecommunications

**A-310401F7000. Verizon Pennsylvania, Inc. and Intermedia Communications, Inc. d/b/a Pennsylvania Intermedia Communications, Inc.** Joint petition for approval of amendment number 4 to the interconnection agreement between Verizon Pennsylvania, Inc. and Intermedia Communications, Inc. d/b/a Pennsylvania Intermedia Communications, Inc.

Verizon Pennsylvania, Inc. and Intermedia Communications, Inc. d/b/a Pennsylvania Intermedia Communications, Inc., by its counsel, filed on July 25, 2005, at the Pennsylvania Public Utility Commission (Commission) a joint petition for approval of amendment number 4 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the joint petition for amendment with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania, Inc. and Intermedia Communications, Inc. joint petition for amendment are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1545. Filed for public inspection August 12, 2005, 9:00 a.m.]

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### Telecommunications

**A-310580F7000. Verizon Pennsylvania, Inc. and MCI WorldCom Communications, Inc. (f/k/a MFS Intelenet of Pennsylvania, Inc.).** Joint petition for approval of amendment number 3 to the interconnection agreement between Verizon Pennsylvania, Inc. and MCI WorldCom Communications, Inc. (f/k/a MFS Intelenet of Pennsylvania, Inc.).

Verizon Pennsylvania, Inc., and MCI WorldCom Communications, Inc. (f/k/a MFS Intelenet of Pennsylvania, Inc.), by its counsel, filed on July 25, 2005, at the Pennsylvania Public Utility Commission (Commission) a joint petition for approval of amendment number 3 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the joint petition for amendment with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania, Inc. and MCI WorldCom Communications, Inc. (f/k/a MFS Intelenet of Pennsylvania, Inc.) joint petition for amendment are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1546. Filed for public inspection August 12, 2005, 9:00 a.m.]

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### Telecommunications

**A-310580F7000. Verizon Pennsylvania, Inc. and MCI WorldCom Communications, Inc. (as successor to Rhythms Links, Inc.).** Joint petition for approval of amendment number 3 to the interconnection agreement between Verizon Pennsylvania, Inc. and MCI WorldCom Communications, Inc. (as successor to Rhythms Links, Inc.).

Verizon Pennsylvania, Inc. and MCI WorldCom Communications, Inc. (as successor to Rhythms Links, Inc.), by its counsel, filed on July 25, 2005, at the Pennsylvania Public Utility Commission (Commission) a joint petition for approval of amendment number 3 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the joint petition for amendment with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of Verizon Pennsylvania, Inc. and MCI WorldCom Communications, Inc. (as successor to Rhythms Links, Inc.) joint petition for amendment are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1547. Filed for public inspection August 12, 2005, 9:00 a.m.]

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### Telecommunications

**A-310752F7000. Verizon Pennsylvania, Inc. and MCImetro Access Transmission Services, LLC.** Joint petition for approval of amendment number 5 to the interconnection agreement between Verizon Pennsylvania, Inc. and MCImetro Access Transmission Services, LLC.

Verizon Pennsylvania, Inc. and MCImetro Access Transmission Services, LLC, by its counsel, filed on July 25, 2005, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of amendment number 5 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the joint petition for amendment with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of Verizon Pennsylvania, Inc. and MCImetro Access Transmission Services, LLC joint petition for amendment are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1548. Filed for public inspection August 12, 2005, 9:00 a.m.]

### 2006 Schedule of Filing Dates for Recovery of Purchased Gas Costs; Doc. No. L-840102

Under 52 Pa. Code § 53.64(a) (relating to filing requirements for natural gas distributors with gross intrastate annual operating revenues in excess of \$40 million) the Pennsylvania Public Utility Commission (Commission) annually publishes a schedule of filing dates for jurisdictional gas utilities subject to the procedure of 66 Pa.C.S. § 1307(f) (relating to sliding scale of rates; adjustments) for the recovery of purchased gas costs.

The 2006 schedule of filing dates is as follows:

February 1, 2006: National Fuel Gas Distribution Corporation—PA Division; T. W. Phillips Gas and Oil Company

March 1, 2006: Philadelphia Gas Works

April 1, 2006: Columbia Gas of Pennsylvania, Inc.; Peoples Natural Gas Company; Equitable Gas Company

June 1, 2006: P. G. Energy, Inc.; PECO—Gas Division; UGI Corporation; PFG Gas, Inc.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 05-1549. Filed for public inspection August 12, 2005, 9:00 a.m.]

