

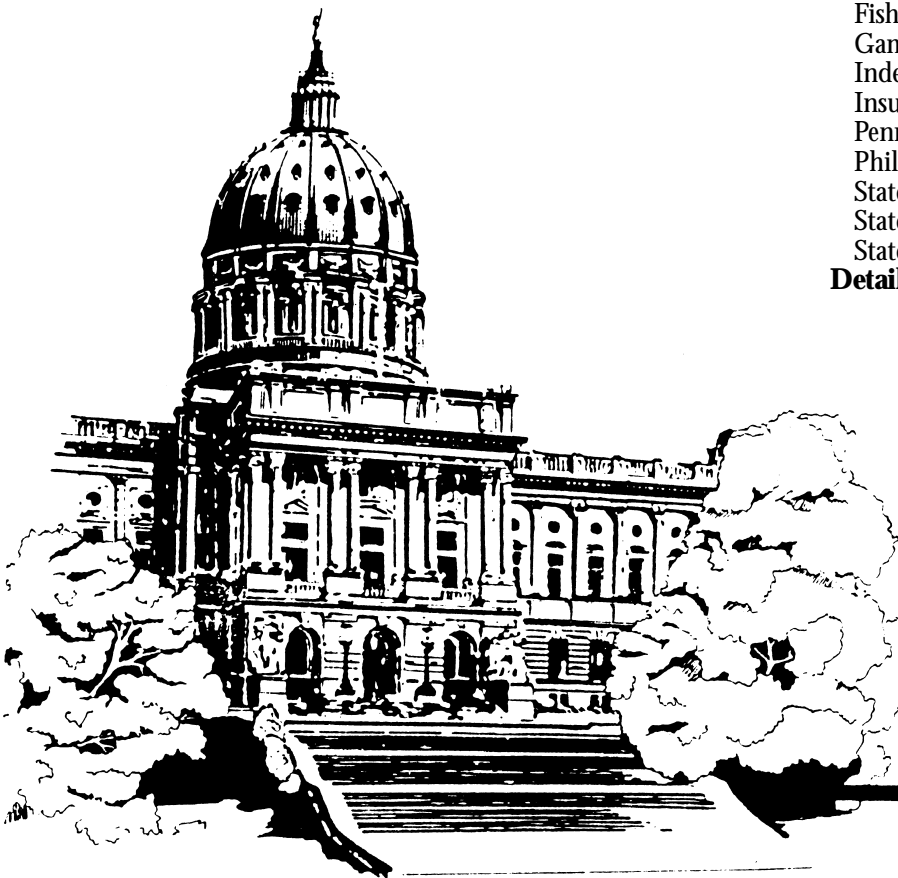
PENNSYLVANIA BULLETIN

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Agencies in this issue:

The Courts
Department of Banking
Department of Environmental Protection
Department of General Services
Department of Health
Department of Public Welfare
Department of Transportation
Executive Board
Fish and Boat Commission
Game Commission
Independent Regulatory Review Commission
Insurance Department
Pennsylvania Public Utility Commission
Philadelphia Regional Port Authority
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State Conservation Commission

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No. 372, November 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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Printing Format

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

Fiscal Notes

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

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

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List of Pa. Code Chapters Affected

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THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Amendment of Pennsylvania Rules of Disciplinary Enforcement 104, 208, 209, 213, 215 and 402; No. 46 Disciplinary Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 26th day of October, 2005, it is ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that:

1. Pennsylvania Rules of Disciplinary Enforcement 104, 208, 209, 213, 215 and 402 are amended as set forth in Annex A.

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

3. The amendments to the Pennsylvania Rules of Disciplinary Enforcement shall take effect upon publication of this Order in the *Pennsylvania Bulletin* and shall apply to all matters thereafter commenced and to those matters pending at the time in which a petition for discipline or a petition for reinstatement has not been filed.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter A. PRELIMINARY PROVISIONS

Rule 104. Filings with the Supreme Court.

* * * * *

(c) *Centralized filing.* All filings with the Supreme Court under these rules shall be made only with the prothonotary, and the person making a filing shall not distribute copies to the members of the Court. **[It shall be the responsibility of the prothonotary to preserve the confidentiality of filings to the extent and as provided in Rule 402 (relating to confidentiality) and elsewhere in these rules.]**

Subchapter B. MISCONDUCT

Rule 208. Procedure.

* * * * *

(d) *Review and action by Board.*

* * * * *

(2) The Board shall either affirm or change in writing the recommendation of the hearing committee or special,

master by taking the following action, as appropriate, within 60 days after the adjudication of the matter at a meeting of the Board;

* * * * *

(iii) *Other discipline.* In the event that the Board shall determine that the matter should be concluded by probation, censure, suspension, disbarment, or by informal admonition or private reprimand in cases where the respondent-attorney is unwilling to have the matter concluded by informal admonition or private reprimand, it shall file its findings and recommendations, together with the briefs, if any, before the Board and the entire record, with the Supreme Court. A respondent-attorney who is unwilling to have the matter concluded by an informal admonition or private reprimand **[shall evidence such unwillingness by filing,] must file within thirty (30) days after notice of the determination of the Board, a notice of appeal [including a statement that the respondent-attorney understands that the effect of the appeal will be to terminate the confidential status of the matter]. [See Rule 402(a)(5) (relating to confidentiality).]** Review by the Supreme Court shall be de novo and the Court may impose a sanction greater or less than that recommended by the Board.

* * * * *

Rule 209. Immunity.

(a) Complaints submitted to the Board or Disciplinary Counsel shall be confidential **unless the matter results in the filing of formal charges. See Rule 402(a) (relating to access to disciplinary information and confidentiality).** Members of the Board, members of hearing committees, special masters, Disciplinary Counsel and staff shall be immune from civil suit for any conduct in the course of their official duties. All communications to the Board, a hearing committee, special master, or Disciplinary Counsel relating to misconduct by a respondent-attorney and all testimony given in a proceeding conducted pursuant to these rules shall be absolutely privileged and the person making the communication or giving the testimony shall be immune from civil suit based upon such communication or testimony, except that such immunity shall not extend to any action that violates Rule 402 **[(relating to confidentiality)].** For purposes of this subdivision (a), the staff of the Board shall be deemed to include conservators and sobriety, financial or practice monitors appointed pursuant to these rules or the rules of the Board.

* * * * *

Rule 213. Subpoena power, depositions and related matters.

* * * * *

(c) *Confidentiality.* A subpoena issued under this rule shall clearly indicate on its face that the subpoena is issued in connection with a confidential investigation under these rules, and that it is regarded as contempt of the Supreme Court or grounds for discipline under these rules for a person subpoenaed to in any way breach the confidentiality of the investigation. It shall not be regarded as a breach of confidentiality for a person subpoenaed to consult with an attorney. The subpoena and deposition **[producers] procedures** of these rules

shall be subject to the protective requirements of confidentiality provided in Rule 402 (relating to **access to disciplinary information and confidentiality**).

* * * * *

Rule 215. Discipline on consent.

* * * * *

(c) *Confidentiality of resignation statement.* The order disbaring the attorney on consent shall be a matter of public record [, **but for the purposes of Enforcement Rule 402(a)(1) (relating to confidentiality) the order shall not be an order for the imposition of public discipline**]. [**The**] If the statement required under the provisions of subdivision (a) of this rule is submitted before the filing and service of a petition for discipline and the filing of an answer or the time to file an answer has expired, the statement shall not be publicly disclosed or made available for use in any proceeding other than a subsequent reinstatement proceeding except:

* * * * *

(g) *Public discipline.* If a panel approves a Petition consenting to public censure or suspension, the Board shall file the recommendation of the panel and the Petition with the Supreme Court. If the Court grants the Petition, the Court shall enter an appropriate order disciplining the attorney on consent. [**The order and the Petition shall be a matter of public record in accordance with Enforcement Rule 402.**]

* * * * *

Subchapter D. MISCELLANEOUS PROVISIONS

Rule 402. **Access to Disciplinary Information and Confidentiality.**

(a) **Except as provided in subdivisions (b) and (d), all proceedings under these rules shall be open to the public after:**

- (1) **the filing of an answer to a petition for discipline;**
- (2) **the time to file an answer to a petition for discipline has expired without an answer being filed; or**
- (3) **the filing and service of a petition for reinstatement.**

(b) **Notwithstanding subdivision (a), an informal proceeding under these rules in which it is determined that private discipline should be imposed but that subsequently results in the filing of formal charges shall not be open to the public until or unless the Supreme Court enters its order for the imposition of public discipline**

(c) [**All**] **Until the proceedings are open under subdivision (a) or (b), all proceedings involving allegations of misconduct by or disability of an attorney shall be kept confidential [until or] unless:**

- (1) [**the Supreme Court enters its order for the imposition of public discipline;**
- (2)] **the respondent-attorney requests that the matter be public, or waives confidentiality for a particular purpose specified in writing;**
- [(3)] (2) **the investigation is predicated upon a conviction of the respondent-attorney for a crime or reciprocal discipline;**

[(4)] (3) **in matters involving alleged disability, the Supreme Court enters its order transferring the respondent-attorney to inactive status pursuant to Enforcement Rule 301 (relating to proceedings where an attorney is declared to be incompetent or is alleged to be incapacitated) [, or ,]**

[(5) **the respondent-attorney appeals under Rule 208(d)(2)(iii) (relating to review and action by Board) a determination by the Board imposing an informal admonition or private reprimand.]**

(4) **the proceeding is based upon allegations that have become generally known to the public; or**

(5) **there is a need to notify another person or organization, including the Lawyers' Fund for Client Security, in order to protect the public, the administration of justice, or the legal profession.**

[(b)] (d) **This rule shall not be construed to:**

(1) **Deny access to relevant information at any point during a proceeding under these rules to:**

- (i) **authorized agencies investigating the qualifications of judicial candidates, [or to]**
- (ii) **the Judicial [Inquiry and Review] Conduct Board [, or to] with respect to an investigation it is conducting,**
- (iii) **other jurisdictions investigating qualifications for admission to practice [or to];**

(iv) **law enforcement agencies investigating qualifications for government employment;**

(v) **lawyer disciplinary enforcement agencies in other jurisdictions investigating misconduct by the respondent-attorney; or**

(vi) **the Pennsylvania Lawyers Fund for Client Security Board investigating a claim for reimbursement arising from conduct by the respondent-attorney.**

(2) **Require Disciplinary Counsel to refrain from reporting to law enforcement authorities the commission or suspected commission of any criminal offense or information relating to a criminal offense.**

(3) **Prevent the Pennsylvania Lawyers Fund for Client Security from utilizing information obtained during any investigation to pursue subrogated claims.**

(e) **Subdivision (a) shall not be construed to provide public access to:**

- (1) **the work product of the Board, Disciplinary Counsel, hearing committee members, or special masters;**
- (2) **deliberations of a hearing committee, special master, the Board or the Court; or**
- (3) **information subject to a protective order issued by the Board under subdivision (f).**

(f) **The Board may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential, and the Board may direct that proceedings be conducted so**

as to implement the order, including requiring that a hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of a protective order.

(g) Except as provided in subdivision (h), if nonpublic information is requested pursuant to subdivision (d)(1) and the respondent-attorney has not signed an applicable waiver of confidentiality, the respondent-attorney shall be notified in writing at the last known address of the respondent-attorney of what information has been requested and by whom, together with a copy of the information proposed to be released to the requesting agency or board. The notice shall advise the respondent-attorney that the information will be released 20 days after mailing of the notice unless the lawyer objects to the disclosure. If the lawyer timely objects to the disclosure, the information shall remain confidential unless the requesting agency or board obtains an order of the Supreme Court requiring its release or the respondent-attorney withdraws the objection.

(h) If an agency or board requesting the release of information under subdivision (d)(1) has not obtained an applicable waiver of confidentiality from the respondent-attorney, and the agency or board requests that the information be released without giving notice to the respondent-attorney, the requesting agency or board shall certify that:

(1) the request is made in furtherance of an ongoing investigation into misconduct by the respondent-attorney;

(2) the information is essential to that investigation; and

(3) disclosure of the existence of the investigation to the respondent-attorney would seriously prejudice the investigation.

(i) [In addition, the] The Board shall transmit notice of all public discipline imposed by the Supreme Court, [or transfer] transfers to or from inactive status[,] for disability, and reinstatements to the National [Discipline] Lawyer Regulatory Data Bank maintained by the American Bar Association.

(j) This rule does not permit broadcasting, televising, recording or taking photographs during a proceeding under these rules, except that a hearing committee, a special master, the Board or the Supreme Court when conducting a proceeding may authorize the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration.

Official Note: Paragraph [(b)](d)(2) is based on 18 Pa.C.S. § 5108 (relating to compounding). Otherwise Disciplinary Counsel may be in the anomalous position of violating Rule 8.4 of the Pennsylvania Rules of Professional Conduct.

[Pa.B. Doc. No. 05-2077. Filed for public inspection November 11, 2005, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 100]

Order Amending Rule 110 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges; No. 220 Magisterial Doc. No. 1

The Minor Court Rules Committee has prepared a Final Report explaining the Supreme Court of Pennsylvania's Order amending Rule 110 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges, effective January 1, 2006. This rule change increases the minimum bond amount required for each magisterial district judge. The Final Report follows the Court's Order.

Order

Per Curiam:

And Now, this 27th day of October, 2005, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at Volume 35, *Pennsylvania Bulletin*, page 1974 (April 2, 2005), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 110 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges be, and hereby is, amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2006.

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 100. RULES AND STANDARDS WITH RESPECT TO OFFICES OF MAGISTERIAL DISTRICT JUDGES

Rule 110. Bonds of Magisterial District Judges.

Each magisterial district judge is required to give bond in such sum, not less than [Two Thousand Five Hundred Dollars (\$2,500.00)] \$25,000, as shall be directed by the president judge of the court of common pleas of the judicial district in which is located the magisterial district of the magisterial district judge, with one or more sufficient sureties[, the]. The bond shall be lodged with the [Prothonotary] prothonotary of the court of common pleas, be conditioned on the faithful application of all moneys that come into the hands of the magisterial district judge as an officer, and be for the benefit of the Commonwealth and its political subdivisions and all persons who may sustain injury from the magisterial district judge in his or her official capacity.

Official Note: This rule sets forth only the minimum bond amount for each magisterial district judge. The amount of money collected by the district courts varies greatly however, and the president judge is free to require higher bond amounts for some or all of the courts in the judicial district.

FINAL REPORT¹

Amendment to Rule 110 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

Increase in Minimum Bond Amount

On October 27, 2005, effective January 1, 2006, upon recommendation of the Minor Court Rules Committee,² the Supreme Court of Pennsylvania amended Rule 110 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.³

I. *Background*

The Minor Court Rules Committee (the Committee) undertook a review of Rule 110 (Bonds of Magisterial District Judges) at the direction of the Supreme Court of Pennsylvania and in response to a recommendation of the Special Courts Administration Subcommittee of the Supreme Court's Intergovernmental Task Force to Study the District Justice System (the Task Force Subcommittee).⁴ In its report to the Supreme Court, the Task Force Subcommittee recommended that Rule 110 be amended to increase the minimum amount of the bond that each magisterial district judge must file in accordance with the Rule.⁵ In response to this recommendation, the Supreme Court referred the matter to the Committee for its consideration, and the Committee recommended that Rule 110 be amended as explained below.

II. *Discussion and Rule Changes*

Prior to this amendment, Rule 110 provided that

[e]ach magisterial district judge is required to give bond in such sum, *not less than Two Thousand Five Hundred Dollars (\$2,500.00)*, as shall be directed by the president judge of the court of common pleas of the judicial district in which is located the magisterial district of the magisterial district judge, with one or more sufficient sureties, the bond shall be lodged with the Prothonotary of the court of common pleas, be conditioned on the faithful application of all moneys that come into the hands of the magisterial district judge as an officer, and be for the benefit of the Commonwealth and its political subdivisions and all persons who may sustain injury from the magisterial district judge in his official capacity.⁶

As the Task Force Subcommittee noted in its report, “[g]iven the case loads of and the amount of money collected by most district courts, the [\$2,500] minimum bond amount required by this rule is likely insufficient to cover” any loss that may result from the malfeasance of a

[magisterial] district [judge] with regard to the handling of funds that are paid into his or her court.⁷ The Committee agreed, and determined that the minimum bond amount should be increased to a level that is more commensurate with the average bank account balances of the magisterial district courts. To assist the Committee in recommending an increased minimum bond amount, the Administrative Office of Pennsylvania Courts (the AOPC) was able to extract data from the Magisterial District Judge System (the MDJS)⁸ regarding average bank account balances in the district courts. Based on the MDJS data, the Committee recommended that the minimum bond amount to be required under Rule 110 be increased to \$25,000.⁹

The Committee was mindful that the Task Force Subcommittee's recommendation included, in addition to an increase in the minimum bond amount, a proposal to tie an individual magisterial district judge's bond amount to his or her district court's bank account balance. Specifically, the Task Force Subcommittee recommended that the bond amounts be “based on the average balance of that [magisterial] district [judge's] district court bank account in the preceding twelve months” and that “local court administrators would be responsible for reviewing annual audit reports or other data to determine the average account balance, and then make recommendations to the president judge as to the appropriate bond amount for each [magisterial] district [judge] in the judicial district.”¹⁰ While the Committee recognizes the merit in this proposal, the Committee chose an alternative to the Task Force Subcommittee's recommendation to avoid an unnecessary burden on court officials, whether on the president judges or on their designated agents, to monitor the more than 550 bank account balances annually and perhaps to change the bond amounts frequently. The Committee believes that a uniform minimum amount for all bonds for all courts will be more efficient and easier for compliance. As by this amendment, the minimum amount for the bond may be changed in the future if appropriate. In addition, the Committee notes that Rule 110 sets forth only the *minimum* bond amount, and a president judge is free to require higher bond amounts for some or all of the district courts in his or her judicial district.

Therefore, the Committee recommended that Rule 110 be amended to increase the minimum bond amount to \$25,000 while keeping the other essential provisions of the Rule as currently written. In addition to the substantive changes discussed here, the Committee recommended the addition of a clarifying Official Note, and minor technical or “housekeeping” changes to enhance readability and address gender neutrality.

[Pa.B. Doc. No. 05-2078. Filed for public inspection November 11, 2005, 9:00 a.m.]

¹ The Committee's Final Report should not be confused with the Official Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Official Notes or the contents of the explanatory Final Report.

² Recommendation No. 3 Minor Court Rules 2005.

³ Supreme Court of Pennsylvania Order No. 220, Magisterial Docket No. 1 (October 27, 2005).

⁴ The Intergovernmental Task Force to Study the District Justice System was convened on May 30, 2001 “to examine the current state of the district justice court system” and to “propose clear standards for the decennial magisterial district reestablishment, identify immediate and long-term system problems and needs, and formulate solutions to ensure the prudent and effective administration of the district justice courts.” Report of the Intergovernmental Task Force to Study the District Justice System vii (October 2001) (available online at <http://www.courts.state.pa.us/>) (hereinafter Task Force Report).

⁵ Id. at 51-52.

⁶ 246 Pa. Code Rule 110 (emphasis added).

⁷ Task Force Report at 51.

⁸ The MDJS is the statewide computer system that automates all case processing and accounting functions of the magisterial district courts.

⁹ The AOPC staff used the MDJS data to examine the month-end bank account balances for 567 courts over an 18 month period (December 2002–August 2004) and found the average to be \$29,621.

¹⁰ Task Force Report at 51-52. The Task Force Subcommittee recommended that this provision be added to the Rule in addition to the minimum bond amount.

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF PSYCHOLOGY [49 PA. CODE CH. 41] Biennial Renewal Fee Increase

The State Board of Psychology (Board) amends § 41.12 (relating to fees). The amendment increases the biennial license renewal fee for psychologists from \$120 to \$300.

Statutory Authority

The amendment is authorized under section 3.3(a) of the Professional Psychologists Practice Act (act) (63 P. S. § 1203.3(a)). It requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures. The new fee will be effective for the biennial period commencing December 1, 2005.

Response to Comments

Notice of proposed rulemaking was published at 35 Pa.B. 1582 (March 5, 2005). Publication was followed by a 30-day public comment period during which the Board received one public comment from the Pennsylvania Psychological Association in support of the proposal. Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC). On May 4, 2005, the Independent Regulatory Review Commission (IRRC) advised that it had no comments, questions or recommendations to the regulation. The Board did not receive any comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). The following is in response to the comment submitted by the HPLC.

The HPLC noted that the Board's increased expenses occurred primarily in the areas of hearing examiner and legal office costs. The HPLC requested additional information about the types of cases that are referred to hearing examiners, the number of hearing examiners hearing Board cases and the number of hours expended by the hearing examiners on Board matters. The Board reviews each order to show cause and determines whether to hear the case or delegate it to a hearing examiner. Generally criminal convictions, reciprocal discipline, continuing education violations and application cases are delegated to the Department of State Office of Hearing Examiners. Five full-time hearing examiners are assigned to that office. In Fiscal Year (FY) 03-04, the Hearing Examiners Office reported 362.14 hours dedicated to hearing board matters. The Board delegated 30 cases to hearing examiners from July 1, 2002, to July 1, 2004.

The HPLC also asked for a more detailed breakdown of the Board's legal expenditures and a list of other Board expenditures and projected expenditures, including the administrative fees which are paid to the Department of State. The following chart sets out the Board's expenditures. For ease of reference, the categories are described in detail preceding the chart.

Board Administration: Timesheet based staff expenses (personnel, operating and fixed assets) for the licensing divisions in the Bureau of Professional and Occupational Affairs (Bureau). Direct charges, that is printing and mailing costs for boards and commissions newsletters, renewal notices, informational handouts, acts, rules and regulations are included in this cost category. Operating and fixed assets expenses that are distributed based on their benefit to the board using licensee population such as License 2000, printed forms, office supplies and inter-agency billings (that is, Civil Service Commission, Comptroller's Office, and the like). Test administration staff (staff) expenses (direct charges) may include freight charges for overnight delivery services and occasional travel charges incurred by the staff.

Commissioner's Office: Timesheet-based staff expenses (personnel, operating and fixed asset charges) for those staff assigned to Commissioner's Office and Revenue Office.

Departmental Services: Timesheet-based charges for support provided by the various support offices within the agency. These include the Executive Office, which consists of offices of the Secretary of the Commonwealth, the Deputy Secretary of Regulatory Programs, Chief of Staff, Deputy Secretary of Administration, Chief Counsel, Communications and Public Information, and Legislative Affairs Offices. In addition, costs are itemized by the offices of Bureau of Management Information Services, Bureau of Finance and Operations and Human Resources.

Legal Office: Timesheet-based staff expenses (personnel, operating and fixed assets) for board counsel, board prosecutors, complaints office and support staff. Examples of direct charges are expert witness services, advertising costs of license suspensions, revocations or fines assessed.

Hearing Expense: Timesheet-based staff expenses (personnel, operating and fixed assets) for staff assigned to the Hearing Examiners' Office. There are also direct charges for hearing related expenses such as court reporting services.

Legislative and Regulatory Analysis: Timesheet-based staff expenses (personnel, operating and fixed assets) for legal review of policy and regulatory matters that affect all boards and commissions.

Enforcement and Investigation: Timesheet-based staff expenses (personnel, operating and fixed assets) are captured for headquarters and the four regional offices, with travel-related expenses listed as a separate line item.

Professional Health Monitoring Program (Client-based): staff expenses (personnel, operating and fixed assets) are distributed based on the number of licensees of the licensing board participating in this program.

Board Member Expenses (Direct charges): Board member per diem, conference registration fees, travel expenses and membership dues for National professional organizations.

RULES AND REGULATIONS

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<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>
<i>Cost Category</i>	<i>FY 2003-2004 Budget</i>	<i>Expenses as of 4/26/05</i>	<i>Required to Fiscal Year End</i>	<i>FY 2003-2004 Projected Expenses</i>	<i>Difference from Budgeted</i>
<i>Administrative Costs:</i>					
Board Administration	\$ 99,000.00	\$ 94,816.99	\$ 0.00	\$ 94,816.99	\$ 4,183.01
Commissioner's Office	34,000.00	8,149.92	0.00	8,149.92	25,850.08
Departmental Services	21,000.00	17,488.02	0.00	20,988.02	11.98
<i>Legal Costs:</i>					
Legal Office	189,000.00	214,389.35	0.00	214,489.35	(25,489.35)
Hearing Expenses	11,000.00	28,329.07	0.00	28,329.07	(17,329.07)
Legislative and Regulatory Analysis	1,000.00	2,803.67	0.00	2,803.67	(1,803.67)
<i>Enforcement And Investigation:</i>					
Nontravel	137,500.00	146,686.36	0.00	146,686.36	(9,186.36)
Travel	4,500.00	4,411.51	0.00	4,411.51	88.49
Prof. Health Monitoring Program	7,000.00	1,582.00	0.00	1,582.00	5,418.00
Board Member Expenses	<u>40,000.00</u>	<u>36,782.68</u>	<u>0.00</u>	<u>36,782.68</u>	<u>3,217.32</u>
Total Board Costs:	<u>544,000.00</u>	<u>555,439.57</u>	<u>0.00</u>	<u>559,039.57</u>	<u>(15,039.57)</u>

**State Board of Psychology
FY 02-03 and FY 03-04 Sources of Revenue**

<i>Revenue By Source</i>	<i>FY 02-03 Actual</i>	<i>FY 03-04 Actual</i>	<i>Biennial Total</i>
Renewals	\$ 4,080.00	\$ 658,790.00	\$ 662,870.00
Applications	20,410.00	25,405.00	45,815.00
Letters of Good Standing/Certifications	2,210.00	2,095.00	4,305.00
Fines	11,850.00	27,000.00	38,850.00
Licensee List	<u>1,946.72</u>	<u>2,992.39</u>	<u>4,939.11</u>
Total Revenue	<u>40,496.72</u>	<u>716,282.39</u>	<u>756,779.11</u>

Lastly, the HPLC noted that the Board imposed more disciplinary sanctions in 2003 than in 2002 and asked for a breakdown of the 2003 sanctions by category of offense. The following chart sets out the number and types of actions taken by the Board for calendar year 2003 by complaint type.

Total Actions Involving Failure to Satisfy Continuing Education Requirement	22
Total Actions Involving Unprofessional Conduct	2
Total Actions Involving Unprofessional Conduct	4
Total Cases Involving Conviction of a Crime	1
Total Actions Involving Arrests for Felonies or Misdemeanors	2
Total Actions Involving Practicing on Suspended License	2
Total Actions Involving Practicing Outside Scope of License	1
Total Actions Involving Mental or Physical Impairment	1
Total Actions Involving Disciplinary Action Taken In Another State	1
Total Application Actions Other Than Reinstatement	1
<i>Violation</i>	
Failure to satisfy continuing education	22
Unprofessional conduct	2
Sexual misconduct	4
Conviction of a crime	1

Fiscal Impact and Paperwork Requirements

The amendment will increase the biennial renewal fee for psychologists and will require the Board to alter some of its forms to reflect the new fee. The amendment will have no other adverse fiscal impact or paperwork requirements on the Board, licensees, the Commonwealth, its political subdivisions or the public sector.

Sunset Date

The Board continually monitors the effectiveness of its regulations through communication with the regulated population. Accordingly, no sunset date has been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted copies of the notice of proposed rulemaking, published at 35 Pa.B. 1582, on March 5, 2005, to IRRC and the Chairpersons of the SCP/PLC and the HPLC for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC, the SCP/PLC and the HPLC with copies of comments received as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the SCP/PLC, the HPLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), this final-form rulemaking was approved by the HPLC on September 27, 2005, and deemed approved by the SCP/PLC on October 5, 2005. IRRC deemed the final-form regulation approved on October 5, 2005.

Contact Person

Further information may be obtained by contacting Christina Stuckey, Administrative Assistant, State Board of Psychology, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7155.

Findings

The Board finds that:

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

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

(3) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in Part B of this Preamble.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 41, are amended by amending § 41.12 to read as set forth at 35 Pa.B. 1582.

(b) The Board shall submit this order and 35 Pa.B. 1582 to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board shall certify this order and 35 Pa.B. 1582 and deposit them with the Legislative Reference Bureau as required by law.

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

ALEX M. SIEGEL, J.D., Ph.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 35 Pa.B. 5893 (October 22, 2005).)

Fiscal Note: Fiscal Note 16A-6316 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 05-2079. Filed for public inspection November 11, 2005, 9:00 a.m.]

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 1187]

Nursing Facility Rate Limitation

The Department of Public Welfare (Department) adopted an amendment to § 1187.96 (relating to price and rate setting computations) as set forth in Annex A. The authority for the amendment is 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). 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 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 of the code, 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 relates to MA provider payments, which are Commonwealth grants or benefits.

- The final-omitted rulemaking relates to payments for MA nursing facility services provided on or after July 1, 2004.

Purpose

The purpose of this final-omitted rulemaking is to amend the methods and standards used by the Department to compute nursing facility per diem payment rates for the State Fiscal Year (FY) 2005-2006. Specifically, it adds an "adjustment factor" of .95122 to the formula set forth in § 1187.96 (relating to price and rate setting computations) that will be used to set payment rates for FY 2005-2006.

Background

The MA Program pays for nursing facility services provided to MA eligible recipients by participating nursing facilities at per diem rates that are computed using the case-mix payment system set forth in the Department's regulations at Chapter 1187, Subchapter G (relating to rate setting). Each nursing facility's per diem rate is comprised of four rate components, one for each of the three "net operating cost centers": "resident care" costs; "other resident related" costs; "administrative" costs; and a fourth for the "capital" cost center. Each component is separately computed on an annual basis.

To compute the rate components for each of the three net operating cost centers under the case-mix payment system, the Department groups nursing facilities into "peer groups." For each peer group, the Department calculates a "peer group price" for each of the net operating cost centers, which prices are then used to set the amounts of the respective rate components for the individual nursing facilities. The peer group prices and corresponding rate components are based, in part, upon the 3-year rolling average of per diem audited allowable costs set forth in an individual nursing facility's audit reports. Similarly, the amount of a nursing facility's capital cost component is based, in part, upon the amount of its audited allowable costs associated with major movable property and real estate taxes.

Generally, the cost of providing nursing facility services to residents may vary depending on the acuity levels of those residents, that is, higher acuity residents may require additional (and more expensive) services, which may result in nursing facilities incurring higher costs. To address the variable costs that may relate to resident acuity, the case-mix payment system makes a quarterly adjustment to the resident care rate component of each nursing facility's per diem rate. The adjustment reflects the average acuity of the nursing facility's MA residents as determined on a "picture date." See § 1187.96.

The Department pays each MA nursing facility for nursing facility services provided to its MA residents during a fiscal quarter using the facility's adjusted quarterly payment rate for that fiscal quarter.

Between 2000 and 2005, the per diem payment rates produced by the case-mix payment system increased by approximately 5.8% every year, and by 29.4% overall. The Department has determined that, with no adjustment, the payment system will generate per diem rates for FY 2005-2006 that will increase by approximately 7.9% over the prior fiscal year. In June of 2005, the Department anticipated that, given the expected financial resources at its disposal, it would be unable to continue to sustain this pace of inflation, and would have insufficient funds to pay for the estimated quantity of nursing facility services throughout the entire 2005-2006 rate year. To help ensure that funds would be available to cover the entire year, the

Department proposed to place a cap on nursing facility rates at 2.0% above the comparable rates for the preceding (2004-2005) rate year. The notice announcing the proposed change was published at 35 Pa.B. 3267 (June 4, 2005).

In the public notice published at 35 Pa.B. 3267, the Department proposed to limit each MA nursing facility's adjusted quarterly case-mix per diem rate beginning with the July 1, 2005 rate to the lower of:

- The facility's quarterly case-mix per diem rate calculated in accordance with the rate setting methodology in Chapter 1187, Subchapter G; or
- 102% of the average of the facility's final rates for the four quarters of the immediately preceding fiscal year.

Following publication of the Department's proposed rate cap notice, the General Assembly enacted two acts that affect payments for MA nursing facility services in FY 2005-2006. First, the General Assembly enacted Appropriations Act No. 1-A in which it appropriated \$ 4.3 billion in total funds for nursing facility and home and community based services for FY 2005-2006. Second, the General Assembly enacted Act 42, which, as noted, amended the code to authorize the Department to adopt regulations altering its case-mix payment system for FY 2005-2006, and to reform or replace its current payment methodology beginning July 1, 2006. In light of these legislative acts, the Department reevaluated its proposed rate cap and determined that some modifications to its initial proposal were warranted.

First, when the Department initially proposed the rate cap, it intended that the cap might be imposed on a multiple year basis pending the adoption of more comprehensive changes to the case-mix payment methodology. Because Act 42 specifically directs the Department to make those comprehensive changes effective July 1, 2006, the Department has limited application of the rate cap to FY 2005-2006 payment rates. Second, when the Department initially proposed the rate cap, the Department expected that appropriated funds would only permit rates to be increased by 2.0% above the FY 2004-2005 level. Because the General Assembly has appropriated additional funds, the Department can increase the rate cap. This rulemaking will enable payment rates to increase such that the estimated Statewide day-weighted average of the final per diem rates of all MA nursing facilities in FY 2005-2006 will rise by 2.8% over the estimated Statewide day-weighted average final per diem rates of all MA nursing facilities for FY 2004-2005.¹

In addition to these modifications, the Department decided to make other revisions to the proposed rate cap after considering the comments and input it received following publication of its rate cap notice.² As initially proposed, the rate cap would have limited each nursing facility's payment rates in FY 2005-2006 based upon its rates in effect during the prior fiscal year and without consideration of intervening increases in the facility's resident acuity levels. As discussed in greater detail in the Public Process section, the Department has modified the rate cap, consistent with the suggestions offered by

¹ The "Statewide day-weighted average rate" is an estimate of the average rate that the Department pays for nursing facility services during a fiscal year. "Statewide" means that all nursing facility payment rates are included in the calculation. "Day-weighted" means that the average reflects the number of days of care that are paid for at a given rate.

The Statewide day-weighted average rate for FY 2004-2005 is \$166.37. The rate cap implemented by this rulemaking permits the estimated Statewide day-weighted average rate for FY 2005-2006 to increase by 2.8% to \$171.03.

² The Department received 26 letters commenting on the proposed rate cap. The comments and the Department's responses are discussed in the "Public Process" section below.

commentators, to continue to recognize acuity adjustments in accordance with the existing case-mix payment methodology. For FY 2005-2006, the Department will continue to compute the four rate components of each nursing facility's per diem rate and to adjust the resident care rate component of each nursing facility's per diem rate on a quarterly basis by the nursing facility's MA CMI, as specified in Chapter 1187, Subchapter G. Once the Department has determined each nursing facility's adjusted quarterly rate, the Department will apply the rate cap by multiplying the nursing facility's adjusted quarterly rate by .95122. In this manner, each nursing facility's per diem rate will continue to fluctuate in accordance with changes in the average acuity of its MA residents while, at the same time, all nursing facility per diem rates will be adjusted as necessary to insure that MA nursing facility payment rate increases Statewide are capped at 2.8%.

Requirements

Section 1187.96. Price and rate setting computations.

This section is amended by adding a new paragraph (2) to subsection (e). As specified in subsection (e)(2), for each quarter of the FY 2005-2006, an MA nursing facility's per diem rate will be computed and adjusted to reflect MA resident acuity as specified in Chapter 1187, Subchapter G and then multiplied by .95122. The Department will make payments to the MA nursing facility for nursing facility services rendered to MA residents during a fiscal quarter using the nursing facility's capped adjusted quarterly rate for that quarter.

Affected Individuals and Organizations

Nursing facilities enrolled and participating in the MA Program will be affected by this rulemaking.

Accomplishments and Benefits

This rulemaking benefits citizens of this Commonwealth, including MA long-term care consumers, because it moderates the amount by which payment rates for nursing facility services will increase in FY 2005-2006 consistent with the fiscal resources of the Commonwealth, while still providing payment rate increases sufficient to assure that consumers will continue to have access to medically necessary nursing facility services.

Fiscal Impact

This rulemaking modifies the payment rates that the Department would have otherwise set for MA nursing facility services for FY 2005-2006 under the case-mix payment system so that on average the payment rates for all MA nursing facilities in FY 2005-2006 will not increase by more than 2.8% from the prior fiscal year.

Paperwork Requirements

No new or additional paperwork requirements result from adoption of the regulation.

Public Process

Federal law requires that the Department undertake a public process whenever it proposes to change how it sets payment rates for nursing facility services so that providers, consumers and other concerned State residents have a reasonable opportunity to comment on the Department's proposed changes. See 42 U.S.C.A. § 1396a(a) (13)(A). In compliance with this Federal requirement, the Department has taken several steps to solicit input from affected stakeholders and the public.

As previously noted, the Department published an advance public notice at 35 Pa.B. 3267, in which it

announced its intent to amend its State Plan to change its methods and standards for payment of MA nursing facility services for FY 2005-2006 and invited interested persons to comment on the proposed change. The Department received a total of 26 comment letters in response to the notice.

The Department also sought advice on its proposal to cap nursing facility payment rates at the Medical Assistance Advisory Committee (MAAC) on May 26, 2005, and the Long-Term Care Subcommittee of the MAAC on June 8, 2005.

In addition, the Department met with representatives of the four nursing home associations—Pennsylvania Health Care Association (PHCA), Hospital and Healthsystem Association of Pennsylvania (HAP), Pennsylvania Association of Non-Profit Homes for the Aging (PANPHA) and Pennsylvania Association of County Affiliated Homes (PACAH)—on nine separate occasions both before and after publication of the rate cap notice to confer with, solicit and obtain input and recommendations on how the Department might best contain the steady inflation of nursing facility payment rates. The Department also discussed this issue at a PACAH conference on April 20 and 21, 2005, met with the PANPHA financial committee on March 25, 2005, and attended a PANPHA conference on June 15, 2005, to discuss its proposal to cap rate increases.

As the public process took place, the Department continued to consider and make refinements in the methodology to be used to implement the rate cap. On July 12, 2005, the Department shared this revised rate cap model with the four nursing facility associations. On August 9, 2005, the Department met with the associations to hear their concerns and comments regarding the model. As a result of these discussions, the Department made additional changes to the rate cap model.

Through these various efforts, the Department obtained thoughtful, substantive comment and recommendations. The Department considered all of that input in the course of revising the rate cap and developing this final-omitted rulemaking. Particular comments and the Department's responses are as follows.

Comment

Various commentators suggested that, although described as a "cap" on increased rates, what the Department was actually proposing was a reduction in rates.

Response

Under the case-mix rate setting methodology contained in Chapter 1187, an individual nursing facility's rate may increase or decrease from one rate setting year to the next depending on factors such as nursing facility costs, peer group changes, median amounts, and the case-mix index (CMI) levels of its residents. As implemented by this rulemaking, the cap will not alter or eliminate those variables. Rather, nursing facility payment rates for FY 2005-2006 will continue to be established in accordance with that methodology but with the addition of the application of the .95122 adjustment factor. As a result, and because the cap has been refashioned to moderate rate inflation on an average Statewide basis, rather than an individual facility basis, some nursing facilities will experience a reduction in payment rates from FY 2004-2005 while others may see increases in excess of 2.8%. Because, however, the purpose and effect of this rulemaking is to limit the overall amount by which rates as a

whole for FY 2005-2006 will exceed the comparable rates for FY 2004-2005, the change is accurately referred to as a "cap."

Comment

Several commentators objected to the proposed rate cap based upon the understanding that, once implemented, the 2.0% cap would continue in effect for an unspecified number of successive rate years. As a result, the cap would cause nursing facility payment rates to be increasingly disconnected from their audited allowable costs.

Response

By enacting Act 42, the General Assembly instructed the Department to amend or replace the case-mix payment system, and it granted to the Department the authority to promulgate the necessary regulations on an expedited basis. Under that authority, the Department intends to promulgate regulations that amend or replace the case-mix payment system, effective July 1, 2006. Consequently, instead of becoming a permanent feature of the case-mix payment system, the cap will be an interim measure, applicable only to the computation of payment rates for the 2005-2006 rate year. Because the cap only affects the rates for a single year, concerns over its possible significance in subsequent years are rendered moot.

Comment

The most common specific criticism of the proposed rate cap was that, if implemented as proposed, the cap would undermine the existing incentive for nursing facilities to admit higher acuity residents. As previously noted, under the existing case-mix payment system, an individual nursing facility's per diem payment rate is adjusted on a quarterly basis to reflect recent changes in the average acuity level of its MA residents, as measured by the "MA case-mix index" (MA-CMI). In the proposed rate cap notice, the Department proposed to limit each nursing facility's quarterly per diem rate to an amount equal to 2% of the average of the facility's quarterly rates for FY 2004-2005, regardless of any acuity-related fluctuations. The commentators pointed out that the proposed cap would effectively eliminate upward MA-CMI adjustments to rates.

Response

The Department has modified the rate cap to address these comments. Operationally, a cap functions with reference to a base amount. As proposed, the base amount would have been the average of an individual nursing facility's quarterly rates for the 2004-2005 rate year. As modified, the base is the Statewide day-weighted average rate for the 2004-2005 rate year. The Department estimates that, but for the rate cap, the case-mix payment system would generate a Statewide day-weighted average rate for FY 2005-2006 that would be approximately 7.9% higher than the average for the preceding year. Therefore, to limit the overall increase in rates to 2.8%, the sum of each nursing facility's rate components will be multiplied by .95122. Because, under this modification, each nursing facility's "resident care" rate component will continue to reflect changes in average resident acuity, each nursing facility's per diem rate will continue to fluctuate in accordance with corresponding increases and decreases in average resident acuity.

Comment

The Department considered including a provision in this rulemaking that would have enabled the Department to do a reconciliation and apply a further rate adjustment

to fourth quarter per diem rates to ensure that the rate cap actually held payment rate increases in FY 2005-2006 to 2.8% Statewide. The associations were opposed to the fourth quarter adjustment factor and stressed that any methodology chosen by the Department should provide the nursing facilities with predictability regarding their rates for the entire fiscal year.

Response

The Department has not included a fourth quarter adjustment in the amendment. Instead, the Department will apply a single adjustment factor in each of the four quarters of FY 2005-2006.

Comment

"Fairness" was a concern of various commentators. A common criticism was that, as proposed, the 2.0% cap would unfairly burden nursing facilities serving higher acuity residents. One commentator made the general recommendation that, if the Department were compelled to limit the growth of payment rates, the changes to the reimbursement system should be "uniform" and "proportionate." Another commentator suggested that the rate cap should be based upon the number of licensed beds, rather than days of care. In addition, a commentator suggested that the cap should provide special consideration for nursing facilities serving a high proportion of MA and higher acuity residents, and a nursing facility's willingness to admit a significant percentage of "day one MA eligibles."

Response

As previously discussed, the Department has modified the rate cap to eliminate the disincentive to admit higher acuity residents. This modification eliminated the most common basis for assertions that the cap would be unfair. In revising the cap, the Department considered various alternatives. Because payments are based upon days of care, the Department determined that basing the cap solely upon the number of licensed beds would be impracticable. The Department did, however, consider implementing the cap in the form of a dollar-specific adjustment, whereby the sum of a nursing facility's rate components would be reduced by a specific dollar amount to arrive at the final per diem rate. The Department ultimately rejected this alternative because the effects of a dollar-specific adjustment would have been disproportionately borne by lower-rate facilities (\$4.66 is a larger percentage of a \$140 rate than it is of a \$180 rate). The Department concluded that a percentage-based adjustment factor, applied after all the rate components have been computed and summed, was a reasonable, uniform and proportionate approach.