## PHILADELPHIA REGIONAL PORT AUTHORITY

### Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept proposals for Project #05-046.P, Design & Print Foreign Trade Zone Folder until 2 p.m. on Thursday, August 25, 2005. The proposal documents can be obtained from the Director of Procurement, PRPA, 3460 N. Delaware Ave., 2nd Floor, Philadelphia, PA 19134, (215) 426-2600 and will be available August 16, 2005. The cost of the proposal document is \$10 (includes 7% Pennsylvania Sales Tax). The cost is nonrefundable. PRPA is an equal opportunity employer. Contractors must comply with all applicable equal employment opportunity laws and regulations.

JAMES T. MCDERMOTT, Jr.,  
*Executive Director*

[Pa.B. Doc. No. 05-1550. Filed for public inspection August 12, 2005, 9:00 a.m.]

## SECURITIES COMMISSION

### Accredited Investor Exemption

Securities Commission staff has issued an Interpretive Opinion regarding the Accredited Investor Exemption. Contact the Division of Corporation Finance at (717) 787-8059 for copies or questions.

JEANNE S. PARSONS,  
*Secretary*

[Pa.B. Doc. No. 05-1551. Filed for public inspection August 12, 2005, 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.

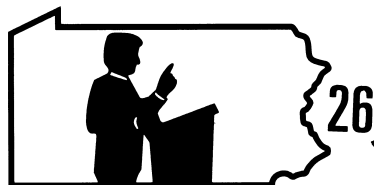
30 days after the later of the receipt of a proper invoice or receipt of goods or services.

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

## DO BUSINESS WITH STATE AGENCIES

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. The bureau is, by law, the central repository for all state contracts over \$5,000. Contract Specialists can supply you with descriptions of contracts, names of previous bidders, pricing breakdowns and other information. They can also direct you to the appropriate person and agency looking for your product or service. Copies of state contracts are also available. (Duplicating and mailing costs may apply). For more information, visit us online at [www.patreaury.org](http://www.patreaury.org).

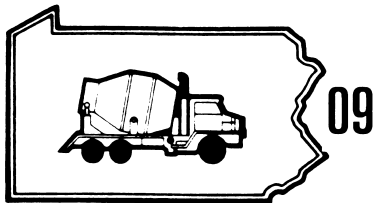
Contact: **Bureau of Contracts and Public Records**  
 Pennsylvania Treasury Department  
 201 Finance Building  
 Harrisburg, PA 17120  
 Phone: (717) 787-2990 or 1-800-252-4700  
 Fax: (717) 772-0977

ROBERT P. CASEY, Jr.,  
*State Treasurer*

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## SERVICES

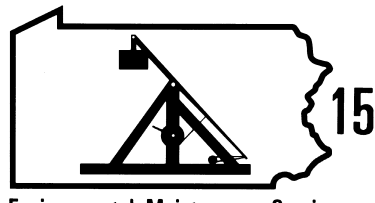
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### Construction & Construction Maintenance

**CPC 05.089** Preservation of the Barnard Statuary & Mexican War Monument: Five year renewable cyclical maintenance project for the Barnard Statuary Groups at the Main Capitol Building and the Mexican War Monument in Capitol Park, Harrisburg, PA. Contract work includes, but is not limited to, cleaning and rinsing monuments, analyzing crack monitors, inspecting and repairing all joints, inspecting and repairing all previous repairs, identifying new repairs, inspect and repair existing dutchman, new dutchman repairs, inspection of prior structural pinning repairs, and documentation of all work performed. Project documents will be available for pick up on Wednesday, August 24, 2005 from the Capitol Preservation Committee Office: Room 630 Main Capitol Building. A \$100 deposit is required. A MANDATORY pre-proposal meeting and site review is scheduled for Wednesday, August 31, 2005 at 10:00 am. Proposals are due on Wednesday, September 21, 2005 at 2:00 p.m.

**Department:** PA Capitol Preservation Committee  
**Location:** Room 630 Main Capitol Building, Harrisburg, PA 17120  
**Duration:** July 6, 2006—September 10, 2010  
**Contact:** Chris Ellis, (717) 783-6484



### Environmental Maintenance Service

**8022005** Under Act 181 of 1984, the Department of Environmental Protection solicits letters of interest from the landowners and/or licensed mine operators for the reclamation of the following abandoned strip mine project: C & K Coal Company Reclamation Project, repair of accelerated erosion and revegetation. Letters of interest must be received by Don Barnes, District Mining Manager, Department of Environmental Protection, 286 Industrial Park Road, Ebensburg, PA 15931, no later than 4:00 p.m. Local Time, August 29, 2005, to be considered. Telephone inquiries shall be directed to Mr. Barnes at 814-472-1900.

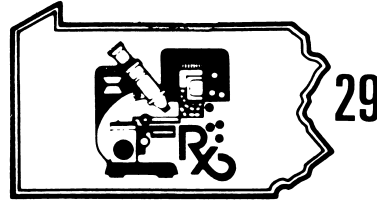
**Department:** Environmental Protection  
**Location:** DEP, Cambria District Mining Office, 286 Industrial Park Road, Ebensburg, PA 15931  
**Duration:** Expiring August 29, 2005  
**Contact:** Don Barnes, (814) 472-1900

**OSM 13,40(4966,4121)101.1** Abandoned Mine Reclamation Project, Buck Mountain and Owl Hole. The principal items of work and approximate quantities include Removal of Structures, 1,002 pounds of Bat Gate and One (1) acre of Seeding. This project issues on August 12, 2005 and bids will be opened on September 1, 2005 at 2:00 p.m. Bid documents cost \$10.00 per set and will not be mailed until payment has been received. This project is financed by the Federal Government under the authority given it by P.L. 95-87 dated August 3, 1977, "The Surface Mining Control and Reclamation Act of 1977," and is subject to that Law, and to the Federal Grant for this project.

**Department:** Environmental Protection  
**Location:** Laussane and Foster Townships, Carbon and Luzerne Counties  
**Duration:** 60 calendar days after the official starting date.  
**Contact:** Construction Contracts Section, (717) 787-7820

**OSM 10(3760)103.1** Abandoned Mine Reclamation Project, Annandale Southwest. The principal items of work and approximate quantities include Implementation of the Erosion and Sediment Pollution Control Plan, 1,014,000 cubic yards of Grading, 2,050 linear feet of Subsurface Drain and 84.1 acres of Seeding. This project issues on August 12, 2005 and bids will be opened on September 1, 2005 at 2:00 p.m. This project is financed by the Federal Government under the authority given it by P.L. 95-87 dated August 3, 1977, "The Surface Mining Control and Reclamation Act of 1977," and is subject to that Law, and to the Federal Grant for this project.

**Department:** Environmental Protection  
**Location:** Cherry Township, Butler County  
**Duration:** 300 calendar days after the official starting date.  
**Contact:** Construction Contracts Section, (717) 787-7820

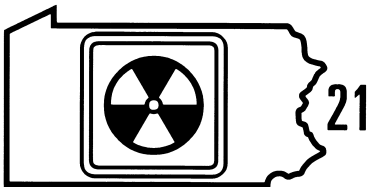


### Medical Services

**CN00015763** Speech Evaluation and Therapy Services. Vendors will need to be registered with the Commonwealth of Pennsylvania Central Vendor Master Unit in order to be awarded a bid. Vendors may register on-line at [www.vendor-registration.state.pa.us](http://www.vendor-registration.state.pa.us) or by calling the toll free number 1-866-775-2868. Bids may be requested by sending a fax to 570-587-7108. Please provide the following information when requesting bids: Name of Vendor, Address, Phone Number, Point of Contact (and their phone number) and Vendor Number. All Bids must arrive prior to the Bid opening date and time to be considered, and become property of the Commonwealth once submitted. Bid packages cannot be faxed.

**Department:** Public Welfare  
**Location:** Clarks Summit State Hospital, 1451 Hillside Drive, Clarks Summit, PA 18411-9505  
**Duration:** Oct. 1, 2005 - June 30, 2009  
**Contact:** Barbara Masko, (570) 587-7292

[Pa.B. Doc. No. 05-1552. Filed for public inspection August 12, 2005, 9:00 a.m.]



### Hazardous Material Services

**FM 8920** The Pennsylvania State Police Academy, Firing Range is seeking a vendor to provide remediation of lead shot from fifty (50) hot spots from the Bullet Containment System located at the PSP Academy, 175 East Hershey Park Drive, Hershey, PA 17033. Remediation shall include separation of spent ammunition (lead bullets) from rubber chips used in the backstop of firing Range. The approximate measurements are 225' X 20'. It is estimated that the bullet trap contains more than one million rounds. Interested vendors shall request full bid specification from the contact person listed below.