Concerns over the high proportion of MA residents are addressed by the disproportionate share provisions of the case-mix payment system, which are not altered by the cap. Moreover, as previously discussed, the modified cap continues the existing adjustment of rates to reflect changes in acuity. The Department concludes that these mechanisms adequately address the commentators' concerns, and that revising the rate cap to provide "special consideration" for nursing facilities serving a high proportion of MA and high acuity residents would be impracticable.

Comment

Two nursing facilities suggested that the proposed 2.0% rate cap, in conjunction with the nursing facility assessment, would severely impair their ability to adequately care for their residents.

Response

Neither of the nursing facilities provided any details as to the changes they would make that would result in decreased quality of care for their residents. Further, and understandably, their concerns appear to be limited to their particular circumstances: Notwithstanding the concerns expressed by these individual commentators, the Department notes that none of the four nursing facility associations that submitted written comments suggested that the Department's proposed rate cap for the 2005-2006 rate year would cause the quality of care to be compromised; and although over 630 facilities participate in the MA Program, no other facilities expressed any such concern.

Moreover, the commentators' concerns were based upon the Department's initial proposed cap, which would have limited rate increases to 2.0% for multiple rate years. Under this regulation, however, the cap is 40% higher than the cap that was proposed in the public notice and it is being implemented on a Statewide average, rather than individual facility basis.

In any event, however, the obligation of a provider to provide appropriate, high-quality care is a condition of participation in the MA Program; the obligation exists independent of any particular payment rate or any feature of the rate setting methodology. The Department has mechanisms in place for ensuring compliance with these requirements, including inspections, investigations of complaints, and monitoring. In summary, the Department concludes that a 1-year rate cap of 2.8% will not impair the quality of care provided by nursing facilities.

Comment

Several commentators suggested that if the rates for FY 2005-2006 are capped at 2.0% above the rates for the preceding fiscal year, certain nursing facilities might be forced to close, resulting in the need to relocate their residents.

Response

By suggesting that nursing facilities might be forced to close, the commentators implied that a cap on the payment rates for the FY 2005-2006 rate year would create an access problem, whereby the MA Program would have insufficient nursing facility beds available for MA recipients in need of nursing facility services. The Department disagrees that the cap is likely to cause any problems related to access to care.

Currently, there are approximately 630 nursing facilities, with a total of approximately 84,600 licensed beds, participating in the MA Program. Based on the most recent occupancy information available to the Department, the overall occupancy rate for these facilities was approximately 90%. Thus, at any given time the MA Program had approximately 8,460 unoccupied and available beds. Because the MA Program possesses substantial unused capacity, the withdrawal of any particular nursing facility from the program would not present an access problem.

Tellingly, the commentators who raised the possibility of nursing facility closures were primarily nursing facility residents or relatives of residents. The commentators were concerned about the continued survival of particular nursing facilities. By contrast, even though the public notice proposed to implement the cap on a multiple year basis, none of the four nursing facility associations that submitted comments suggested that the cap would force any of their members to close. Likewise, although there

are 630 nursing facilities participating in the MA Program, written comments were submitted on behalf of only ten individual facilities. While these facilities were uniformly opposed to the proposed rate cap, none asserted that they would be forced to close as a result of the proposed 2.0% cap.

From a programmatic standpoint, individual nursing facilities occasionally terminate their participation in the MA Program. Some remain in operation; others close. In the past, such terminations, whether voluntary or involuntary, have not served to create an access problem, even in areas of this Commonwealth where there were perceived shortages of nursing facility beds.

Comment

Various commentators recommended that the Department make no changes to the case-mix payment system, and that the Department find the funds needed to make payment at the rates generated by that system. Other commentators criticized the proposed cap on the grounds that rate increases would not be sufficient to offset increases in nursing facility costs.

Response

In its proposed rate cap notice, the Department stated that since 2000, MA nursing facility payment rates have increased by approximately 5.6% each year, and by 29.4% overall, a rate of growth that cannot be sustained and would result in insufficient funds being available to pay for all days of care projected to be provided during the 2005-2006 rate year. The multiple year 2.0% cap was proposed as a means of containing the resulting rate increases.

While the Department originally estimated that a multiple year cap of 2.0% would be necessary to meet its cost containment objectives, the Department has now determined that for the 2005-2006 rate year, a cap of 2.8% will meet those objectives. For subsequent rate years, the Department expects to make further modifications to the case-mix payment system, or to replace that system in its entirety.

Comment

Various commentators objected to the proposed 2.0% cap on the grounds that it would prevent nursing facilities from receiving full reimbursement, either for the costs they incur during the 2005-2006 rate year, or for the audited allowable costs that are in the Nursing Home Information System (NIS) Database and used to compute the 2005-2006 rates.

Response

The rates generated by the case-mix payment system are payment rates; they do not reimburse nursing facilities for their past or current costs. For example, if an enrolled nursing facility provided services to an MA resident during the 2004-2005 rate year, the payments made by the Department for those services were computed using per diem rates, and those rates are not based upon any costs that the provider incurred during that period. Moreover, while the rates are based (in part) upon costs that the nursing facility incurred in already concluded periods, the payments that the Department made for services provided during the 2004-2005 rate year are compensation for those services; the payments do not reimburse the nursing facility for the costs it incurred in the earlier periods.

Comment

One nursing facility association suggested that a possible effect of the rate cap might be that, if a nursing facility had kept its cost increases substantially lower than the other facilities in its peer group, the cap might result in an actual reduction in its rates when compared to those for the comparable quarter in FY 2004-2005. It was suggested that the rate cap methodology should "assure that all nursing homes experience rate increases effective July 1, 2005, except homes that have seen substantial decreases in facility-specific case-mix indices."

Response

In response to various comments regarding the 2% cap and consistent with its representations to the General Assembly in connection with the recently enacted Appropriations Act, the Department developed a methodology that will increase rates by 2.8% from the Statewide day-weighted average rate for the 2004-2005 rate year. Before deciding on this methodology, numerous discussions were held with and input was sought from the nursing facility associations. In the end, the Department decided to implement a methodology that it determined best addresses all competing concerns, including the Commonwealth's concern that rate inflation is sufficiently and responsibly moderated to help ensure that adequate funds for MA nursing facility services remain available throughout the fiscal year. The methodology is applied uniformly, provides predictability, provides acuity adjustments, and follows the existing case-mix methodology by rebasing and calculating quarterly acuity adjustments. It does not assure, however, that all nursing facilities will experience rate increases.

Comment

Various commentators expressed concern that the proposed 2% cap would disrupt nursing facility budgets. One commentator pointed out that, for county governments, July 1, 2005, is the midpoint of their budget year and if the 2% cap were to become effective on that date, the counties would have to rearrange their budgets. Other commentators asserted that the cap might not allow nursing facilities to provide raises to their employees.

Response

The Department has not published the final rates for any quarter of the 2005-2006 rate year. Therefore, nursing facility budgets encompassing any part of that rate year were necessarily based upon estimates of what those rates would be. To the extent that the actual rates are not the same as the estimates, a nursing facility will have to make adjustments. Such adjustments are a normal part of the budgeting process and are implicit in the initial use of estimates.

Comment

One commentator suggested that, by proposing to make the rate cap effective as of July 1, 2005, the Department was proposing to violate the guidance set forth in a "Dear State Medicaid Director's" letter of December 10, 1997, in which the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services (CMS)) provided guidance regarding compliance with the public process requirements of 42 U.S.C.A. § 1396a(a)(13)(A).

Response

The Department's actions are consistent with the guidance found in the "Dear State Medicaid Director" letter. According to that letter, the replacement of the Boren amendment with the current provisions of 42 U.S.C.A.

§ 1396a(a)(13)(A) was intended to provide states with "maximum possible flexibility . . . involving payment rate changes." The letter provides examples of the various processes that CMS considers acceptable. Among other things, the letter suggests that a state could comply with the Federal public process requirement by publishing a notice announcing its intent to change its payment methodology, describing the state's proposed rates, methodologies and justifications and allowing the public a reasonable opportunity for comment. Since the enactment of the Federal public process requirement in 1997, the Department has used the public notice option as a means of complying and CMS has never expressed concern that this practice is inconsistent with its guidance.

In this instance, and as previously described in detail, the Department not only gave reasonable and proper notice of the proposed rate cap and invited public comment, it sought the advice of the MAAC and the Long-Term Care Subcommittee of the MAAC and undertook various other measures to solicit input from affected stakeholders.

Comment

Commentators asserted that implementation of the proposed cap would violate various state laws governing the rulemaking process.

Response

As noted, this rulemaking is promulgated under the expedited rulemaking authority granted to the Department under section 454 of the code. Section 454 specifies that, until December 31, 2005, the Department must promulgate provider payment rate regulations under section 204(1)(iv) of the CDL (45 P.S. § 1204(1)(iv)), 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, 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)). The amendments adopted by this rulemaking are promulgated in accordance with this authority.

Comment

Various commentators asserted that the Department lacks the authority to promulgate regulations that are effective as of July 1, 2005, rather than on the day they are published in the *Pennsylvania Bulletin*. While these assertions generally did not address any particular authorities, one commentator did assert that the nursing facility providers currently enrolled in the MA Program have a "vested right to payment" under the current—that is, unamended—case-mix payment system.

Response

It is "axiomatic" that an administrative agency may adopt retroactive regulations. *Hospital Association of Pennsylvania v. Foster*, 616 A.2d 1082 (Pa.Cmwlth. 1992). Indeed, the courts have repeatedly upheld the Department's authority to make retroactive changes to its reimbursement regulations. *Wesbury United Methodist Community v. Department of Public Welfare*, 597 A.2d 271 (Pa.Cmwlth. 1992); *Carbon County Home v. Department of Public Welfare*, 535 A.2d 1243 (Pa. Cmwlth. 1988). In this instance, any question regarding the authority to make the amendments to § 1187.96 retroactively effective to July 1, 2005, is resolved by sections 443.1(5) and 454 of the code which, by their plain language, specifically

permit the Department to revise the case-mix payment system for the entire FY 2005-2006 .

The Department disagrees with the contention that the existing nursing facilities have a vested right to have their rates computed in accordance with the unamended version of § 1187.96. Those rates have not yet been set and, until final rates are set, an MA provider has no vested property right in any particular rate. See, such as, *Monroe County v. Axelrod*, 163 A.D.2d 847, 558 N.Y.S.2d 377 (1990). In addition, the "vested rights" argument ignores the fact that the Department provided advance public notice that it intended to amend the case-mix payment system to include the cap, and that it proposed to make that cap effective as of July 1, 2005. Under these circumstances, imposition of the cap does not and could not impair any vested rights.

Comment

A commentator suggested that the Department eliminate the Utilization Management Review (UMR) unit, or that it redirect the activities of the UMR unit toward the Pennsylvania Department of Aging (PDA) Waiver program to ensure that individuals who are receiving PDA Waiver services are truly eligible for Waiver services.

Response

The Department is required by Federal regulations to maintain a program to safeguard against unnecessary utilization of care and services. See 42 CFR Part 456 (relating to utilization control). The Department's UMR unit was created to fulfill this function in the long term care area. Therefore, the Department cannot eliminate it. Moreover, the Department sees no reason to redirect the Unit's activities away from the functions they currently perform.

Comment

Some commentators made the general suggestion that the Department work with the nursing facility associations toward the objective of creating a revised or new reimbursement methodology for nursing facility services.

Response

Act 42 charged the Department with the responsibility to reform or replace the case-mix payment system. The Department will be meeting with the nursing facility associations in working toward that end in the coming months.

Comment

The proposed rate cap would have limited each nursing facility's quarterly rates for FY 2005-2006 to no more than 2.0% of the corresponding quarterly rates for 2004-2005. Several commentators suggested that, because of this correlation, facilities should not be prevented from litigating the accuracy of their FY 2004-2005 rates, even if they had not filed appeals contesting those rates, or had filed appeals but subsequently withdrew them.

Response

These comments are rendered moot by the revisions to the rate cap. As revised, the cap is imposed only after the rate components for FY 2005-2006 year have been otherwise computed and summed. If, when the Department sets a quarterly per diem payment rate for a nursing facility, the facility concludes in good faith that the Department has made an error in computing that rate, the facility may contest its rate by filing an appeal with the Bureau of Hearings and Appeals and, among other things, may raise the issue whether the Department correctly applied the amended regulations.

Sunset Date

This regulation applies to the methodology used to compute nursing facility case-mix per diem rates for the 2005-2006 rate year only.

Regulatory Review

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) That the adoption of this regulation in the manner provided by this order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

Order

The Department acting under 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 § 1187.96 to read as set forth in Annex A of this order, with ellipses referring to the existing text of the regulation.

(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 order shall take effect July 1, 2005.

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-501. (1) General Fund; (2) Implementing Year 2005-06 is \$15.413 million; (3) 1st Succeeding Year 2006-07 is \$16.815 million; 2nd Succeeding Year 2007-08 is \$16.815 million; 3rd Succeeding Year 2008-09 is \$16.815 million; 4th Succeeding Year 2009-10 is \$16.815 million; 5th Succeeding Year 2010-11 is \$16.815 million; (4) 2004-05 Program—\$983.936 million; 2003-04 Program—\$836.317 million; 2002-03 Program—\$777.084 million; (7) MA Long-Term Care; (8) recommends adoption. Funds have been included in the Department's budget to cover this increase.

Annex A

TITLE 55. PUBLIC WELFARE

PART III. MEDICAL ASSISTANCE MANUAL

CHAPTER 1187. NURSING FACILITY SERVICES

Subchapter G. RATE SETTING

§ 1187.96. Price and rate setting computations.

* * * * *

(e) The following applies to the computation of a nursing facilities per diem rates:

(1) The nursing facility per diem rate will be computed by adding the resident care rate, the other resident related rate, the administrative rate and the capital rate for the nursing facility.

(2) For each quarter of the rate setting year that begins on July 1, 2005, and ends on June 30, 2006, the nursing facility per diem rate will be computed as follows:

(i) *Generally.* If a nursing facility is not a new nursing facility or a nursing facility experiencing a change of ownership during the 2005-2006 rate year, that nursing facility's resident care rate, other resident related rate, administrative rate and capital rate will be computed in accordance with subsections (a)—(d) and the nursing facility's per diem rate will be the sum of those rates multiplied by an adjustment factor of .95122.

(ii) *New nursing facilities.* If a nursing facility is a new nursing facility for purposes of § 1187.97(1) (relating to rates for new nursing facilities, nursing facilities with a change of ownership, reorganized nursing facilities, and former prospective payment nursing facilities) that nursing facility's resident care rate, other resident related rate, administrative rate and capital rate will be computed in accordance with § 1187.97(1), and the nursing facility's per diem rate will be the sum of those rates multiplied by an adjustment factor of .95122.

(iii) *Nursing facilities with a change of ownership and reorganized nursing facilities.* If a nursing facility undergoes a change of ownership during the 2005-2006 rate year, that nursing facility's resident care rate, other resident related rate, administrative rate and capital rate will be computed in accordance with § 1187.97(2), and the nursing facility's per diem rate will be the sum of those rates multiplied by an adjustment factor of .95122.

[Pa.B. Doc. No. 05-2080. Filed for public inspection November 11, 2005, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Corrective Amendment to 58 Pa. Code § 65.6

The Fish and Boat Commission (Commission) has discovered a discrepancy between the agency text of 58 Pa. Code § 65.6 (relating to delayed harvest artificial lures only areas), as deposited with the Legislative Reference Bureau, and the official text published at 35 Pa.B. 5261, 5263 (September 24, 2005) and scheduled to be codified in the December 2005 *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 373). The amendment of § 65.6 inadvertently omitted the text of existing paragraph (4).

Therefore, under 45 Pa.C.S. § 901: The Fish and Boat Commission has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code § 65.6. The corrective amendment to 58 Pa. Code § 65.6 is effective as of January 1, 2006, the effective date for the amendment of § 65.6 as ordered by the Commission.

The correct version of 58 Pa. Code § 65.6 appears in Annex A.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Annex A

TITLE 58 RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§65.6. Delayed harvest artificial lures only areas.

(a) The Executive Director, with the approval of the Commission, may designate waters as delayed harvest, artificial lures only areas. The designation of waters as delayed harvest, artificial lures only areas shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted delayed harvest, artificial lures only areas except in compliance with the following requirements:

(1) Fishing may be done with artificial lures only constructed of metal, plastic, rubber or wood or with flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear.

(2) The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

(3) Fishing hours are 1 hour before sunrise to 1 hour after sunset during the regular and any extended trout season.

(4) Minimum size is: 9 inches, caught on, or in possession on, the waters under regulation.

(5) The daily creel limit is: three combined species except during the period after Labor Day and before June 15 when the daily limit shall be zero trout combined species, caught on or in possession on the waters under regulation.

(6) Taking of baitfish or fishbait is prohibited.

(7) A current trout/salmon permit is required.

[Pa.B. Doc. No. 05-2081. Filed for public inspection November 11, 2005, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 143]

Hunting and Furtaker Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 4, 2005, meeting, adopted amendments to § 143.84 (relating to application) to replace the language establishing the deadline by which muzzleloader licenses must be purchased with language more consistent with the application process for other various licenses.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 35 Pa.B. 3550 (June 25, 2005).

1. Purpose and Authority

Formerly, § 143.84 required all muzzleloader license applications to be made by the second Saturday in

November. The Commission has determined that this deadline is no longer necessary. Therefore, the Commission has amended § 143.84 by replacing the language establishing the application deadline with language more consistent with the application process for other various licenses. This amendment renders the subsequent language allowing collectors to purchase a flintlock (muzzleloader) license after the close of the special flintlock season to be unnecessary; therefore this language was also eliminated.

Section 2722(g) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of license issuing activities. Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth . . ." The amendment to § 143.84 was adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 143.84 by replacing the language establishing the deadline by which muzzleloader licenses must be purchased with language more consistent with the application process for other various licenses. The final-form rulemaking also removes language made unnecessary by the previously discussed change.

3. Persons Affected

Persons wishing to apply for and purchase muzzleloader licenses will be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding this final-form rulemaking.

5. Cost and Paperwork Requirements

The final-form rulemaking should not result in additional cost or paperwork.

6. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 143, are amended by amending § 143.84 to read as set forth at 35 Pa.B. 3550.

(b) The Executive Director of the Commission shall certify this order and 35 Pa.B. 3550 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-207 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 05-2082. Filed for public inspection November 11, 2005, 9:00 a.m.]

GAME COMMISSION [58 PA. CODE CH. 147] Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 4, 2005, meeting, adopted an amendment to § 147.122 (relating to application) to increase the examination fee for the taxidermy permit.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 35 Pa.B. 3550 (June 25, 2005).

1. Purpose and Authority

The cost of providing the taxidermy examination to applicants currently exceeds the revenue generated by the existing fee charged to take the examination. The Commission amended § 147.122 to allow the Commission to recover its expenses by increasing the taxidermy examination fee from \$50 to \$300.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment to § 147.122 was adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 147.122 by increasing the taxidermy examination fee from \$50 to \$300.

3. *Persons Affected*

Persons wishing to apply for a taxidermy permit from the Commission will be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in additional cost or paperwork for the Commission.

6. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment adopted by this order has been given

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

(2) The adoption of the amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.122 to read as set forth at 35 Pa.B. 3550.

(b) The Executive Director of the Commission shall certify this order and 35 Pa.B. 3550 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-209 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 05-2083. Filed for public inspection November 11, 2005, 9:00 a.m.]

PROPOSED RULEMAKING

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 31]

Higher Education General Provisions

The State Board of Education (Board) proposes to amend Chapter 31 (relating to general provisions) to read as set forth in Annex A. The Board is acting under the authority of section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).

Purpose

The purpose of amending Chapter 31 is to update and clarify the regulations that establish requirements for the approval and operation of postsecondary degree-granting institutions in this Commonwealth.

Requirements of the Proposed Rulemaking

The proposed rulemaking addresses requirements for the governance, academic program, admissions and student services, facilities, maintenance of quality, honorary degrees and major corporate change of postsecondary institutions.

Affected Parties

The proposed rulemaking affects the students and professional employees of the degree-granting postsecondary institutions of this Commonwealth. This includes all institutions of postsecondary education, domestic or foreign, including both out-of-State and out-of-country, legally authorized to award college credits or grant degrees in this Commonwealth.

Cost and Paperwork Estimates

Since the proposed rulemaking clarifies current requirements, it does not impose any new costs or savings for the Department of Education or to postsecondary institutions.

Effective Date

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

Sunset Date

In accordance with its policy and practice respecting all regulations promulgated by the Board, every 4 years the Board will review the effectiveness of Chapter 31. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 27, 2005, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

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

General Assembly and the Governor of comments, recommendations or objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Jim Buckheit at (717) 787-3787 or TDD (717) 787-7367.

JIM BUCKHEIT,
Executive Director

Fiscal Note: 6-297. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart C. HIGHER EDUCATION

CHAPTER 31. GENERAL PROVISIONS

PRELIMINARY PROVISIONS

§ 31.1. Purpose and scope.

* * * * *

(b) This chapter does not apply to Chapter 35 (relating to community colleges), except for the following:

* * * * *

(9) Section 31.21(a) and (b) (relating to curricula).

(c) Exclusive of community colleges, this chapter applies to an institution of postsecondary education, domestic or foreign, including both out-of-State and out-of-country, legally authorized to award college credits or grant degrees in this Commonwealth, and to an institution or chartering group applying for authorization. An entity is required to be approved as a postsecondary institution under this chapter to award **[colleges] college** credits or grant degrees in this Commonwealth. An institution is prohibited by law to operate in this Commonwealth and award college credits or grant degrees unless legally authorized to do so. Provisions of Board regulations in this part **[which] that** are in conflict with this chapter do not affect the applicability of this chapter unless specified by another provision of Board regulations in this part.

* * * * *

(e) Only a postsecondary degree-granting institution having more than 50% of its degree programs consisting of resident-based instruction may be established or operate in this Commonwealth. **[For a nonresident-based degree program to be approved for the awarding of college credits or granting of degrees in this Commonwealth, the institution shall have an identical resident-based degree program. In addition, more than 50% of an institution's degrees, which are awarded for completion of each resident and non-resident degree program combination, shall be earned from the resident-based degree program.]**

For combination programs, the residential portion of the program shall be offered on a regularly scheduled basis.

(1) An approved postsecondary degree-granting institution that has operated for 10 years within this Commonwealth, or a private licensed school offering AST or ASB degrees that has operated for 10 years within this Commonwealth, may petition the Department to be established to operate as a college or university with more than 50% of its degree programs offered through distance education, if it has demonstrated the following:

(i) Accreditation by a regional accreditation agency approved by the United States Department of Education.

(ii) Graduated a minimum of 25 students each from 10 degree programs in place at the time of petitioning for approval.

(iii) Meet all other requirements to operate in this Commonwealth as defined in this subpart.

(f) Except as specifically provided in this chapter, this chapter does not apply to private licensed schools or other proprietary institutions of postsecondary education that do not offer degrees. These institutions are governed by the Private Licensed Schools Act (24 P. S. §§ 6501—6518) and Chapters 42 and 73 (relating to program approval; and general provisions).

§ 31.2. Definitions.

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

ASB—Associate in Specialized Business.

AST—Associate in Specialized Technology.

[Alternate instructional delivery system—A course or series of courses offered or sponsored by a postsecondary educational institution, consortium of institutions or educational enterprise, for which credit is offered or awarded toward a certificate, diploma or degree, having as the primary mode of delivery, television, videocassette or disc, film, radio, computer or other supportive devices using current or future technology. To assure academic integrity, the institution shall provide students in an alternate instructional delivery system course access to academic and student services, including textbooks, study guides, library resources and other study aids, and personal interaction with faculty, tutors or other educational personnel by computer, telephone, mail or face-to-face meetings.]

CEC—Community Education Council—A nonprofit educational organization, governed by a community-based board of directors, whose purpose is to identify, implement and oversee new or innovative efforts to provide access to postsecondary education opportunities in educationally underserved communities; and is established and operated in accordance with Article XIX-D of the School Code (24 P. S. §§ 19-1901-D—19-1905-D).

(i) Each CEC assesses the education and training needs of its community and chooses providers to offer postsecondary educational programs.

(ii) A CEC does not have the authority to award credit or grant degrees.

(iii) CECs established after June 30, 1999, must be institutionally neutral.

Chartered status—Classification of a [junior] 2-year college, college, seminary or university established under one of the following:

(i) 15 Pa.C.S. Part II, Subpart B (relating to Business Corporation Law of 1998).

(ii) 15 Pa.C.S. Part II, Subpart C (relating to [non-profit corporations] and [Nonprofit Corporation Law of 1988]).

(iii) Section 2601-H of the School Code (24 P. S. § 26-2601-H).

(iv) 24 Pa.C.S. Chapter 65 (relating to private colleges, universities and seminaries).

College—An institution which, in accordance with its charter or articles of incorporation, offers 2-year, 4-year or 5-year postsecondary educational programs or their equivalent and which grants associate, baccalaureate or first professional degrees. In some instances, a 4-year college may offer [2-year programs culminating with associate degrees or] graduate programs culminating with graduate degrees when it has the appropriate approval under Chapter 42 (relating to program approval).

Combination program—An academic degree program that uses both distance learning and classroom instruction to deliver instructional content.

Community college—A college or technical institute which offers 2-year, secondary and postsecondary, transfer, college parallel, terminal-general, terminal-technical, out-of-school youth or adult education programs or a combination of these; grants certificates and associate degrees; and is established and operated in accordance with Article XIX-A of the [Public] School Code [of 1949] (24 P. S. §§ 19-1901-A—19-1913-A). A community college also may offer upper-division programs not culminating in a baccalaureate degree when it has the appropriate approval under Chapter 42.

Distance education—An alternate format to resident-based instruction for offering education courses or series of courses by an approved postsecondary educational institution, consortium of institutions or educational enterprise, for which credit is offered or awarded toward a certificate, diploma or degree, which has as its primary mode of delivery one or more of the following:

(i) Correspondence.

(ii) Television.

(iii) Videocassette or disk.

(iv) Film.

(v) Radio.

(vi) Computer.

(vii) Devices built upon an audio-video format.

(viii) Other supportive devices using current or future technology.

Education enterprise—An educational activity in this Commonwealth which is sponsored by a foreign corporation and for which college credits or continuing education units are awarded, continuing professional education is offered (culminating in awards such as Continuing Education Unit (CEU), Continuing Medical Edu-

cation (CME) or Continuing Professional Education (CPE)), or tuition or fees are charged or collected.

* * * * *

Foreign corporation [status]—[Classification of an] An institution which is incorporated or authorized by other means in a state other than this Commonwealth, is approved to operate an educational enterprise by and in its state of origin and is approved and authorized to operate the enterprise in this Commonwealth under 15 Pa.C.S. Part II, [Subpart] Subparts B or C, and 24 Pa.C.S. Chapter 65.

* * * * *

[Junior college—An institution which offers full 2-year postsecondary educational programs culminating with associate degrees. A junior college also may offer upper-division programs not culminating in a baccalaureate degree when it has the appropriate approval under Chapter 42.]

* * * * *

Physical presence—The operation of an entity that offers courses, programs, or degrees or maintains a campus, or an administrative, corporate or other address, including a post office box, telephone number, recruiters, instructors, advertising in local media and publications at a location in this Commonwealth.

Professional program—A program which culminates with a baccalaureate, first professional or graduate degree; provides preparation for [the] practice [of a profession] in professions, including medicine, allied health, dentistry, law, engineering, architecture, ministry and teaching; and educates persons in the field of study.

Professional school—[A] An organized administrative unit of a school, college, university or seminary offering one or more professional programs.

* * * * *

Specialized associate degree program—A program culminating in an occupational degree, either an ASB degree or AST degree, that is designed to prepare a student for [occupational] employment in an area requiring specialized instruction beyond secondary education.

* * * * *

State System—Classification of universities established under Article XX-A of the [Public] School Code [of 1949] (24 P. S. §§ 20-2001-A—20-201[7]9-A).

* * * * *

[Telecommunication instruction—A course or series of courses offered or sponsored by a postsecondary educational institution, consortium of institutions or other organization, for which credit is offered or awarded toward a certificate, diploma or degree, which have as the primary mode of delivery, television, video cassette or disc, film, radio, computer or other supportive devices which build upon the audio-video format. A telecommunication course may be supported by textbooks, study guides, library resources and other study aids, and may also involve personal interac-

tion with faculty, tutors or other educational personnel by computer, telephone, mail or face-to-face meetings.]

Two-year college—An institution that offers full 2-year postsecondary educational programs culminating with associate degrees. A 2-year college also may offer upper-division programs not culminating in a baccalaureate degree when it has the appropriate approval under Chapter 42.

University—A multiunit institution with a complex structure and diverse educational functions, including instruction, promotion of scholarship, preservation and discovery of knowledge, research and service. A university meets the following criteria:

* * * * *

(ii) Has a broad [cultural basis from which undergraduate and graduate units draw upon the arts and sciences for basic course whether or not these are an integral part of the programs provided in the unit] foundation in the arts and sciences, which is instilled in the philosophy and implementation of the undergraduate and graduate education curriculum.

* * * * *

Vocational education—Programs which provide an organized process of learning experience designed to develop skills, knowledge, attitudes, work habits and leadership skills for entry into and advancement within various levels of employment in [the] current or emerging occupational areas [of agriculture, business, marketing and distribution, health, home economics, trade and industry and other nonprofessional occupations].

GOVERNANCE

§ 31.12. President and board or council of trustees.

(a) For [a chartered nonprofit] an institution, the minimum and maximum number of trustees shall be stated in the articles of incorporation of the institution. The composition, selection, term of office and the like of the board or council of trustees shall be stated in the bylaws of the corporation. The composition of the board or council shall include members of the professions, business, industry and other organizations or lay persons. The board of trustees shall have as its main function the legal operation of the institution. The primary areas of responsibility of the board are:

* * * * *

(4) Oversight of institution-wide assessment.

(b) For a State System university subject to the authority of the Board of Governors, the chancellor, the president, together with the council of trustees, shall give overall policy direction to the institution. The president shall administer and manage the institution under Article XX-A of the School Code (24 P. S. §§ 20-2001-A—20-201[7]9-A).

§ 31.13. Administrative organization.

* * * * *

(b) [The administrative organization for graduate programs shall be separate from that for undergraduate programs. For convenience, nondegree postbaccalaureate work may be administered by the graduate program organization.]

(c) Policies relating to the organization of the institution [shall] must indicate the groups within the institution responsible for [such] the policy development and implementation. Copies of the policies shall be available for distribution to constituent groups.

(d) (c) For a State System university, appropriate provisions of the School Code, The Administrative Code of 1929 (71 P. S. §§ 51—732), and policies of the Board of Governors shall apply to administrative organization and supervision.

§ 31.14. Financial records.

(a) The budget of an institution [shall] must provide for necessary expenditures, including library and learning resources, faculty, student services, noninstructional staff and other operating costs.

(b) For a university having State System status, the following apply:

* * * * *

(2) Records shall be audited as provided by Article XX-A of the School Code (24 P. S. §§ 20-2001-A—20-201[7]9-A).

* * * * *

(d) For an institution having independent status, financial records shall be maintained which are in accordance with generally accepted accounting principles and procedures for educational institutions. For business (for-profit) corporations offering academic programs leading to an academic degree, the financial records shall be maintained separately for the portion of the corporation constituting the Pennsylvania institution offering the academic programs. The financial records for for-profit corporations must show that the required minimum protective endowment of \$500,000 is maintained.

* * * * *

(g) For CECs, funding is allocated through an annual grant award. Financial and performance reporting requirements of the Department are specified in the annual contract. The Department will provide oversight of the expenditures and activities undertaken by the community education councils during the grant period. The CECs shall maintain records, documents and files so that they will be available for inspection for a period specified in the grant agreement.

ACADEMIC PROGRAM

§ 31.21. Curricula.

* * * * *

(b) Degree requirements stated in this section [are in terms of a credit hour which represents a unit of curricular material which normally can be taught in a minimum of 14 hours of classroom instruction as determined by the faculty offering the program. For alternative instructional modes such as laboratory instruction, independent study, thesis and dissertation guidance, clinical and practicum experience, telecommunication instruction and correspondence study a credit hour shall represent an instructional unit which by faculty determination is equivalent to a minimum of 14 hours of classroom instruction] may be stated in terms of semester credit hours or quarter credit hours, as deter-

mined by the institution and conforming to generally accepted academic practices.

(i) A semester credit hour represents a unit of curricular material that normally can be taught in a minimum of 14 hours of classroom instruction, plus appropriate outside preparation or the equivalent as determined by the faculty.

(ii) A quarter credit hour represents a unit of curricular material that normally can be taught in a minimum of 10 hours of classroom instruction, plus appropriate outside preparation or the equivalent as determined by the faculty.

(1) An associate degree exclusive of a specialized associate degree [shall] must require the satisfactory completion of a minimum of 60 semester credit hours, which [shall include] includes a minimum of 20 semester credit hours of general education, or a minimum of 90 quarter credit hours, which shall include a minimum of 30 quarter credit hours of general education.

(2) A specialized associate degree [shall] must require the satisfactory completion of at least 60 semester credit hours with a minimum of 1,500 clock hours or a minimum of 90 quarter credit hours. At least 70%, but no more than 80%, of the program [shall] must consist of specialized instruction [which] that bears directly upon the employment objectives of the program; and at least 20% of the program must consist of general education. The program [shall] must include related instruction[, including general education, which] that supports the specialized instruction.

(3) A baccalaureate degree [shall] must require the satisfactory completion of a minimum of 120 semester credit hours or a minimum of 180 quarter credits. Of the total baccalaureate degree program course requirements, at least [1/3 of the required minimum credit shall] 40 semester credit hours or 60 quarter credit hours must be in [the arts and sciences] general education and [shall] represent a broad spectrum of disciplines in general education.

(4) A first professional degree [shall], except those for the preparation of professional educators, must require the satisfactory completion of a minimum of 60 semester credit hours or 90 quarter credit hours for admission to the degree program and the satisfactory completion of a total minimum of 150 semester credit hours or 225 quarter credit hours for the program. Professional educator preparation programs must comply with Chapter 354 (relating to preparation of professional educators).

(5) A master's degree [shall] must require the satisfactory completion of a minimum of 30 semester credit hours or 45 quarter credit hours beyond the baccalaureate level.

(6) The number of semester or quarter credit hours for a degree beyond a first professional or master's degree shall be determined by the [institution] faculty and [shall] reflect the recommendations of professional associations or National learned societies.

* * * * *

(d) To assure academic integrity, an institution shall provide students in a distance education pro-

gram access to academic and student services, including textbooks, study guides, library and other learning resources, personal interaction with faculty, tutors or other educational personnel by computer, telephone, mail or face-to-face meetings. The institution shall assure integrity of student work and provide opportunity for student assessment. These programs must comply with the regulations and policies that apply to resident-based programs.

§ 31.23. Program [data base] database.

(a) Periodically, the Department will provide to each institution a copy of the institution's complete list of degree and certificate programs as contained in the Department's program [data base] database. The institution shall verify the list or correct or amend it by indicating additions, deletions or changes and [shall] return the copy to the Department by the requested date.

(b) In addition to the requirements of subsection (a), if an institution adds, deletes or changes a program as listed in the Department's program [data base] database, the institution shall report the addition, deletion or change to the Department when it becomes effective.

§ 31.24. Faculty.

* * * * *

(c) Full-time faculty members shall constitute a majority of the total number of full-time-equivalent faculty employed by the institution. Care shall be taken to ensure that total commitments of part-time faculty do not impair the quality of the program. [Graduate courses shall normally be taught by full-time members of the faculty.]

(d) Faculty development shall be in accordance with the institution's faculty development plan. The institution shall support professional development for all full-time, part-time and new faculty. The institution should encourage publication, travel, attendance at professional seminars and conferences, research and similar developmental activities when feasible by the granting of reduced teaching loads, the purchase of needed equipment, and the granting of or assistance in obtaining needed funds.

(e) [Institutions] Each institution of higher education operating in this Commonwealth shall comply with the English Fluency in Higher Education Act (24 P.S. §§ 6801—6806), by filing the certification required by the act by September 1 of each year in the form requested by the Department. Failure to comply with the act and with this subsection shall subject the institution to the penalties under the act.

ADMISSIONS AND STUDENT SERVICES

§ 31.32. Catalog and announcements.

(a) An institution's current catalog and official publications, as appropriate, [shall] must describe accurately the institution's policies, including the institution's policy of nondiscrimination, [and] grievance procedures, regulations and programs affecting students, and include the academic expectations and responsibilities of students.

* * * * *

(c) Each institution shall file its current official catalog with the Department in print or electronic format.

(d) Each institution shall provide each student a copy of the current catalog, in print or electronic form, upon enrollment.

§ 31.33. Student records and services.

(a) An academic record, including credits or courses completed under § 31.21 (relating to curricula) and grades earned, shall be maintained on a current transcript for each student. Institutions shall adopt a plan for the collection, maintenance and dissemination of student academic, counseling, health and other records. Copies of the plan shall be maintained by the institution and updated as required by changes in State or Federal law or local policy. Student records shall be maintained in a readily accessible format. Appropriate standards of confidentiality for the records shall be defined in the college policies and official publications and administered accordingly. Students shall be granted the right of access, under the requirements of law, to their official records.

(b) There shall be a program of student services to provide for the following:

* * * * *

(7) Compliance with State and Federal laws and regulations regarding reasonable accommodation for students with special needs.

§ 31.34. Credit card marketing.

Each institution of higher education shall establish a policy that regulates the marketing of credit cards on campus in accordance with Article XXIII-A of the School Code (24 P.S. §§ 23-2301-A—23-2303-A).

FACILITIES

§ 31.41. Library and learning resources.

(a) An institution shall maintain adequate library [resources] and learning resources for all programs offered. The adequacy [of resources] shall be determined by the appropriateness of print, electronic and other collections for the achievement of the stated objectives of the institution, as related to its statement of philosophy and mission.

* * * * *

§ 31.43. Buildings and equipment.

Classrooms, laboratories, faculty offices, related academic buildings, student living facilities and recreational facilities are governed by 34 Pa.Code Chapter 47, Subchapter D (relating to Department of Labor and Industry—miscellaneous provisions—facilities for handicapped), and Chapters 49—59, and [shall] must be adequate to provide an integrated academic and nonacademic program consistent with the stated objectives of the institution as related to its statements of philosophy, mission and need.

MAINTENANCE OF QUALITY

§ 31.52. Accreditation.

(a) Institutions which grant degrees, including private licensed schools which grant specialized associate degrees under §§ 42.11—42.14 (relating to specialized associate degree programs approval procedure), shall [, not later

than July 1, 1977, obtain] maintain total institutional accreditation from appropriate accrediting agencies recognized by the Federal Government and acceptable to the Department and the Board. An institution failing to [obtain total institutional accreditation by July 1, 1997, or to] maintain total institutional accreditation [thereafter] shall be subject to proceedings under § 40.51(b), § 40.53(b) or § 42.14 (relating to approval of an independent junior college, college, university or foreign corporation; approval of State System, State-related or State-aided status; and revocation of the degree-granting privilege).

(b) [Prior to July 1, 1997, previously approved degree-granting institutions which have not yet obtained total institutional accreditation under subsection (a) will be evaluated by the Department on a scheduled 5-year cycle. Documentation necessary for the evaluation shall be submitted to the Department prior to the scheduled evaluation.] Except for specialized associate degree-granting institutions, new institutions approved to offer degrees shall have 3 years after commencing operations to obtain candidacy status for total institutional accreditation.

(c) Notwithstanding the requirements of subsection (a), a seminary which chooses for religious reasons not to obtain total institutional accreditation from an appropriate accrediting agency as indicated in subsection (a) will be evaluated by the Department on a scheduled 5-year cycle. Documentation necessary for the evaluation shall be submitted to the Department prior to the scheduled evaluation.

HONORARY DEGREES

§ 31.62. Approval procedure.

(a) An institution which desires to award honorary degrees and does not have legal authorization allowing this privilege may petition the Secretary for approval to award the degrees. [The petition shall be submitted by July 1 preceding the academic year in which honorary degree is to be awarded.] In the petition, the institution shall set forth the degrees to be awarded and the procedures for the selection of candidates and be prepared to support awards of honorary degrees on the basis of meritorious service to mankind.

* * * * *

MAJOR CORPORATE CHANGE

§ 31.72. Obligations.

The institution shall work with the Department to ensure the following, if necessitated by the corporate change:

* * * * *

(9) Applicable statutes found at 15 Pa.C.S. [§§ 5101—5110, 5301—5341 and 6101—6162 (relating to general provisions; incorporation; and foreign nonprofit corporations)] Part II, Subpart B (relating to Business Corporation Law of 1988) or Subpart C (relating to Nonprofit Corporation Law of 1988); section 2601-H of the School Code (24 P. S. § 26-2601-H); and 24 Pa.C.S. Chapter 65 (relating to private colleges, universities and seminaries), [relating to] regarding the type of corporate change being effected have been addressed.

[Pa.B. Doc. No. 05-2084. Filed for public inspection November 11, 2005, 9:00 a.m.]

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Office of the Budget

The Executive Board approved a reorganization of the Office of the Budget effective October 21, 2005.