**Department:** State Police  
**Location:** Pennsylvania State Police Academy, 175 East Hershey Park Drive, Hershey, PA 17033  
**Duration:** August through December  
**Contact:** Helen Fuhrman, (717) 705-5952

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## DESCRIPTION OF LEGEND

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- |  |   |
|--|---|
| <p><b>1</b> Advertising, Public Relations, Promotional Materials</p> <p><b>2</b> Agricultural Services, Livestock, Equipment, Supplies &amp; Repairs: Farming Equipment Rental &amp; Repair, Crop Harvesting &amp; Dusting, Animal Feed, etc.</p> <p><b>3</b> Auctioneer Services</p> <p><b>4</b> Audio/Video, Telecommunications Services, Equipment Rental &amp; Repair</p> <p><b>5</b> Barber/Cosmetology Services &amp; Equipment</p> <p><b>6</b> Cartography Services</p> <p><b>7</b> Child Care</p> <p><b>8</b> Computer Related Services &amp; Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p><b>9</b> Construction &amp; Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p><b>10</b> Court Reporting &amp; Stenography Services</p> <p><b>11</b> Demolition—Structural Only</p> <p><b>12</b> Drafting &amp; Design Services</p> <p><b>13</b> Elevator Maintenance</p> <p><b>14</b> Engineering Services &amp; Consultation: Geologic, Civil, Mechanical, Electrical, Solar &amp; Surveying</p> <p><b>15</b> Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core &amp; Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p><b>16</b> Extermination Services</p> <p><b>17</b> Financial &amp; Insurance Consulting &amp; Services</p> <p><b>18</b> Firefighting Services</p> <p><b>19</b> Food</p> <p><b>20</b> Fuel Related Services, Equipment &amp; Maintenance to Include Weighing Station Equipment, Underground &amp; Above Storage Tanks</p> <p><b>21</b> Hazardous Material Services: Abatement, Disposal, Removal, Transportation &amp; Consultation</p> | <p><b>22</b> Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental &amp; Repair</p> <p><b>23</b> Janitorial Services &amp; Supply Rental: Interior</p> <p><b>24</b> Laboratory Services, Maintenance &amp; Consulting</p> <p><b>25</b> Laundry/Dry Cleaning &amp; Linen/Uniform Rental</p> <p><b>26</b> Legal Services &amp; Consultation</p> <p><b>27</b> Lodging/Meeting Facilities</p> <p><b>28</b> Mailing Services</p> <p><b>29</b> Medical Services, Equipment Rental and Repairs &amp; Consultation</p> <p><b>30</b> Moving Services</p> <p><b>31</b> Personnel, Temporary</p> <p><b>32</b> Photography Services (includes aerial)</p> <p><b>33</b> Property Maintenance &amp; Renovation—Interior &amp; Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning &amp; Planting, etc.)</p> <p><b>34</b> Railroad/Airline Related Services, Equipment &amp; Repair</p> <p><b>35</b> Real Estate Services—Appraisals &amp; Rentals</p> <p><b>36</b> Sanitation—Non-Hazardous Removal, Disposal &amp; Transportation (Includes Chemical Toilets)</p> <p><b>37</b> Security Services &amp; Equipment—Armed Guards, Investigative Services &amp; Security Systems</p> <p><b>38</b> Vehicle, Heavy Equipment &amp; Powered Machinery Services, Maintenance, Rental, Repair &amp; Renovation (Includes ADA Improvements)</p> <p><b>39</b> Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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JAMES P. CREEDON,  
*Secretary*



**Title 58—RECREATION**  
**PENNSYLVANIA GAMING CONTROL BOARD**  
**[58 PA. CODE CHS. 405, 441 AND 443]**  
**Draft Temporary Regulations**

The Pennsylvania Gaming Control Board (Board), under authority in 4 Pa.C.S. § 1202 (relating to general and specific powers), has drafted temporary regulations to facilitate the prompt implementation of 4 Pa.C.S. Part II (relating to gaming), enacted by the act of July 5, 2004 (P. L. 572, No. 71). Upon adoption of the regulations by the Board, the Board's temporary regulations will be added to Part VII (relating to Gaming Control Board). By publishing these temporary regulations in draft form, the Board seeks public comment prior to the adoption of the regulations.