The organization chart at 35 Pa.B. 6249 (November 12, 2005) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

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

[Pa.B. Doc. No. 05-2085. Filed for public inspection November 11, 2005, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the State Police

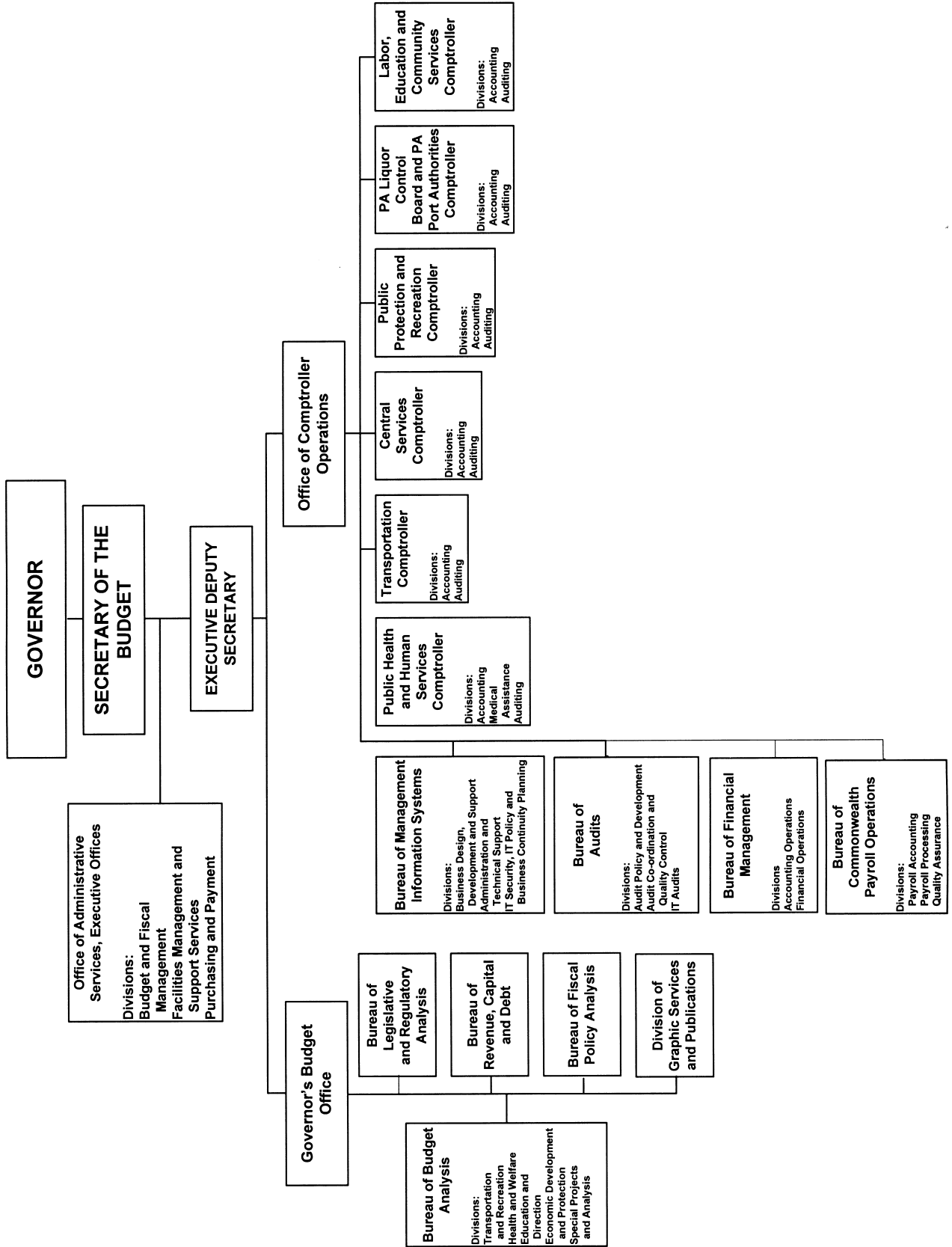
The Executive Board approved a reorganization of the State Police effective October 17, 2005.

The organization chart at 35 Pa.B. 6250 (November 12, 2005) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

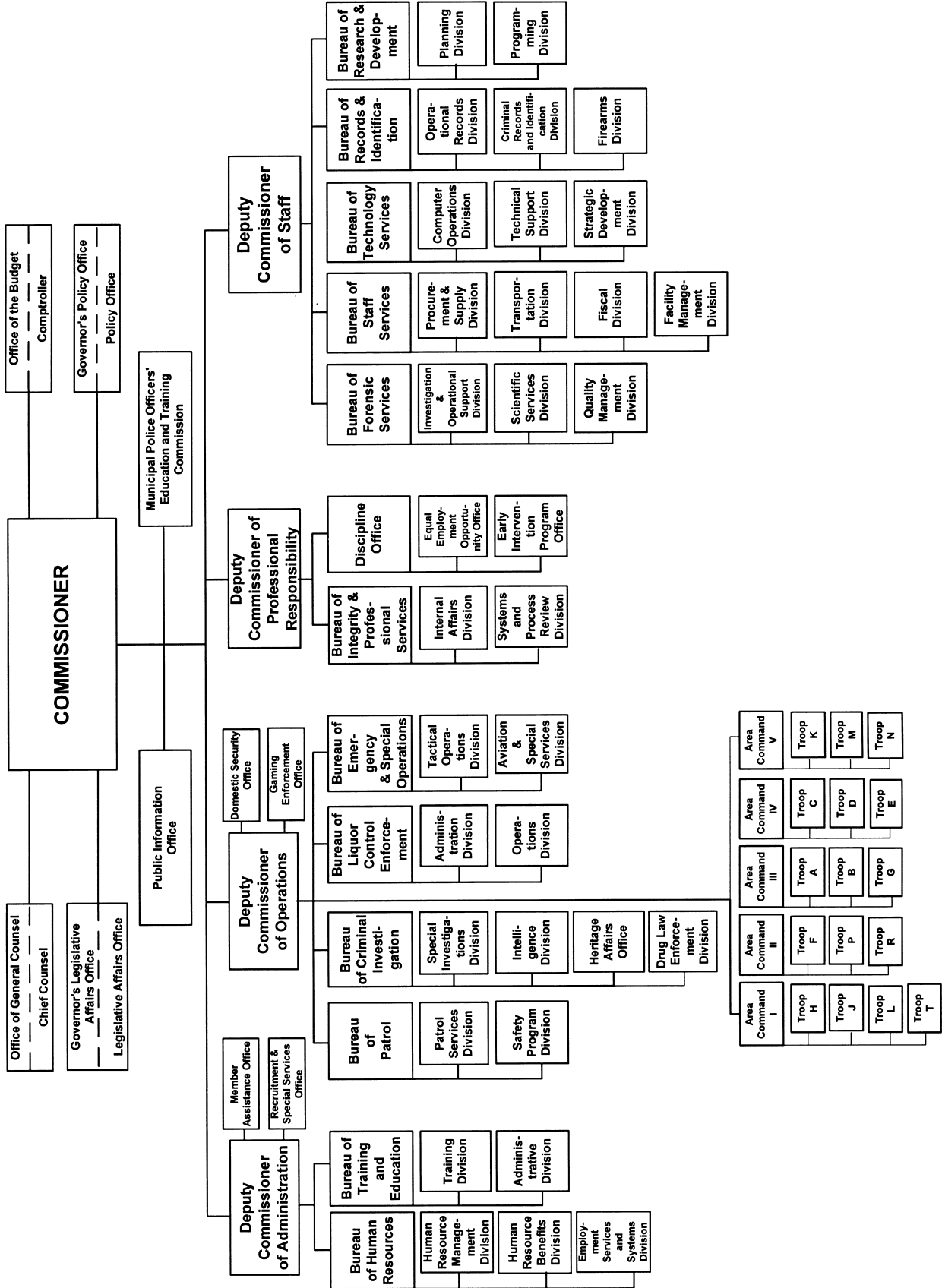
(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) (relating to contents of Pennsylvania Code) as a document general and permanent in nature which shall be codified in the Pennsylvania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

[Pa.B. Doc. No. 05-2086. Filed for public inspection November 11, 2005, 9:00 a.m.]

GOVERNOR'S OFFICE OF THE BUDGET



PENNSYLVANIA STATE POLICE



NOTICES

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 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 November 1, 2005.

BANKING INSTITUTIONS

Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-28-05	Fulton Bank Lancaster Lancaster County Purchase of assets/assumption of liabilities of one branch office of Susquehanna Bank, PA, Lititz Located at: 2305 Susquehanna Trail North York York County	Lancaster	Approved

Branch Relocations/Consolidations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
9-19-05	ESB Bank Ellwood City Lawrence County	<i>To:</i> 1552 Beechview Avenue Pittsburgh Allegheny County <i>From:</i> 1609 Broadway Avenue Pittsburgh Allegheny County	Effective
10-26-05	AmeriServ Financial Bank Johnstown Cambria County	<i>Into:</i> 1383 Shoemaker Street Nanty Glo Cambria County <i>From:</i> 928 Roberts Street Nanty Glo Cambria County	Filed

Savings Institutions

No activity.

Credit Unions

No activity.

A. WILLIAM SCHENCK, III,
Secretary

[Pa.B. Doc. No. 05-2087. Filed for public inspection November 11, 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

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0046272 (Minor Renewal)	Porter Tower Joint Municipal Authority 326 East Grand Avenue Tower City, PA 17980	Schuylkill County Porter Township	Wisconisco Creek (6C)	Y

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0060640 (Sewage)	Pennsylvania American Water Company 100 North Pennsylvania Avenue Wilkes-Barre, PA 18701	Pike County Lehman	Saw Creek (1D)	Y
PA0044024 Industrial Waste	Fish and Boat Commission Pleasant Mount Fish Hatchery P. O. Box 3 Pleasant Mount, PA 18453	Wayne County Mount Pleasant Township	West Branch Lackawaxen River 01B	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed#)</i>	<i>EPA Waived Y/N ?</i>
PA0044261 (Sewage)	Department of Conservation and Natural Resources Canoe Creek State Park R. R. 2, Box 560 Hollidaysburg, PA 16646	Blair County Frankstown Township	New Creek/11-A	Y
PA0084131 (Sewage)	Gettysburg Area School District—Frankstown Township Elementary School 900 Biglerville Road Gettysburg, PA 17325-8007	Adams County	UNT Marsh Creek/13-D	Y
PA0086894 (Sewage)	Raymond L. Hoffman County View Mobile Home Park 842 Dicks Dam Road New Oxford, PA 17350	York County Washington Township	UNT to Red Run/7-F	Y
PA0081591 (Sewage)	Eastern York County Sewer Authority P. O. Box 6206 Hellam, PA 17406	York County Hallam Borough Hellam Township	Kreutz Creek/7-I	Y
PA0083747 (IW)	Weaber Inc. 1231 Mount Wilson Road Lebanon, PA 17045-4785	Lebanon County South Annville Township	UNT to Gingrich Run/7-D	Y

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

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

Application No. PA 0247731, Industrial Waste, SIC Code 5499-03, **DS Waters of America**, 1761 Newport Road, Ephrata, PA 17522. This facility is located in West Earl Township, **Lancaster County**.

Description of activity: The application is for issuance of an NPDES permit for new discharge of treated industrial waste.

The receiving stream, stormwater swale to the Cocalico Creek, is in Watershed 7-J and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake is Lancaster Municipal Water Authority located on the Conestoga River, approximately 12 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 based on a design flow of 0.06 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Total Suspended Solids	30	60	75
Total Phosphorus	1.0	2.0	2.5
Total Residual Chlorine	1.5	2.5	3.7
pH		from 6.0 to 9.0 inclusive	

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.

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

PA0065030, Sewage, **Meshoppen Borough**, P. O. Box 237, Meshoppen, PA 18630. This proposed facility is located in Meshoppen Borough, **Wyoming County**.

Description of Proposed Activity: Issuance of an NPDES permit.

The receiving stream, Susquehanna River, is in the State Water Plan watershed 4G and is classified for WWF. The nearest downstream public water supply intake for Danville Borough Water Authority is located on the Susquehanna River.

The proposed effluent limits for Outfall 001 based on a design flow of 0.050 mgd.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	25	40	50
Total Suspended Solids	30	45	60
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	0.50		
Total Residual Chlorine			1.2
Total Nitrogen*	report annual mass load		
Total Phosphorus*	report annual mass load		

In accordance, the recent Chesapeake Bay Strategy nutrient monitoring requirements were changed to monitoring and report annual mass load for Total Nitrogen and Total Phosphorus as published on October 1, 2005.

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

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

WQM Permit No. 4905404, Sewerage, SIC 4952, **Mount Carmel Municipal Authority**, P. O. Box 365, Mount Carmel, PA 17851-0365. This proposed facility will be located in Mount Carmel Township and the Borough of Mount Carmel, **Northumberland County**.

Description of Proposed Action/Activity: The Authority proposes Phase I of the 3-phase combined sewer separation/transport project, consistent with the approved Act 537 Plan Update. Phase I will include the replacement of approximately 8,150 linear feet of 24-inch and 30-inch gravity sewer with a 36-inch gravity sewer between CSO No. 13 and the treatment plant and eliminating CSO Nos. 13 and 14. Also included in Phase I is the replacement of an 18-inch gravity interceptor from Beech Street to CSO No. 13 and the installation of new stormwater pipes and associated sanitary sewer repairs for partial separation in Mount Carmel Borough.

WQM Permit No. 1405405, Sewerage, SIC 4952, **Mountaintop Area Municipal Authority**, P. O. Box 275, Snowshoe, PA 16874. The proposed facilities will be located in Snowshoe Township, **Centre County**.

Description of Proposed Action/Activity: The applicant proposed the addition of the following technologies as part of the Innovative Lagoon Modifications Project: a plate settler (and recycle pump), floating attached growth bioreactors and a floating fine bubble aeration system.

WQM Permit No. 4105402, Sewerage, SIC 4952, **Williamsport Sanitary Authority**, 253 West Fourth Street, Williamsport, PA 17701. This proposed facility will be located in City of Williamsport, **Lycoming County**.

Description of Proposed Action/Activity: The applicant proposes the construction of a (relief) sanitary sewage interceptor sewer to provide capacity that is not currently available in the existing parallel interceptor, which will remain in service.

WQM Permit No. 5905402, Sewerage, SIC 4952, **Department of Conservation and Natural Resources**, R. R. 6, Box 199, Wellsboro, PA 16901. This proposed facility will be located in Shippen Township, **Tioga County**.

Description of Proposed Action/Activity: The applicant proposes the construction of a new, sanitary sewer collection system (with flow controls and surge storage), primary treatment (septic tanks), secondary treatment (recirculating sand filter) and onsite disposal (spray field) to replace the existing park latrines. In addition to the park, the system will also provide service the Ranger station.

WQM Permit No. 4105403, Sewerage, **Nippenose Township**, P. O. Box 201, 220 Second Street, Antes Fort, PA 17720. This proposed facility is located in Nippenose Township, **Lycoming County**.

Description of Proposed Action/Activity: The proposed permit is for a new wastewater treatment facility and new collection system for an area that currently has no public sewage facilities.

The treatment facility is to include screening, flow equalization, aeration tanks, clarifiers, ultraviolet disinfection and sludge holding. The facility would have an average flow rating of 0.0482 mgd, with a peak of 0.070 mgd and an organic loading capacity of 84.02 lbs of BOD₅.

The collection system is to include three pump stations along with 27,230 LF of 8-inch gravity sewers, 1,469 LF of 4-inch and 5,281 LF of 3-inch forcemain.

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

WQM Permit No. 2505405, Sewerage, **Municipal Authority of the Borough of Edinboro**, 124 Meadville Street, Edinboro, PA 16412-2502. This proposed facility is located in Borough of Edinboro, **Erie County**.

Description of Proposed Action/Activity: This project is for the reconstruction of sanitary sewer lines on Maple Drive and Chestnut Street in the Borough of Edinboro.

IV. NPDES Applications for Stormwater Discharges from MS4

V. Applications for NPDES Waiver Stormwater Discharges from MS

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

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

Northampton County Conservation District: Greystone Bldg., Gracedale Complex, Nazareth, PA 18064-9211, (610) 746-1971.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024805025	Fretz Simonds Partnership 188 Jefferson St. Emmaus, PA 18049	Northampton	City of Bethlehem	Saucon Creek (Black River to SR 412 Bridge) HQ-CWF

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

PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

PUBLIC WATER SUPPLY (PWS) PERMIT

Under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17), the following parties have applied for a PWS permit to construct or substantially modify a public water system.

Persons wishing to comment on a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice. Comments received within the 30-day comment period will be considered in the formulation of the final determinations regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of Environmental Protection (Department) of the exact basis of a comment and the relevant facts upon which it is based. A public hearing may be held after consideration of comments received during the 30-day public comment period.

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

The permit application and any related documents are on file at the office listed before the application and are available for public review. Arrangements for inspection and copying information should be made with the office listed before the application.

Persons with a disability who require an auxiliary aid, service or other accommodations to participate during the 30-day public comment period should contact the office listed before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

SAFE DRINKING WATER

Applications Received under the Pennsylvania Safe Drinking Water Act

Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401.

Permit No. 2305505 , Public Water Supply	
Applicant	Chester Water Authority
Townships	Little Britain and Fulton
County	Delaware
Responsible Official	Robert W. Naef
Type of Facility	PWS
Consulting Engineer	CET Engineering Service, Inc.
Application Received Date	October 25, 2005
Description of Action	Upgrade of Susquehanna raw water intake and pump station and the addition of inclined plate settlers in the sedimentation basins and raw water blend tank at the Octoraro Water Treatment Plant. The intake and pump station located in Fulton Township and the Otoraro Water Treatment Plant in Little Britain Township, Lancaster County.

MINOR AMENDMENT

Applications Received Under the Pennsylvania Safe Drinking Water Act

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

Application No. 0205506MA, Minor Amendment.

Applicant **Pennsylvania American Water Company**
800 West Hersheypark Drive
Hershey, PA 17033

Township or Borough Elizabeth Township

Responsible Official Paul Zielinski
Director
Environmental Management and Compliance
Pennsylvania American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

Type of Facility Water storage tank

Application Received Date October 18, 2005

Description of Action Blasting and painting of the interior and exterior of the 300,000 gallon standpipe tank known as the Route 48 Tank.

Application No. 3205501MA, Minor Amendment.

Applicant Pennsylvania American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

Township or Borough White Township

Responsible Official Paul Zielinski, Director
Environmental Management and Compliance
Pennsylvania American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

Type of Facility Water storage tank

Application Received Date October 18, 2005

Description of Action Rehabilitation of Indiana Aldrich Unit No. 1 including blasting and repainting of the interior wet and interior dry areas and minor sanitary, structural and safety modifications.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 1

Acknowledgment of Notices of Intent to Remediate Submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the Background Standard, Statewide Health Stan-

dard, 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:

Northeast Regional Field Office: Environmental Cleanup Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

Rutz Residence, City of Allentown, **Lehigh County**. Chris Kotch, P. G., Barry Issett & Associates, Inc., P. O. Box 147, Trexlertown, PA 18087 has submitted a Notice of Intent to Remediate (on behalf of Marjorie Rutz, Van Buren Street, Allentown, PA 18109) concerning the remediation of soil found or suspected to have been impacted by the accidental release of No. 2 home heating oil from an aboveground storage tank on the property. The applicant proposes to meet the residential Statewide Health Standard. A summary of the Notice of Intent to Remediate was published in the *Times Morning Call* on October 1, 2005. The continued future use of the site is expected to be for residential purposes. A Final Report was simultaneously submitted.

Dougherty Property, Penn Forest Township, **Carbon County**. Guyton Giannotta, Project Manager, AquAeTer, Inc., 20 Briarcrest Square, No. 208, Hershey, PA 17033 has submitted a Notice of Intent to Remediate (on behalf

of Nancy and Stephen Dougherty, Phylis Court, Stroudsburg, PA 18360) concerning the remediation of soil and groundwater found or suspected to have been impacted by the accidental release of kerosene in 1997 from a former aboveground storage tank on the property. The applicant proposes to meet the residential Statewide Health Standard. A summary of the Notice of Intent to Remediate was reportedly published in the *Times News* on July 20, 2005. The continued future use of the site is expected to be for residential purposes.

Hayes Property (SR 29), Bridgewater Township, **Susquehanna County**. Kevin Van Kuren, P. G., Hydrocon Services, Inc., 16 East Minor Street, Emmaus, PA 18049 has submitted a Notice of Intent to Remediate (on behalf of Roger Hayes, SR 29, South Montrose, PA 18843) concerning the remediation of soil found or suspected to have been impacted by the release of leaded and/or unleaded gasoline from a former 500-gallon underground storage tank on the property. The applicant proposes to meet the residential Statewide Health Standard. A summary of the Notice of Intent to Remediate is expected to be published in a local newspaper serving the general area sometime in the near future. The future use of the site is expected to be for agricultural purposes. A Final Report was simultaneously submitted.

Pennsylvania Army National Guard Tamaqua Armory, Rush Township, **Schuylkill County**. Seth Naregood, Sr. Staff Geoscientist, Converse Consultants, 2738 West College Avenue, State College, PA 16801 has submitted a Notice of Intent to Remediate (on behalf of his client, Pennsylvania Army National Guard, Department of Military and Veterans Affairs Environmental Section, c/o Andrew Geist, Fort Indiantown Gap, Annville, PA 17003) concerning the remediation of soil found or suspected to have been impacted by the release of No. 2 fuel oil constituents from a former underground storage tank on the property. The applicant proposes to meet the residential Statewide Health Standard. A summary of the Notice of Intent to Remediate was expected to be published in *The Pottsville Republican & Herald* on October 13, 2005. The future use of the site may be for a mixture of residential or nonresidential purposes, or both.

A & E Products Group, Ringtown Borough, **Schuylkill County**. Dennis Libenson, Project Geologist, Earth Tech, Inc., Four Neshaminy Interplex, Suite 300, Trevoise, PA 19030 has submitted a revised Notice of Intent to Remediate (on behalf of his client, Charles Twamugabo, Tyco Plastics and Adhesives, 104 Carnegie Center Drive, Suite 301, Princeton, NJ 08540) concerning the remediation of soils found or suspected to be contaminated with PCE and benzo(a)pyrene. The applicant proposes to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate is expected to be published in a local newspaper serving the general area sometime in the near future. The proposed future use of the property will remain as industrial.

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

Losey Farm, Lawrenceville, PA 16929, Lawrence Township, **Tioga County**. Skelly & Loy Consultant, 2601 N. Front Street, Harrisburg, PA 17110 has submitted a Notice of Intent to Remediate soil contaminated with diesel fuel. This site is being remediated to meet a Statewide Health Standard.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Application received under the Solid Waste Management Act (35 P. S. §§ 6018.101–6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101–4000.1904) and regulations to operate solid waste processing or disposal area or site.

Southeast Region: Regional Solid Waste Manager, 2 East Main Street, Norristown, PA 19401.

Permit Application No. 101237. J P Mascaro & Sons, Inc., 320 Godshall Dr., Harleysville PA, 19438-2008, Franconia Township, **Montgomery County**. The application was received for the renewal of the Mascaro Transfer Station's solid waste permit. The application was received by the Southeast Regional Office on October 19, 2005.

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.

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

01-05023: Carmeuse Lime, Inc.—Hanover Lime Plant (877 Oxford Road, Hanover, PA 17316) for installing a railcar unloading pit and associated dust collection equipment in their Hanover facility in Oxford Township, **Adams County**.

06-05069I: East Penn Manufacturing Co., Inc. (P. O. Box 147, Deka Road, Lyon Station, PA 19536-0147) for construction of a concasting machine (A2); the installation of a replacement fabric collector and HEPA filter for A3 pasting and mixing; the construction of battery assembly equipment in A3; and the construction of two lead oxide mills each controlled by a cyclone, fabric collector and HEPA filter at the assembly plant in Richmond Township, **Berks County**. The sources are subject to 40 CFR Part 60, Subpart KK, Standards of Performance for New Stationary Sources.

Northcentral Region: Air Quality Program, 208 West Third Street, Williamsport, PA 17701, David Aldenderfer, Program Manager, (570) 327-3637.

18-00005C: Dominion Transmission, Inc. (445 West Main Street, Clarksburg, WV 26301) for modification of an emission limit for fugitive VOCs (Source ID 01) from 4.4 tons in any 12-consecutive month period to 15.41 tons in any 12-consecutive month period at Finnefrock Compressor Station in Leidy Township, **Clinton County**.

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

65-00726A: Gutchess Hardwoods, Inc. (P. O. Box 618, Route 981 South, Latrobe, PA 15650) for installation of a wood fired boiler system at Latrobe Plant in Unity Township, **Westmoreland County**.

Intent to Issue Plan Approvals and Intent to Issue or Amend Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter B. These actions may include the administrative amendments of an associated operating permit.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Thomas McGinley, New Source Review Chief, (484) 250-5920.

09-0022B: Cleveland Steel Container Corp. (350 Mill Street, Quakertown, PA 18951) for a facilitywide HAP restriction of 9.99 tons/yr of any individual HAPs and 24.9 tons/yr of combined HAPs on a 12 month rolling basis to opt out of the National Emission Standard for Hazardous Air Pollutants from Surface Coating of Miscel-

laneous Metal Parts. The plan approval application also requests an amendment to the Title V permit for Source ID 108 for an increase in the VOC content from 10% by weight to 35% by weight at their facility in Quakertown Borough, **Bucks County**. The Plan Approval is for a Title V facility. The increase in VOC content from 10% by weight to 35% by weight will have a negligible effect on the VOC emissions. The plan approval will include monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Mark Wejkszner, New Source Review Chief, (570) 826-2531.

48-309-125: Keystone Cement Co. (P. O. Box A, Bath, PA 18014) for construction of a finish mill and related material feed system, an indirect coal firing system including a new coal burner pipe for the existing No. 2 cement kiln and associated fabric collectors at their facility in East Allen Township, **Northampton County**. The No. 2 cement kiln can be fired by waste oil, bituminous coal/coke, hazardous waste and Department of Environmental Protection approved alternate fuels. There will be no increases in clinker production, no increases in the quantity of nonhazardous and hazardous wastes fired in the No. 2 cement kiln, and no increases in the emissions previously approved and listed in the issued Title V Operating Permit No. 48-00003. The indirect coal firing system is subject to 40 CFR Part 60, Subpart Y, New Source Performance Standards for Coal Preparation Plants. The finish mill and related material feed system are subject to 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry. The No. 2 cement kiln is subject to 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors. The particulate emissions from the operation of the finish mill and related material feed system, the indirect coal firing system, the existing No. 2 cement kiln and all associated fabric collectors, including the existing No. 2 cement kiln fabric collector, will not exceed the best available technology standard of 0.01 grain/dscf. The Plan Approval and Operating Permit will contain restrictions, testing, work practices, monitoring, recordkeeping and reporting requirements designed to keep the sources and associated fabric collectors operating within all applicable air quality requirements. In addition, the operation of the No. 2 cement kiln shall continue to comply with all applicable conditions of the issued Title V Operating Permit No. 48-00003. This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into the Title V Operating Permit through an Administrative Amendment at a later date.

45-310-037: Locust Ridge Quarry—Division of Haines and Kibblehouse, Inc. (P. O. Box 196, 2052 Lucon Road, Skippack, PA 19474) for modification of an existing stone crushing plant and associated air cleaning device (making permanent the portable stone crushing plant) in Tobyhanna Township, **Monroe County**. This facility is a non-Title V facility. It is anticipated that particulate emissions will not increase at the site from the existing levels once the approval is issued. The stone crushing plant in this operation is subject to Subpart OOO of the Federal Standards of Performance for New Stationary Sources, 40 CFR 60.670–60.676. The company will operate the facility and maintain the systems in accordance with the good engineering practices to assure proper operation of the equipment. The Plan Approval

and resulting operating permit will contain recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements. The existing State-only Operating Permit (No. 45-00019) for this facility will be amended to include the equipment contained in this Plan Approval (No. 45-310-037) in addition to the equipment contained in Plan Approval No. 45-310-036.

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

34-05003B: Tedd Wood, Inc. (P. O. Box 187, Johnstown Road, Thompsettown, PA 17094) for construction of two new coating booths and relocating various existing coating booths in Delaware Township, **Juniata County**. Over the next 3 years, production is estimated to increase by 33% at the facility. The plan approval will limit facility wide emissions to less than 100 tons per year of CO, SO_x, NO_x and PM₁₀, 50 tons per year of VOC, 10 tons per year of a single HAP and 25 tons per year of combined HAPs. Standard recordkeeping and operating restrictions will be included 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.

49-00033A: Watsonstown Brick Co. (P. O. Box 68, Watsonstown, PA 17777-0068), for installation of a Donaldson Torit model DFT 4-48 cartridge collector on an existing brick making process in Delaware Township, **Northumberland County**. The respective facility is a major facility for which a Title V operating permit (49-00033) has been issued.

The Department of Environmental Protection's (Department) review of the information contained in the application submitted by Watsonstown Brick indicates that the source and the air-cleaning device will comply with all applicable air quality regulations including the fugitive air contaminant emission requirement of 25 Pa. Code § 123.1, the applicable particulate matter emission limitation of 25 Pa. Code § 123.13, the visible emission limitation of 25 Pa. Code § 123.41, and the Federal Standards of Performance for New Stationary Sources 40 CFR Part 60, Subpart OOO, 60.607—60.676. The plan approval, if issued, will subsequently be incorporated into their Title V operating permit via an administrative amendment in accordance with 25 Pa. Code § 127.450 at a later date.

Based upon this finding, the Department proposes to issue plan approval for the installation of the cartridge collector. The following is a summary of the conditions the Department proposes to place in the plan approval to be issued to ensure compliance with all applicable regulatory requirements:

1. Under the best available technology (BAT) requirements of 25 Pa. Code §§ 127.1 and 127.12, the particulate matter emissions from the exhaust of the collector shall not exceed 0.01 grain per dry standard cubic foot.
2. Under 40 CFR Part 60, 60.672, the visible emissions from the exhaust of the collector shall not exceed 7% opacity at any time.
3. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the cartridge collector shall be equipped with instrumentation to continuously monitor the pressure drop across the collector.

4. The permittee shall record the pressure drop across the collector at least once per day. These records shall be maintained onsite for a minimum of 5 years and be presented to the Department upon request.

5. Under BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the air compressor that supplies compressed air to the cartridge collector shall be equipped with an air dryer and oil trap.

6. The permittee shall keep onsite a sufficient number of spare cartridges for the collector associated with the brick making process to replace any cartridge that needs replacing.

7. The brick making process is subject to 40 CFR Part 60 Subpart OOO, 60.670—60.676. The permittee shall comply with all applicable requirements of this subpart.

8. Within 90 days of the installation and operation of the cartridge collector, the permittee shall conduct the Environmental Protection Agency referenced method stack testing for particulate matter to verify compliance with the particulate matter emission limitation.

9. Under the best available technology requirements of 25 Pa. Code §§ 127.1 and 127.12, all conveyors of source ID P204 shall be completely covered unless the conveyors are in a completely enclosed building.

Intent to Issue Operating Permits under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

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

67-05068: Highway Materials, Inc. (1750 Walton Road, Blue Bell, PA 19422) a renewal of their State-only Operating Permit (Synthetic Minor) for operation of the Wrightsville Plant in Wrightsville Borough, **York County**. The State-only operating permit will include monitoring, recordkeeping, reporting requirements, emission restrictions and work practice standards designed to keep the facility operating within all applicable air quality requirements.

COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). Mining activity permits issued in response to applications will also address the applicable permitting requirements of the following statutes: the Air Pollution Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of an application is available for inspection at the district mining office indicated before an application. Where a 401 Water Quality Certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for certification.

Written comments, objections or requests for informal conferences on applications may be submitted by any person or any officer or head of any Federal, State or local government agency or authority to the Department at the district mining office indicated before an application within 30 days of this publication, or within 30 days after the last publication of the applicant's newspaper advertisement, as provided by 25 Pa. Code §§ 77.121—77.123 and 86.31—86.34.

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. NPDES permits will contain, at a minimum, technology-based effluent limitations as identified in this notice for the respective coal and noncoal applications. In addition, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit, when necessary, for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies who have

requested review of NPDES permit requirements for a particular mining activity within the previously mentioned public comment period will be provided with a 30-day period to review and submit comments on the requirements.

Written comments or objections should contain the name, address and telephone number of the person submitting comments or objections; the application number; and a statement of sufficient detail to inform the Department on the basis of comment or objection and relevant facts upon which it is based. Requests for an informal conference must contain the name, address and telephone number of requestor; the application number; a brief summary of the issues to be raised by the requestor at the conference; and a statement whether the requestor wishes to have the conference conducted in the locality of the proposed mining activities.

Coal Applications Received

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

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

* The parameter is applicable at all times.

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

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

30031301 and NPDES Permit No. PA0235610, Dana Mining Company of PA, Inc., (P. O. Box 1170, Morgantown, WV 26507), to revise the permit for the 4 West Mine in Dunkard Township, **Greene County** and related NPDES permit to install the 4 West Brewer Shaft site. Surface Acres Proposed 5.5. Receiving stream: UNT to Meadow Run, classified for the following use: WWF. Application received October 7, 2005.

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

Permit No. 56940104 and NPDES Permit No. PA0212849. Mountaineer Mining Corporation, 1010 Garrett Shortcut Road, Berlin, PA 15530, permit revision—land use change on James and Mary Long property from Forestland to Cropland in Brothersvalley Township, **Somerset County**, affecting 5.1 acres. Receiving streams: UNTs to Tubs Run and Laurel Run classified for the following use: WWF. There are no potable water supply intakes within 10 miles downstream. Application received on October 21, 2005.

NPDES Permit No. PA0109088, Geiger Development Corporation, 1207 Stoystown Road, Friedens, PA 15541, renewal of NPDES Permit, in Somerset Township, **Somerset County**. Receiving stream: UNT of Coxes Creek classified for the following use: TSF. There are no potable water supply intakes within 10 miles downstream. NPDES renewal application received October 20, 2005.

Greensburg District Mining Office: R. R. 2, Box 603C, Greensburg, PA 15601, (724) 925-5500.

03950105 and NPDES Permit No. PA0201421. Allegheny Mineral Corp. (P. O. Box 1022, Kittanning, PA 16201). Renewal application for continued operation and reclamation of an existing bituminous surface mine, located in West Franklin Township, **Armstrong County**, affecting 439 acres. Receiving streams: UNT to Buffalo Creek and Patterson Creek, classified for the following use: TSF. The potable water supply intake within 10 miles downstream from the point of discharge: Creekside Mushroom, LTD. Renewal application received: October 20, 2005.

65970105 and NPDES Permit No. PA0202053. M. B. Energy, Inc. (175 McKnight Road, Blairsville, PA 15717). Renewal application for continued operation and reclamation of an existing bituminous surface mine, located in Derry Township, **Westmoreland County**, affecting 146 acres. Receiving streams: UNTs to Union Run and Union Run, classified for the following use: WWF. There is not potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received: October 24, 2005.

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

10820139 and NPDES Permit No. PA0605646. Quality Aggregates, Inc. (200 Neville Road, Neville Island, PA 15225-0347). Renewal of an existing bituminous surface strip, coal ash placement, and beneficial use of fly ash operation in Venango Township, **Butler County** affecting 102.8 acres. Receiving streams: three UNTs of Seaton Creek, classified for the following use: CWF. There

are no potable surface water supply intakes within 10 miles downstream. Application for reclamation only. Application received October 27, 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:

<i>Parameter</i>	<i>30-day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Suspended solids	35 mg/l	70 mg/l	90 mg/l
Alkalinity exceeding acidity ¹		greater than 6.0; less than 9.0	

¹ The parameter is applicable at all times.

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

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

09890303C and NPDES Permit No. PA0594661, Naceville Materials (P. O. Box 161, Warminster, PA 18974), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Plumstead Township, **Bucks County**, receiving stream: intermittent stream to North Branch Neshaminy Creek, classified for the following uses: TSF and migratory fish. Application received October 20, 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 com-

ment, 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(a) of the FWPCA (33 U.S.C.A. § 1341(a)).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Northeast Region: Watershed Management Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

E64-257. Gerald B. Margraf, R. R. 2, Box 782, Hawley, PA 18428, in Clinton Township, Wayne County, United States Army Corps of Engineers, **Philadelphia District**.

To construct an excavated pond on a residential property, impacting approximately 0.34 acre of wetlands in the drainage basin of the West Branch Lackawaxen River (HQ-CWF). The project is located on the east side of T-528 (Rutkosky Road), near the intersection of T-528 and T-439. (Forest City, PA Quadrangle N: 6.7 inches; W: 0.8 inch).

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

E05-332: East St. Clair Township, 1445 Quaker Valley Road, New Paris, PA 15554-8523 in East St. Clair Township, **Bedford County**, ACOE Baltimore District.

To remove the existing structures and then to construct and maintain a 22-foot by 6-foot box culvert at the channel of a UNT to Adams Run (WWF) on T-541, a 54-inch diameter pipe culvert at the channel of the same UNT on SR 4028, to relocate a total of approximately 625-foot long stream channel of the same UNT, and to fill in 0.22 acre of wetland, and associated improvements to

widen and improved the safety condition of SR 0056, Section 012 located in the Village of Fishertown (Bedford, PA Quadrangle N: 21.73 inches; W: 10.8 inches, and N: 22.25 inches; W: 11.2 inches) in East Saint Clair Township, Bedford County. The wetland impact will be mitigated at the Huntingdon Wetland Replacement Area of 0.22 acre.

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

E08-431. Robert Ehoff, 4319 Cheltenham, Philadelphia, PA 19124. Bridge Construction, in Asylum Township, **Bradford County**, ACOE Baltimore District (Wyalusing, PA Quadrangle N: 17.95 inches; W: 14.39 inches).

To construct and maintain a 25-foot long by 12-foot wide steel I-beam bridge with wood plank deck and reinforced concrete headwalls and wingwalls in a private driveway over Durrell Creek off Brook Street about 1,500 feet northeast of the intersection of Brook Street with SR 187. The project will not impact wetlands while impacting about 35 feet of waterway and less than 0.1 acre of earth disturbance. Durrell Creek is a WWF stream.

E14-482. Penn Township, P. O. Box 125, Coburn, PA 16832. T-510 Bridge, in Penn Township, **Centre County**, ACOE Baltimore District (Coburn, PA Quadrangle N: 18.6 inches; W: 17.0 inches).

To: 1) remove the existing bridge; 2) construct and maintain a single span prestressed concrete adjacent box beam bridge with a clear span of 100.40 feet and minimum underclearance of 3.6 feet on a 70° skew with a 825.61 square foot waterway opening; and 3) construct and temporarily maintain two temporary stream diversions around the abutments in Penns Creek, located 30 feet south of the intersection of T-510 and SR 2012. The project proposes to temporarily impact 100 linear feet and permanently impact 80 linear feet of Penns Creek, which is classified as a CWF.

E19-249. Columbia County, Columbia County Commissioners, P. O. Box 380, Bloomsburg, PA 17815. Bridge Rehabilitation, in Greenwood Township, **Columbia County**, ACOE Baltimore District (Bloomsburg, PA Quadrangle N: 22.1 inches; W: 7.79 inches).

To rehabilitate and maintain the existing single span timber queen post truss covered bridge which has a clear

span of 38.7 feet, a curb-to-curb width of 13.25 feet and is on a 90° skew to the roadway baseline. Rehabilitation will include construction of new reinforced concrete abutments and wingwalls that replicate the appearance of the original units. Deteriorated timber members will be replaced. R-6 rock will be placed around the substructure unites for scour protection. Sediment deposits are to be removed from a 2,000 square foot area immediately upstream of the bridge for a distance of about 60 feet. A two-phase temporary dike system will be constructed of shoring and precast barrier, polyethylene liner and sandbags to divert upstream water around construction activities. The project is located on T-572 about 0.25 mile off Utt Road. The project will not impact wetlands while impacting about 150 feet of waterway. Mud Run is a trout stocked fisheries stream.

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

E02-1517. Turnpike Commission, P. O. Box 67676, Harrisburg, PA 17106-7676. To construct a culvert in Richland Township, **Allegheny County**, Pittsburgh ACOE District. (Valencia, PA Quadrangle N: 0.9 inch; W: 15.3 inches and Latitude: 40° 37' 48"—Longitude: 79° 59' 09"). The applicant proposes to construct and maintain a 110 LF stream relocation, construct and maintain a 97 LF, 18 inch diameter culvert and fill and maintain 0.34 acre of PEM/PSS/PFO wetland in a UNT to Montour Run (TSF) for the purpose of installing an access road to the Turnpike (I-76). This project located approximately 800 feet northwest of the Gibsonia Road (SR 910) overpass of the Turnpike.

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

E10-413. Park Place Associates, LP, 215 Executive Drive, Suite 300, Cranberry Township, PA 16066. Park Place Development Phase II, in Cranberry Township, **Butler County**, ACOE Pittsburgh District (Baden, PA Quadrangle N: 40° 42' 13.6"; W: 80° 08' 8.95").

To temporarily impact 0.245 acre of PEM/PSS wetlands to facilitate the construction of a sanitary sewage collection system, which is part of a residential development located along the north side of Rochester Road approximately 1.6 miles west of SR 0019.

STORAGE TANKS

SITE-SPECIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permit application has been received by the Department of Environmental Protection (Department) and is currently under review. Persons wishing to comment on the proposed permit are invited to submit a statement to the Bureau of Waste Management, Division of Storage Tanks, P. O. Box 8763, Harrisburg, PA 17105-8763, within 30 days from the date of this publication. Comments received within this 30-day period will be considered in the formulation of the final determinations regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of the comment and the relevant facts upon which it based.

The following applications have been received for Storage Tank Site-Specific Installation Permits under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504 and 6021.1101—6061.1102) and under 25 Pa. Code Chapter 245, Subchapter C.

<i>SSIP Application No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Tank Type</i>	<i>Tank Capacity</i>
05017	John Parsons Wakefern Food Corporation 33 Northfield Avenue Edison, NJ 08818	Lehigh	Upper Macungie Township	two ASTs storing diesel fuel	37,000 gallons total

ACTIONS

**THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT
FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE
ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY
MANAGEMENT (WQM) PERMITS**

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

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

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

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

I. NPDES Renewal Permit Actions

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N?</i>
PAS602202 Stormwater	Denco Tire Recycling, Inc. 333 Industrial Boulevard Stockertown, PA 18083-0100	Stockertown Borough Northampton County	UNT to Bushkill Creek 01F	Yes

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0001872	Saint Gobain Containers One Glass Place Port Allegany, PA 16743-0069	Port Allegany Borough McKean County	Allegheny River 16-C	Y

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

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

NPDES Permit No. PA0081469, Sewage, **Loysburg Gap Mobile Home Park & Campgrounds, Ross and Mildred Smith**, P. O. Box 74, Loysburg, PA 16659-0074. This proposed facility is located in South Woodbury Township, **Bedford County**.

Description of Proposed Action/Activity: Permit Cancellation, connected to public sewer.

NPDES Permit No. PA0026743, Sewage, **City of Lancaster**, 120 North Duke Street, P. O. Box 1599, Lancaster, PA 17608. This proposed facility is located in Lancaster Township, **Lancaster County**.

Description of Proposed Action/Activity: Authorization to discharge to Conestoga River in Watershed 7-J.

NPDES Permit No. PA0083330, Sewage, **Wayne Township Board of Supervisors**, 3055 Ferguson Valley Road, McVeytown, PA 17051. This proposed facility is located in Wayne Township, **Mifflin County**.

Description of Proposed Action/Activity: Authorization to discharge to a UNT of the Juniata River in Watershed 12-A.

NPDES Permit No. PA0083160, Sewage, **Peifer and Gross, Inc., Anchor Mobile Estates**, P. O. Box 506, Elizabethtown, PA 17022. This proposed facility is located in Butler Township, **Adams County**.

Description of Proposed Action/Activity: Authorization to discharge to the Willoughby Run in Watershed 13-D.

NPDES Permit No. PA0247685, CAFO, **Rohrer Dairy Farm, LLC**, 124 Charlestown Road, Washington Borough, PA 17582. This proposed facility is located in Manor Township, **Lancaster County**.

Description of Size and Scope of Proposed Operation/Activity: Authorization to operate a 2002.9-AEU dairy and swine CAFO in Watershed 7-G.

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

PA0228923, Sewerage SIC 4952, **Pine Cradle Lake Campground**, P. O. Box 113, Rome, PA 18837. This proposed facility will be located in Rome Township, **Bradford County**.

Description of Proposed Activity: The applicant was issued a NPDES permit authorizing the discharge from a proposed 5,000-gallon per day sewage treatment plant that will serve the existing 100 campsites, 65 proposed expansion sites and the owner's existing residence. This system will be the replacement for a failed onlot system.