*Contact Person*

Interested persons are invited to submit written comments, suggestions or objections to the draft temporary regulations to the Pennsylvania Gaming Control Board, Office of Communications, P. O. Box 69060, Harrisburg, PA 17106-9060, Attn: Public Comment. The public comment period will end on September 6, 2005.

THOMAS A. DECKER,  
*Chairperson*

**Annex A**

**TITLE 58. RECREATION**

**PART VII. GAMING CONTROL BOARD**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 405. BUREAU OF INVESTIGATIONS  
AND ENFORCEMENT**

Sec.	
405.1.	General duties and powers.
405.2.	Information.
405.3.	Office of Enforcement Counsel.
405.4.	Procedures.
405.5.	Conduct.

**§ 405.1. General duties and powers.**

There is hereby established a Bureau of Investigations and Enforcement which has the powers and duties in section 1517 of the act (relating to enforcement) including:

- (1) The investigation and review of applicants seeking a license, permit or registration.
- (2) The investigation of licensees, permittees, registrants and other persons for potential violations of the act, including potential violations referred to the Bureau by the Board or other person.
- (3) The monitoring of slot machine operations to ensure compliance with the act and the integrity of gaming, including internal controls, exclusion list enforcement, underage gaming and drinking, individual complaints, information systems, integrity and security issues.
- (4) The inspection and examination of licensed entities as provided in section 1517(e) of the act. Inspections may include the review and reproduction of any document or record.
- (5) The conduct of audits of a licensed entity as necessary to ensure compliance with the act. An audit may include the review of accounting, administrative and financial records, management control systems, procedures and other records utilized by a licensed entity.

(6) The referral of possible criminal violations to the Pennsylvania State Police or other appropriate law enforcement agency.

**§ 405.2. Information.**

(a) An applicant, licensee, permittee or registrant shall provide the information, data and documents requested by the Bureau under section 1517(a) of the act (relating to enforcement).

(b) A State or local law enforcement agency, including the Pennsylvania State Police and the Office of Attorney General, the Department or other executive agency shall provide the information, data and documents requested by the Bureau relating to an applicant, licensee, permittee or registrant.

(c) The Bureau may, upon request, provide pertinent information relating to an applicant, licensee, permittee or registrant to law enforcement agencies, including the Federal Bureau of Investigation or gaming authorities of the Commonwealth or other domestic or foreign agencies or jurisdictions.

(d) Information under this section may be provided or received by electronic distribution.

**§ 405.3. Office of Enforcement Counsel.**

(a) There is hereby established within the Bureau an Office of Enforcement Counsel which has the following powers and duties:

(1) Advise the Bureau on all matters, including the granting of licenses, permits or registrations, the conduct of background investigations, audits and inspections and the investigation of potential violations of the act.

(2) File recommendations and objections relating to the issuance of licenses, permits and registrations on behalf of the Bureau.

(3) Initiate, in its sole discretion, proceedings for violations of the act by filing a complaint or other pleading with the Board seeking civil fines or penalties, the imposition of conditions on licenses, or the suspension or revocation of a license.

(4) The Office of Enforcement Counsel may seek a settlement that may include fines, penalties or other actions subject to approval by the Board.

(b) The Enforcement Counsel is the director of the Office of Enforcement Counsel. The Enforcement Counsel will be selected by the Board and shall be an attorney admitted to practice before the Pennsylvania Supreme Court.

(c) The Director of the Office of Enforcement Counsel reports to the Executive Director of the Board on administrative and operational matters.

**§ 405.4. Procedures.**

(a) The Office of Enforcement Counsel acts as the prosecutor in all enforcement actions under the act.

(b) The Board's Chief Counsel will advise the Board in its adjudicatory capacity and represent the Board in appellate actions under the act.

(c) If the Bureau or the licensing Bureau files an objection to any license, permit or registration, an evidentiary record will be established to allow the Board to reach a decision in accordance with the act.

**§ 405.5. Conduct.**

(a) An attorney representing the Office of Enforcement Counsel, or an employee involved in the hearing process,

may not discuss the case ex parte with a hearing officer, Chief Counsel or Board member.

(b) A hearing officer, the Chief Counsel or a Board member may not discuss or exercise any supervisory responsibility over any employee with respect to an enforcement hearing with which the employee is involved.