The receiving stream, a UNT to Parks Creek, is in the State Water Plan watershed 4D and is classified for CWF. The nearest downstream public water supply intake is the Danville Municipal Water Authority at Danville, PA located on the Susquehanna River, 138 river miles below the discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.005 mgd:

<i>Parameter</i>	<i>Concentration (mg/L)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum</i>
CBOD ₅	10		20
TSS	20		40
pH	within the range of 6.0 to 9.0		
Fecal Coliforms	200 col/100 ml as a geometric mean		

In addition to the effluent limits, the permit contains the following major special condition: required dechlorination.

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

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

WQM Permit No. 5805401, Sewerage, **Village of Four Seasons, Inc.**, R. R. 2, Box 3350, Uniondale, PA 18470. This proposed facility is located in Herrick Township, **Susquehanna County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit.

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

WQM Permit No. 0805401, Sewerage SIC 4952, **Pine Cradle Lake Campground**, P. O. Box 113, Rome, PA 18837. This proposed facility will be located in Rome Township, **Bradford County**.

Description of Proposed Action/Activity: A permit was issued, authorizing the construction and operation of a 5,000-gallon per day sewage treatment plant that will serve the existing 100 campsites, 65 proposed expansion sites and the owner's existing residence. This system will be the replacement for a failed onlot system.

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

WQM Permit No. WQG018426, Sewerage, **James Cosilla**, 7808 East Road, Harborcreek, PA 16421. This proposed facility is located in Harborcreek Township, **Erie County**.

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

WQM Permit No. WQG018423, Sewerage, **Karen L. Orchard**, 107 Tindall Road, Mars, PA 16046. This proposed facility is located in Adams Township, **Butler County**.

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

IV. NPDES Stormwater Discharges from MS4 Permit Actions

V. NPDES Waiver Stormwater Discharges from MS4 Actions

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
WAIVER	Hallstead Borough P. O. Box 366 Hallstead, PA 18822	Susquehanna	Hallstead Borough	Susquehanna River WWF

VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI026405006	Russell Palmer Rusty Palmer, Inc. 1103 Texas Palmyra Highway Honesdale, PA 18431	Wayne	Texas Township	Lackawaxen River HQ-TSF, MF and Indian Orchard Brook HQ-CWF, MF
PAI024504018	Jesus the Christ Church, Inc. R. R. 2, Box 2060A Stroudsburg, PA 18360	Monroe	Stroud Township	UNT to Pocono Creek HQ-CWF
PAI024504031	Gearhart Properties, LLC 182 Blue Mtn. Lake East Stroudsburg, PA 18301	Monroe	Tobyhanna Township	Tobyhanna Creek HQ-CWF
PAI024503024	James J. Fondi 5105 High Terrace Rd. Stroudsburg, PA 18360	Monroe	Coolbaugh Township	Devils Hole Creek HQ-CWF
PAS10S112	Arsha Vidya Pitham Old Highway 115 P. O. Box 1059 Saylorsburg, PA 18353-1059	Monroe	Ross Township	McMichaels and Aquashicola Creeks HQ-CWF
PAI024504032	Dino and Anna Catozzo 164 Konner Ave. Pine Brook, NJ 07058	Monroe	Barrett Township Monroe County and Greene Township Pike County	Leavitt Branch HQ-CWF
PAI025405002	Locust Ridge Wind Farm, LLC 90 Weston Place Shenandoah, PA 17976	Schuylkill	East Union Township and Mahanoy Township	Davis Run and UNT to Catawissa Creek HQ-CWF
PAI025404004	Yudacot Limited Partnership P. O. Box 279 St. Clair, PA 17970	Schuylkill	Ryan Township	UNT to Cordorus Creek HQ-CWF
PAI023905020	Pulte Homes of PA, LP 1100 Northbrook Dr. Suite 200 Trevose, PA 19053	Lehigh	Upper Macungie Township	Little Lehigh Creek HQ-CWF
PAI023905022	Pulte Homes of PA, LP 1100 Northbrook Dr. Suite 200 Trevose, PA 19053	Lehigh	Upper Macungie and Lower Macungie Townships	Little Lehigh Creek HQ-CWF

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI021305002	Turnpike Commission P. O. Box 67676 Harrisburg, PA 17106-7676	Carbon	Penn Forest Township	Wild Creek EV
<i>Southcentral Region: Water Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.</i>				
PAI030505001	The Bedford Springs Co., LLC 5950 Brookshire Lane Suite 990 Dallas, TX 75225	Bedford	Bedford Township	Shobers Run HQ-CWF
PAI032105008	South Middleton School District Four Forge Road Boiling Springs, PA 17007	Cumberland County	South Middleton Township	Yellow Breeches Creek HQ-CWF
<i>Southwest Region: Watershed Management Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.</i>				
<i>Beaver County Conservation District: 156 Cowpath Road, Aliquippa, PA 15001 (724) 378-1701.</i>				
PAI050405001	Gary Bowser Bowser Hyundai, LLC Route 51 and Lewis Run Road P. O. Box 10019 Pleasant Hills, PA 15236	Beaver	Chippewa Township	North Fork of Little Beaver Creek (HQ-CWF)
<i>Northwest Region: Water Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.</i>				
PAI063705003	Vortex Recycling 526 S. Jefferson Street New Castle, PA 16101	Lawrence	New Castle City	Shenango River WWF

VII. Approvals to Use NPDES and/or Other General Permits

The EPA Region III Administrator has waived the right to review or object to this permit action under the waiver provision 40 CFR 123.23(d).

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Single Residence Sewage Treatment 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

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*General Permit Type—PAG-02**Facility Location:*

<i>Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Northampton Borough Northampton County	PAG2004805033	Joseph Keglovits Keglovits Enterprises, Inc. 1492 Main St. North Catasauqua, PA 18032	Dry Run Creek CWF	Northampton Co. Cons. Dist. (610) 746-1971
Jenkins Township Luzerne County	PAG2004005036	Mericle Armstrong Road, LLC Robert K. Mericle 100 Baltimore Dr. East Mtn. Corporate Wilkes-Barre, PA 18702	UNT to Gardner Creek CWF	Luzerne Co. Cons. Dist. (570) 674-7991
Littlestown Borough Adams County	PAG2000105017	Manuel Laverov Sovereign Assets, LLC 13278 Styler Ct. Highland, MD 20777	Alloway Creek WWF	Adams County Conservation District 670 Old Harrisburg Rd. Suite 201 Gettysburg, PA 17325 (717) 334-0636
Peters Township Franklin County	PAG2002805073	Ami Plessinger Veridian Properties 9311 Huber Road Saint Thomas, PA 17252	UNT Conococheague Creek TSF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Peters Township Franklin County	PAR10M02291	Richard and Doris Reeder 3742 Mercersburg Road Mercersburg, PA 17236	West Branch Conococheague Creek TSF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Southampton Township Franklin County	PAG2002805074	William Wolfe Shippensburg Borough Composting Facility 111 N. Front Street Shippensburg, PA 17257	Middle Spring Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Guilford Township Franklin County	PAG2002805071	Ivan Horst Cedar Valley Mennonite Church 2732 Sollenberger Road Chambersburg, PA 17201	Conococheague Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Swatara Township Dauphin County	PAG2002205053	FJ Dreams 6220 Carlisle Pike Mechanicsburg, PA 17050	Beaver Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Rd. Dauphin, PA 17018 (717) 921-8100
West Pennsboro Cumberland County	PAG2002105029	Pennsboro Crossing Harry Fox, Jr. 600 Cold Springs Rd. Dillsburg, PA 17019	Big Spring Creek CWF Mount Rock Spring Creek WWF	Cumberland County Conservation District 43 Brookwood Avenue Carlisle, PA 17013 (717) 240-7812
Upper Allen Cumberland County	PAG2002105033	Kensington Place, Phase I Rhodes Development Group Mike Lau P. O. Box 622 Lemoyne, PA 17043	Cedar Run CWF	Cumberland County Conservation District 43 Brookwood Avenue Carlisle, PA 17013 (717) 240-7812

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Hanover Borough York County	PAG2006705058	Stonecroft Paul Brukentine Burkentine & Sons 1050 Baltimore Street Hanover, PA 17331	UNT SB Conewago Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Newberry Township York County	PAG2006705080	Lowell R. Resser Reeser Estates, Inc. 905 Pleasant Grove Rd. York Haven, PA 17370	Susquehanna WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Manchester Township York County	PAG2006705059	S & S Partners Scott Dobbeck 703 N. Franklin St. York, PA 17403	Willis Run Codorus Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Franklin Township York County	PAG20067050001	Terry Reck 2902 Westly Drive Dover, PA 17315	Tributary to Bermudian Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
York Township York County	PAG2006705061	Paddock at Equine Meadows Madison Heights, LP Stanley Watroba 3360 Cape Horn Road Red Lion, PA 17356	Mill Creek WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
East Manchester Township York County	PAG2006704087	Rentzel Property Snyder Development 119 West Lancaster Ave. Shillington, PA 19607	UNT to W. B. Conewago Creek and/or Musser Run WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
North Codorus Township York County	PAG2006705079	Kingdom Hall Lake Pointe Assoc. Bruce Ruhlman 65 Musselman Road Hanover, PA 17331	UNT to Lehman Pond WWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Shrewsbury Township York County	PAG2006705086	Russett Farm U. S. Home 10211 Wincopin Circle Suite 300 Columbia, MD 21044	UNT to Deer Creek CWF	York County Conservation District 118 Pleasant Acres Road York, PA 17402 (717) 840-7430
Fermanagh Township Juniata County	PAG2003405009	Leidy Partners 4 Park Side Court Mifflintown, PA 17059	Schweyer Run CWF	Juniata County Conservation District R. D. 5, Box 35 Stoney Creek Dr. Mifflintown, PA 17059 (717) 436-8953
Monroe Township Juniata County	PAG2003405010	Niemonds Independent Church P. O. Box 187 Richfield, PA 17086	West Branch Mahantango Creek	Juniata County Conservation District R. D. 5, Box 35 Stoney Creek Dr. Mifflintown, PA 17059 (717) 436-8953
Amity Township Berks County	PAG2000605049	Lee Mauger 475 Red Corner Road Douglassville, PA 19518	Leaf Creek WWF	Berks County Conservation District 1238 County Welfare Road P. O. Box 520 Leesport, PA 19533-0520 (610) 372-4657, Ext. 201

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<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Caernarvon Township Berks County	PAG2000605087	Raymond Shuey National Penn Bank P. O. Box 547 Boyertown, PA 19512	East Branch of Conestoga River WWF	Berks County Conservation District 1238 County Welfare Road P. O. Box 520 Leesport, PA 19533-0520 (610) 372-4657, Ext. 201
Caernarvon Township Berks County	PAG2000605067	Mike Kimble The Hankin Group 707 Eagleview Blvd. Exton, PA 19341	Conestoga River WWF	Berks County Conservation District 1238 County Welfare Road P. O. Box 520 Leesport, PA 19533-0520 (610) 372-4657, Ext. 201
Spring Township Berks County	PAG2000605091	William Weber 100 Gelsinger Road Sinking Spring, PA 19608	UNT to Cacoosing Creek WWF	Berks County Conservation District 1238 County Welfare Road P. O. Box 520 Leesport, PA 19533-0520 (610) 372-4657, Ext. 201
South Heidelberg Township Berks County	PAG2000605093	Robert Bender Heritage Building Group 2500 York Road Jamison, PA 18929	Manor Creek Tulpehocken Creek TSF	Berks County Conservation District 1238 County Welfare Road P. O. Box 520 Leesport, PA 19533-0520 (610) 372-4657, Ext. 201
Lycoming County Montoursville Borough	PAG2004105011	Thomas Hart Williamsport Regional Airport 700 Airport Rd. Suite 204 Montoursville, PA 17754	W. Br. Susquehanna River WWF	Lycoming County Conservation District (570) 433-3003
Lycoming County Montoursville Borough	PAG2004105014	Department of Transportation P. O. Box 218 Montoursville, PA 17754	Loyalsock Creek WWF Tules Run WWF Turkey Run WWF	Lycoming County Conservation District (570) 433-3003
Lycoming County Hughesville Borough	PAG2004105015	David Price East Lycoming School District 349 Cemetery St. Hughesville, PA 17737	UNT Muncy Creek CWF	Lycoming County Conservation District (570) 433-3003
Union County Kelly Township	PAG2006005009	Daniel Gasteiger AYSO Soccer 69 Ridge Rd. Lewisburg, PA 17837	Buffalo Creek TSF	Union County Conservation District (570) 523-9782
Union County Kelly Township	PAG26005010	Gary Baylor Brookpark Station 320 Harrison Ave. Lewisburg, PA 17837	Limestone Run WWF	Union County Conservation District (570) 523-9782
Fayette County Redstone Township	PAG2002605023	Frank J. Kempf, Jr. Turnpike Commission P. O. Box 67676 Harrisburg, PA 17106-7676	Dunlap Creek (TSF) Redstone Creek (WWF)	Fayette County CD (724) 438-4497
Washington County Centerville and West Brownsville Boroughs	PAG20063050041	Center-West Joint Sewage Authority P. O. Box 542 Brownsville, PA 15417	Monongahela River (WWF)	Washington County CD (724) 228-6774

*Facility Location:
Municipality &
County*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Washington County Cecil Township	PAG2006305038	Horizon Properties Michael Swisher 375 Southpointe Blvd. Suite 400 Canonsburg, PA 15317	Chartiers Creek (WWF)	Washington County CD (724) 228-6774
Adams and Cranberry Townships Butler County	PAG2001003019	Carriage Manor Phases 2 and 3 Rocco Viola 8001 Rowan Road Cranberry Township, PA 16066	UNT to Kaufman Run WWF	Butler Conservation District (724) 284-5270
Cranberry Township Butler County	PAG2001004027	TND Associates 106 Point Drive Valencia, PA 16059	Brush Creek WWF	Butler Conservation District (724) 284-5270
Penn, Middlesex and Jefferson Townships Butler County	PAG2001004031	Saxonburg Area Authority Wastewater Treatment Regionalization Project Saxonburg Area Authority 420 West Main Street Saxonburg, PA 16056	South Branch Glade Run Glade Run Connoquenessing Creek WWF; Thorn Creek CWF	Butler Conservation District (724) 284-5270
Sugarcreek Borough Venango County	PAG2006105011	Sugarcreek Primary Intermediate School Valley Grove School District 429 Wiley Avenue Franklin, PA 16323	Sugarcreek CWF	Venango Conservation District (814) 676-2832

*General Permit Type—PAG-3**Facility Location &
Municipality*

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
York County Warrington Township	PAR603521	Perry A. Witmer Witmer's Auto Salvage 340 Fickes Road Dillsburg, PA 17019	Beaver Creek WWF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Mifflin County Granville Township	PAR223515	CMH Manufacturing, Inc. Marlette Homes, Inc. P. O. Box 947 Lewistown, PA 17044	Juniata River WWF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Pulaski Township Lawrence County	PAR208351	Young Galvanizing P. O. Box 334 Route 551 Pulaski, PA 16143	Shenango River	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-4**Facility Location:
Municipality &
County*

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Harborcreek Township Erie County	PAG049215	James Cosilla 7808 East Road Harborcreek, PA 16421	Lake Erie	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Adams Township Butler County	PAG049212	Karen L. Orchard 107 Tindall Road Mars, PA 16046	Glade Run	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

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

Southeast Region: Water Supply Management Program Manager, 2 East Main Street, Norristown, PA 19401.

Permit No. 1505502, Public Water Supply.

Applicant **Spring Run Estates**
628 Telegraph Road
Coatesville, PA 19320

Township West Caln

County **Chester**

Type of Facility PWS

Consulting Engineer Applied Environmental Management, Inc.
16 Chester County Commons
Malvern, PA 19355

Permit to Construct Issued October 18, 2005

Permit No. 4605504, Public Water Supply.

Applicant **Cabot Corporation**
P. O. Box 1608
Boyertown, PA 19512

Township Douglass

County **Montgomery**

Type of Facility PWS

Consulting Engineer Spotts, Stevens & McCoy, Inc.
1047 N. Park Road
Reading, PA 19610

Permit to Construct Issued October 19, 2005

Permit No. 0905505, Public Water Supply.

Applicant **Buckingham Township**
Buckingham Water Department
P. O. Box 413
Buckingham, PA 18912

Township Buckingham

County **Bucks**

Type of Facility PWS

Consulting Engineer Castle Valley Consultants, Inc.
10 South Clinton Street
Suite 302
Doylestown, PA 18901

Permit to Construct Issued October 19, 2005

Operations Permit issued to **Northampton Bucks County Municipal Authority**, (PWS ID 1090089) Northampton Township, **Bucks County** Issued on October 19, 2005, for the operation of facilities approved under Construction Permit No. 0903504.

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

Permit No. 1805502—Construction, Public Water Supply.

Applicant **Eastville Community Water Association**

Township or Borough Greene Township

County **Clinton**

Responsible Official Ken Geisewite, President
Eastville Community Water Association
2290 East Winter Road
Loganton, PA 17747

Type of Facility Public Water Supply—Construction

Consulting Engineer David Horst, P. E.
Alfred Benesch & Company
P. O. Box 1090
Pottsville, PA 17801

Permit Issued Date 10/27/05

Description of Action Construction of Well No. 1 as a new source for their system.

Permit No. Minor Amendment—Construction, Public Water Supply.

Applicant **PA American Water Company**

Township or Borough Bradford Township

County **Clearfield**

Responsible Official Nick Rowe
PA American Water Company
800 West Hersheypark Drive
Hershey, PA 17033

Type of Facility Public Water Supply—Construction

Consulting Engineer Jasun Stanton
PA American Water Company
300 Galley Road
McMurray, PA 15317

Permit Issued Date 10/27/05

Description of Action Replacement of the existing
Emigh Run Booster Station.

Permit No. 1991501-T1—Transfer, Public Water Supply.

Applicant **Stony Brook Circle Mobile Home Park**

Township or Borough Orange Township

County **Columbia**

Responsible Official Frank T. Perano
Owner/Manager
Stony Brook Management, LLC
P. O. Box 677
Morgantown, PA 19543

Type of Facility Public Water Supply—Operation

Consulting Engineer N/A

Permit Issued Date 10/27/05

Description of Action Operation of the public water supply system at Stony Brook Circle Mobile Home Park.

Permit No. MA-T1—Transfer, Public Water Supply.

Applicant **Stony Brook Circle Mobile Home Park**

Township or Borough Orange Township

County **Columbia**

Responsible Official Frank T. Perano
Owner/Manager
Stony Brook Management, LLC
P. O. Box 677
Morgantown, PA 19543

Type of Facility Public Water Supply—Operation

Consulting Engineer N/A

Permit Issued Date 10/27/05

Description of Action Operation of the public water supply system at Stony Brook Circle Mobile Home Park.

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

Permit No. 6505501, Public Water Supply.

Applicant **Torrance State Hospital**
Route 217
Torrance, PA 15779

Borough or Township Derry Township

County **Westmoreland**

Type of Facility Water treatment plant

Consulting Engineer Herbert, Rowland & Grubic, Inc.
280 Executive Drive
Cranberry Township, PA 16066

Permit to Construct Issued October 19, 2005

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

Operations Permit issued to **Sykesville Area Sewer and Water Authority**, 21 East Main Street, Sykesville, PA 15865, PWS ID 6330013, Sykesville Borough, **Jefferson County**, on October 28, 2005, for the operation of the existing 25,000 gallon water storage tank upon completion of repainting tank interior, as approved under Construction Permit No. 8742-W-T1-MA1.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan approvals granted under section 5 the Pennsylvania Sewage Facilities Act (35 P. S. § 750.5)

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

Plan Location:

Borough or Township	Borough or Township Address	County
Burnside Borough	Burnside Borough Council c/o Twila Sunderlin Secretary General Delivery Burnside, PA 15721	Clearfield

Plan Description: The approved plan provides for a sewage collection and conveyance system consisting of low-pressure sewers with approximately 30 grinder pumps serving the northern and southern portions of the Borough. The low-pressure sewer will convey sewage across the river from the northern portion of the Borough, into a gravity system, while the southern portion of the Borough will be conveyed directly to the proposed sewage treatment plant. The center portion of the Borough, between the river crossings, will be served by a gravity collection system and collected wastewater will be conveyed to a pump station located near the intersection of East First and Pine Streets. This pump station will convey the sewage south, along the eastern edge of town, and across the river to a proposed 40,000 gallon per day extended aeration sewage treatment plant. This sewage treatment plant will discharge treated effluent to the West Branch Susquehanna River. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following 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 nonresiden-

tial 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:

Northeast Regional Field Office, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

Honeywell Pottsville Plant, Norwegian Township, **Schuylkill County**. Dayne Crowley, P. G., MACTEC Engineering & Consulting, Inc., Carnegie Office Park, Building 4, 700 North Bell Avenue, Suite 200 Pittsburgh, PA 15106 has submitted a combined Remedial Investigation Report and Final Report (on behalf Judd Weiss, 98 Westwood Road, Pottsville, PA 17901-1834 and Honeywell Inc., 101 Columbia Road, Morristown, NJ 07962-1139) concerning the remediation of soils and/or groundwater found or suspected to have been impacted by acetone as the result of a release from piping located outside of an AST containment area. The reports were submitted in partial fulfillment of the Site-Specific Standard.

River Shores, West Pittston Borough, **Luzerne County**. Richard Johnson, P. G., RT Environmental Services, Inc. 215 West Church Road, King of Prussia, PA 19406-3207, has submitted a combined Remedial Investigation Report and Cleanup Plan (on behalf of his client, Frank Delaney, Susquehanna River Shores LLC, 918 Exeter Avenue, Exeter, PA 18643) concerning the characterization and remediation of soils found or suspected to have been impacted by inorganics (arsenic and lead) and PCBs. The reports were submitted in partial fulfillment of the Site-Specific Standard.