(c) If it becomes necessary for the Chief Counsel or Board member to become involved on behalf of the Board in any enforcement proceeding, the Chief Counsel or Board member is prohibited from participating in the adjudication of that matter and shall designate appropriate individuals to exercise adjudicatory functions.

### **Subpart C. SLOT MACHINE LICENSING**

#### **CHAPTER 441. SLOT MACHINE LICENSES**

##### **§ 441.13. Notification of anticipated or actual changes in key employee qualifiers or key employees.**

Each slot machine licensee or applicant shall immediately notify the Board, in writing, as soon as practicable, of the proposed appointment, appointment, proposed nomination, nomination, election, hiring, intended resignation, resignation, removal, firing, incapacitation or death of any person required to be licensed as a key employee qualifier or key employee under §§ 435.2 and 435.3 (relating to key employee qualifier license; and key employee license). The notice must be addressed to the Office of the Clerk.

##### **§ 441.14. Notification of new financial sources.**

Each slot machine licensee or applicant shall immediately notify the Board, in writing, as soon as it becomes aware that it intends to enter into a transaction which would affect any relation to its licensed facility and may result in any new financial backers. The notice must be addressed to the Office of the Clerk.

#### **CHAPTER 443. CATEGORIES OF LICENSURE**

##### **§ 443.4. Category 2 slot machine licenses.**

(a) To be eligible to receive a Category 2 slot machine license, an applicant shall comply with Chapter 441 (relating to slot machine licenses) and submit the following:

(1) A sworn or affirmed statement that neither the applicant, nor any of its affiliates, intermediaries, subsidiaries or holding companies is eligible to seek a Category 1 slot machine license.

(2) A statement detailing the proposed plans and location of the licensed facility.

(3) A statement detailing and establishing that the proposed location is in a revenue or tourism-enhanced location and is in compliance with the geographical requirements of section 1304(b) of the act (relating to Category 2 slot machine license). The statement must include the appropriate business and tourism studies, economic impact studies, projected revenue and business plans.

(4) Other information deemed necessary by the Board.

(b) The Board may issue a Category 2 slot machine license if it determines that the applicant has complied with this section and Chapter 441 and has proven by clear and convincing evidence that it has the financial stability and integrity and the good character, honesty, integrity and responsibility to qualify for a slot machine license.

##### **§ 443.5. Category 3 slot machine license.**

(a) To be eligible to receive a Category 3 slot machine license, an applicant shall comply with Chapter 441 (relating to slot machine licenses) and submit the following:

(1) A sworn or affirmed statement that neither the applicant nor any of its affiliates, intermediaries, subsidiaries or holding companies has applied for, has been approved for or has been issued a Category 1 or 2 slot machine license.

(2) A statement detailing the proposed plans and location of the licensed facility and confirming that the facility shall be located at a well-established resort hotel which has no fewer than 275 existing guest rooms under common ownership and having substantial year-round recreational guest amenities.

(3) Documentation satisfactory to the Board proving that the applicant is the owner of the established resort hotel or is a wholly owned subsidiary of the owner of the established resort hotel. Documentation may include, but is not limited to, copies of the following documents:

(i) If a corporation, the applicant shall submit the following:

- (A) Articles of incorporation.
- (B) Charter.
- (C) By-laws.

(ii) If a partnership, the applicant shall submit the following:

- (A) Partnership agreements.
- (B) Certificates of limited partnership, if applicable.

(iii) If a limited liability company, the applicant shall submit the following:

- (A) Certificates of formation, amendment and cancellation.
- (B) Operating agreements.

(4) A plan detailing how the applicant, as part of its operational plan, will monitor the gaming area to ensure that only registered guests or patrons of one or more of the amenities over the age of 21 are permitted to enter the gaming area.

(5) Information deemed necessary by the Board to determine the operational viability, financial fitness or character of the applicant.

(b) An applicant shall have three or more of the following amenities:

- (1) Sports and recreational activities and facilities such as a golf course or golf driving range.
- (2) Tennis courts or swimming pool.
- (3) Health spa.
- (4) Convention center.
- (5) Meeting and banquet facilities.
- (6) Entertainment facilities.
- (7) Restaurant facilities.

(c) The Board may issue a Category 3 slot machine license if it determines that the applicant has complied with this section and the applicable provisions of Chapter 441 and has proven by clear and convincing evidence that it has the financial stability and integrity and the good character, honesty, integrity and responsibility to qualify for a slot machine license.

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