Rutz Residence, City of Allentown, **Lehigh County**. Chris Kotch, P. G., Barry Isett & Associates, Inc., P. O. Box 147, Trexlertown, PA 18087 has submitted a Final Report (on behalf of Marjorie Rutz, Van Buren Street, Allentown, PA 18109) concerning the remediation of soil found or suspected to have been impacted by the accidental release of No. 2 home heating oil from an above ground storage tank on the property. The report was submitted to document attainment of the residential Statewide Health Standard. A Notice of Intent to Remediate was simultaneously submitted.

Hayes Property (State Route 29), Bridgewater Township, **Susquehanna County**. Kevin Van Kuren,

P. G., Hydrocon Services, Inc., 16 East Minor Street, Emmaus, PA 18049 16801 has submitted a Final Report (on behalf of Roger Hayes, SR 29, South Montrose, PA 18843) concerning the remediation of soil found or suspected to have been impacted by the release of leaded and/or unleaded gasoline from a former 500-gallon underground storage tank on the property. The report was submitted to document attainment of the residential Statewide health standard. A Notice of Intent to Remediate was simultaneously submitted.

A & E Products Group, Ringtown Borough, **Schuylkill County**. Dennis Libenson, Project Geologist, Earth Tech, Inc., Four Neshaminy Interplex, Suite 300, Trevoise, PA 19030 has submitted a Final Report (on behalf of his client, Charles Twamugabo, Tyco Plastics and Adhesives, 104 Carnegie Center Drive, Suite 301, Princeton, NJ 08540 concerning the remediation of soils found or suspected to be contaminated with PCE and benzo(a)pyrene. The report was submitted to document attainment of the Statewide Health Standard.

UGI Utilities, Inc.—Hazelton Service Center, City of Hazelton, Luzerne County. J. C. Rondeau, Division Engineer—Environmental Compliance, UGI Utilities, Inc., 100 Kachel Boulevard, Suite 400, P. O. Box 12677, Reading, PA 19612-2677 has submitted a Final Report concerning the characterization of soils and groundwater found or suspected to have been contaminated by petroleum products, polycyclic aromatic hydrocarbons and other potential constituents related to the site's historic use as a manufactured gas plant. The report was submitted in partial fulfillment of the Site-Specific Standard.

Former Lehigh New England Railroad Property, Wind Gap Borough and Plainfield Township, **Northampton County**. Jeffrey T. Bauer, P. G., Whitestone Associates, New Britain Corporate Center, 1600 Manor Drive, Suite 220, Chalfont, PA 18914 has submitted a combined Remedial Investigation Report and Cleanup Plan (on behalf of various clients, remediators, and property owners, including Nolan Perin, c/o NAPER Development Corp., Inc.; Jerrold Bermingham, National Resources Associates, LP; David Cox, WalMart Stores, Inc.; Brendan Sheehan and Scott Perin, Grand Central Sanitary Landfill, Inc.; and Bill and Caroline Hicks) concerning the characterization and proposed remediation of soils found or suspected to have been contaminated with metals and semivolatle organic contamination as the result of historic industrial operations. The reports were submitted in partial fulfillment of the Site-Specific Standard.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

ITT Engineered Process Solutions Group, Borough of Columbia, **Lancaster County**. ENSR International, 2005 Cabot Boulevard West, Suite 100, Langhorne, PA 19047, on behalf of ITT Industries, Ten Mountainview Road, Upper Saddle River, NJ 07458, submitted a combined Remedial Investigation, Risk Assessment and Final Report concerning remediation of site soils and groundwater contaminated with gasoline and No. 2 fuel oil. The report is intended to document remediation of the site to the Statewide Health and Site-Specific Standards.

Capital City Airport, Fairview Township, **York County**. Susquehanna Area Regional Airport Authority, 513 Airport Drive, Middletown, PA 17057, on behalf of Capital City Airport, 106 Airport Road, New Cumberland, PA 17070 submitted a Final Report concerning remediation of site soils contaminated with No. 2 fuel oil, used

motor oil, other organics and site groundwater contaminated with aviation gasoline, diesel fuel, No. 2 fuel oil, jet fuel, MTBE, PAHs, VOCs, SVOCs and unleaded gasoline. The report is intended to document remediation of the site to the nonresidential Statewide Health Standard.

Millardsville Crop Center, Jackson Township, **Lebanon County**. Environmental Resources Management, Inc. 350 Eagleview Boulevard, on behalf of GROWMARK FS, Inc., 1701 Towanda Avenue, Bloomington, IL 61702, submitted a Remedial Investigation concerning remediation of site groundwater contaminated with nitrate. The report is intended to document remediation of the site to the Site Specific Standard.

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

Losey Farm, Lawrenceville, PA 16929, Lawrence Township, **Tioga County**, Skelly & Loy, 2601 N. Front Street, Harrisburg, PA 17110. Consultant, has submitted a Final Report concerning soil contaminated with leaded and diesel fuel. This Final Report is intended to demonstrate attainment of the Statewide Health Standard.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

LTV South Side Parcel B2a, City of Pittsburgh, **Allegheny County**. Martin C. Knuth, Civil & Environmental Consultants, Inc., 333 Baldwin Road, Pittsburgh, PA 15205 (on behalf of 2600 Block B2 Associates, LP, 400 Penn Center Blvd., Suite 211, Pittsburgh, PA 15235) has submitted a Final Report concerning remediation of site soil contaminated with PCBs, Heavy Metals, PHCs and PAHs. The report is intended to document remediation of the site to meet the Site-Specific Standard.

LTV South Side Parcel D2b, City of Pittsburgh, **Allegheny County**. Martin C. Knuth, Civil & Environmental Consultants, Inc., 333 Baldwin Road, Pittsburgh, PA 15205 (on behalf of Soffer Quantum II Associates, LP, 400 Penn Center Blvd., Suite 211, Pittsburgh, PA 15235) has submitted a Final Report concerning remediation of site soil contaminated with PCBs, Heavy Metals, PHCs and PAHs. The report is intended to document remediation of the site to meet the Site-Specific Standard.

Westinghouse Facility (Former Power Circuit Breaker Facility) Lot 1B Soils Borough of Trafford, **Allegheny County**. Chad C. Coy, Cummings/Riter Consultants, Inc., 10 Duff Road, Suite 500, Pittsburgh, PA 15235 (on behalf of Leo Brausch, Viacom, Inc., 11 Stanwix Street, Pittsburgh, PA 15222) has submitted a Final Report concerning remediation of site soil contaminated with PCBs, lead, heavy metals, pesticides, solvents, BTEX, PAHs and cyanide. The report is intended to document remediation of the site to meet the Site Specific Standard.

BWXT Parks Township Site, Parks Township, **Armstrong County**. Bruce E. Fishman, Ph.D. DABT, RBR Consulting, Inc., 650 Shady Drive, Beaver Falls, PA 15010 (on behalf of James R. Barrett, BWXT Technologies, Inc., Engineering and Technical Services, MC106, Mount Athos Road, Lynchburg, VA 24504-5447) has submitted a Risk Assessment Report concerning remediation of site groundwater contaminated with chlorinated solvents. The report is intended to document remediation of the site to meet the Site-Specific Standard.

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

Wolf's Head, Sugarcreek Borough, **Venango County**. Stephen A. Zbur, CORE Environmental Services, 4068 Mount Royal Blvd., Suite 225 Gamma Bldg., Allison Park, PA 15101 on behalf of Harry Perrine, Pennzoil-Quaker State Co. d/b/a SOPUS, P. O. Box 99, 260 Elm Street, Oil City, PA 16301 has submitted a Remedial Investigation Report/Site Characterization Report concerning remediation of site soil and groundwater contaminated with dissolved metals and SVOCs. The report is intended to document remediation of the site to meet the Site-Specific Standards.

Universal Motor Sales of Butler, Butler Township, **Butler County**. Edward Dobson, Mountain Research, 825 25th Street, Altoona, PA 16601 on behalf of Jean Wiles, c/o Louis A. Naugle Esq., Reed Smith, LLP, 1024 Main Street Ext., SR 8, Butler, PA 16001 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with arsenic, ethylbenzene, 1,2,4-trimethylbenzene and 1,3,5-trimethylbenzene. The Final Report was approved by the Department on October 26, 2005.

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:

Northeast Region: Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.

River Shores, West Pittston Borough, **Luzerne County**. Richard Johnson, P. G., RT Environmental Services, Inc. 215 West Church Road, King of Prussia, PA 19406-3207, submitted a combined Remedial Investigation Report and Cleanup Plan (on behalf of his client, Frank Delaney, Susquehanna River Shores, LLC, 918 Exeter Avenue, Exeter, PA 18643) concerning the characterization and remediation of soils found or suspected to have been impacted by inorganics (arsenic and lead) and PCBs. The reports were submitted in partial fulfillment of the Site-Specific Standard and were approved on October 12, 2005.

Turkey Hill Store No. 223 (434 Main Street), Pen Argyl Borough, **Northampton County**. Kelly Lee Kinkaid, P. G., Liberty Environmental, Inc., 10 N. 5th Street, Suite 800, Reading, PA 19601 submitted a Final Report (on behalf of her client, Turkey Hill Minit Markets, c/o Bill Weisser, 257 Centerville Road, Lancaster, PA 17603) concerning the remediation of soil impacted by the release of No. 2 fuel oil constituents from a historic accidental release. The report demonstrated attainment of the Statewide Health Standard and was approved on October 18, 2005.

Former Holtzman Petroleum Company, Borough of East Stoudsburg, **Monroe County**. Letterle & Associates, Beta Building, Suite 203, 4084 Mt. Royal Boulevard, Allison Park, PA 15101 submitted a combined Remedial Investigation Report and Final Report (on behalf of their client, Richard Burroughs, Holtzman Petroleum Company Liquidating Trust, 2940 Woods Hollow Lane, Allentown, PA 18103) concerning the characterization and remediation of soils and groundwater found or suspected to have been impacted by the release of No. 2 fuel oil constituents from a former aboveground storage tank on the property. The reports demonstrated attainment of a combination of the Statewide Health and Site-Specific Standards and was approved on October 18, 2005.

A & E Products Group, Ringtown Borough, **Schuylkill County**. Dennis Libenson, Project Geologist, Earth Tech, Inc., Four Neshaminy Interplex, Suite 300, Trevoise, PA 19030 submitted a Final Report (on behalf of his client, Charles Twamugabo, Tyco Plastics and Adhesives, 104 Carnegie Center Drive, Suite 301, Princeton, NJ 08540) concerning the remediation of soils found or suspected to be contaminated with PCE and benzo(a)pyrene. The report demonstrated attainment of the Statewide Health Standard and was approved on October 19, 2005.

Southcentral Region: Environmental Cleanup Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

Brethren Village, Manheim Township, **Lancaster County**. GCI Environmental Services, 1250 East King Street, Lancaster, PA 17602, on behalf of Brethren Village, P. O. Box 5093, Lancaster, PA 17606-5093, submitted a Remedial Investigation and Final Report concerning the remediation of site soils and groundwater contaminated with No. 2 heating oil. The combined Remedial Investigation and Final Report demonstrated attainment of the Site-Specific Standard, and were approved by the Department of Environmental Protection on October 28, 2005.

Southwest Region: Environmental Cleanup Program Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Eastman Chemical Resins, Inc., (Formerly Hercules Inc.—Jefferson Plant), Jefferson Borough **Allegheny County**. William A. Baughman, Cummings/Riter Consultants, Inc., 339 Haymaker Road, Parkway Building Suite 201, Monroeville, PA 15146 on behalf of William C. Hendon, Eastman Company, State Highway 837, P. O. Box 567, West Elizabeth, PA 15088-0567, and Joseph A. Keller, Hercules Incorporated, Research Center, Building 8139/15, 500 Hercules Road, Wilmington, DE 19808 has submitted a Human Health and Ecological Risk Assessment concerning the remediation of site soil and groundwater contaminated with chlorinated solvents, inorganics, other organics, diesel fuel, leaded gasoline, unleaded gasoline, used motor oil and PAHs. The Human Health and Ecological Risk Assessment was disapproved by the Department of Environmental Protection on October 11, 2005.

OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

Closure Plan Approval issued under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and regulations to close a solid waste processing or disposal area or site.

Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745.

Permit ID No. 400136. Kiski Valley Water Pollution Control Authority, 1200 Pine Camp Road, Leechburg, PA 15656. Clean closure of the Authority's incinerator ash lagoon located in Allegheny Township, **Westmoreland County**. Closure Plan approved in the Regional Office on October 26, 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.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Mark Wejkszner, New Source Review Chief, (570) 826-2531.

40-302-152GP1: SVC Manufacturing, Inc. (750 Oak Hill Road, Mountaintop, PA 18707) on October 26, 2005, to construct and operate a No. 2 fuel oil/natural gas fired boiler at their facility in Wright Township, **Luzerne County**.

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

GP1-2-07-05003: Norfolk Southern Railway Co. (Room 101, General Office Building, 200 North Fourth Avenue, Altoona, PA 16601-6702) on October 25, 2005, for Small Gas and No. 2 Oil Fired Combustion Units under GP1 in Logan Township, **Blair 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.

15-0094A: Metallurgical Products Co. (810 Lincoln Avenue, West Chester, PA 19380) on October 28, 2005, to operate a new efficiency fiber bed filter in West Goshen Township, **Chester County**.

Northeast Region: Air Quality Program, 2 Public Square, Wilkes-Barre, PA 18711-0790, Mark Wejkszner, New Source Review Chief, (570) 826-2531.

45-313-013: Johnson Diversey, Inc. (880 Crowe Road, East Stroudsburg, PA 18301) on October 25, 2005, to construct a liquid packaging line in East Stroudsburg Borough, **Monroe County**.

66-315-035C: Procter and Gamble Paper Products, Co. (P. O. Box 32, Mehoopany, PA 18629) on October 24, 2005, to modify paper machines Nos. 7 and 8 (dryer replacements) on Route 87, Washington Township, **Wyoming County**.

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

06-05100D: Ontelaunee Operating Co., LLC (5115 Pottsville Pike, Reading, PA 19605-9729) on October 25, 2005, to transfer the Plan Approval at the electric generating plant controlled by SCR in Ontelaunee Township, **Berks County**.

36-05001C: Armstrong World Industries, Inc. (1507 River Road, Marietta, PA 17547) on October 28, 2005, to replace the PIF finish paint booth dry filter with a wet filter in their East Donegal Township, **Lancaster County**.

44-05002D: CNH America, LLC (P. O. Box 868, Belleville, PA 17004-0868) on October 26, 2005, to modify the annual VOC emission limits for the plant in Union Township, **Mifflin 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.

15-0010A: ISG Plate, LLC (139 Modena Road, Coatesville, PA 19320) on October 27, 2005, to operate a heat treating furnace in City of Coatesville, **Chester County**.

46-0037Q: Cabot Supermetals (P. O. Box 1608, County Line Road, Boyertown, PA 19512) on October 27, 2005, to operate a wet dust collector in Douglass Township, **Montgomery County**.

46-0108A: Highway Materials, Inc. (1750 Walton Road, Blue Bell, PA 19422) on October 28, 2005, to operate a cyclone and baghouse—aspalt in Marlborough 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.

48-322-005: Grand Central Sanitary Landfill, Inc. (1963 Penn Argyl Road, Penn Argyl, PA 18072) on October 18, 2005, to install an air cleaning device at the landfill in Plainfield Township, **Northampton 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.

04-00013A: Jewel Acquisition, LLC (100 River Road, Brackenridge, PA 15014) on October 27 2005, for Mel Shop Upgrad and New Steckel Mill at Midland Facility in Midland Borough, **Beaver County**. This is a Plan Approval extension.

04-00013B: Jewel Acquisition, LLC (100 River Road, Brackenridge, PA 15014) on October 27, 2005, for two pickling tanks and DRAP boiler at midland facility in Midland Borough, **Beaver County**. This is a Plan Approval extension.

Title V Operating Permits Issued 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.

23-00044: Sunoco Partners Marketing and Terminal, LP (1801 Market Street, 3-10 PC, Philadelphia, PA 19103) on October 27, 2005, for renewal of a Title V facility in Upper Chichester Township, **Delaware County**.

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

06-05100: Ontelaunee Power Operating Co., LLC (5115 Pottsville Pike, Reading, PA 19605-9729) on October 25, 2005, to transfer the operating permit for the electric generating plant in Ontelaunee Township, **Berks County**.

67-05052: New York Wire Co. (P. O. Box 1749, York, PA 17405-1749) on October 25, 2005, to operate their Weaving Facility in City of York, **York County**. This action 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.

04-00490: Dominion Transmission, Inc. (625 Liberty Avenue, Pittsburgh, PA 15222) on October 25, 2005, to renew the Title V operating permit at Beaver Station in North Sewickley Township, **Beaver County**. The facility is a compressor station primarily used for transmission of natural gas. Sources include four internal combustion engines, an auxiliary generator and a small boiler. This permit contains conditions that will allow the provisions of a new RACT permit to take precedence over the Title V conditions if a new RACT permit is incorporated into the State Implementation Plan. The facility is a major stationary source due to its potential to emit NOx, CO and VOC.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act (35 P.S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter F.

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

07-03049: AP Green Refractories, Inc. (R. R. 1, Box 588D, Claysburg, PA 16625) on October 27, 2005, to operate a refractory manufacturing facility in Greenfield Township, **Blair County**.

Southwest Region: Air Quality Program, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, Mark Wayner, Facilities Permitting Chief, (412) 442-4174.

65-00927: Hoover Stone Quarry, LLC (3497 Route 981, Saltsburg, PA 15681) on October 27, 2005, to operate various crushers, screens, conveyors, transfer points, truck loading and haul roads at their stone quarry in the Loyalhanna Township, **Westmoreland County**.

65-00280: Kalumetals, Inc. (P. O. Box 455, Latrobe, PA 15650) on October 28, 2005, to operate a scrap metals recovery and resale company in Derry Township, **Westmoreland County**.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-7584.

S05-006: Ryder Truck Rental, Inc. (9751 Blue Grass Road, Philadelphia, PA 19114) on September 30, 2005, to operate a truck renting and leasing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include a paint booth and a stage II vapor recovery system for an 8,000 gallon UST for gasoline.

V05-007: SunChemical (3301 Hunting Park Avenue, Philadelphia, PA 19132) on October 13, 2005, to operate 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.

S05-005: Pioneer Leathertouch, Inc. (2250 East Ontario Street, Philadelphia, PA 19134) on October 17, 2005, to operate a coated fabrics manufacturing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include one 150 Hp boiler, one Rotogravure printing press and one gluer.

S04-020: Philadelphia Gas Works—Passyunk Station (3100 Passyunk Avenue, Philadelphia, PA 19145) on October 13, 2005, to operate a liquefied natural gas storage and distribution facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include two heaters each <10 mmBtu/hr, two emergency generators at 1,250 Hp each, three 58.8 mmBtu/hr boilers with low NOx burners and a firewater pump.

N05-004: Innovation Printing and Communications (2051 Byberry Road, Philadelphia, PA 19116) on October 17, 2005, to operate a printing and lithography facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include three Sheetfed, Offset, Lithographic Printing Presses and a 405,000 Btu/hr natural gas fired boiler.

S05-004: Pearl Pressman Liberty (5th and Poplar Streets, Philadelphia, PA 19123) on October 26, 2005, to operate a printing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include five printing presses and two No. 2 oil fired boilers each 1.125 mmBtu/hr or less.

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 Jurdon Brown, Facilities Permitting Chief, (484) 250-5920.

46-00076: Greene, Tweed and Company, Inc. (2075 Detwiler Road, Kulpville, PA 19443) on October 27, 2005, to amend the manufacturing gaskets, packing and sealing devices facility located in Towamencin Township, **Montgomery County**, for an Administrative Amendment to State-only (Natural Minor) Operating Permit No. NMOP-46-00076. The Administrative Amendment incorporates a dust collector and cold parts cleaner not revealed during the review of the facility, and modifies the monitoring and recordkeeping requirements for the ethanol wash sink and ASTs. The following changes have been addressed in the amended State-only Operating Permit:

The following sources, control device and emission points, along with corresponding source throughputs, permit maps, conditions and emission restriction, have been removed (due to modification):

Source ID	Description
201	Rubber Compounding Area
204	Cold Parts Cleaners (3)
C01	Rubber Compounding Area Dust Collector
X03	Rubber Compounding Area Dust Collector Stack
Z03	Cold Parts Cleaners Fugitive Emissions

The following sources, control device and emission points, along with corresponding source throughputs, permit maps, conditions and emission restriction, have been added (as modifications):

Source ID	Description
201A	Rubber Compounding Area
204A	Cold Parts Cleaners (2)
C01A	Rubber Compounding Area Dust Collectors (3)
X03A	Rubber Compounding Area Dust Collectors Stacks (3)
Z03A	Cold Parts Cleaners Fugitive Emissions

A rubber compounding area dust collector not reflected in the originally issued permit has been added to the amended permit.

Pressure drop ranges have been added for all the rubber compounding area dust collectors.

The exhaust flow path from the respective equipment of the rubber compounding area to their associated dust collectors has been corrected.

Monitoring and recordkeeping requirements to track the number of batches run and the VOC and HAP emissions have been added for the ethanol sink.

The fuel/material for the ethanol ASTs has been changed from "ethanol solution" to "virgin/waste ethanol."

Monitoring and recordkeeping requirements for the ethanol ASTs have been changed as follows:

1. References to the term "ethanol solution" have been changed to "virgin ethanol or waste ethanol solution."
2. The requirement to track the composition of ethanol solution has been removed.
3. The requirement to track the amount of ethanol solution spent has been removed.
4. The requirement to track the amount of virgin ethanol or waste ethanol solution stored has been added.
5. The term "standing and working" has been added to the requirement to track VOC and HAP emissions to differentiate the emissions from those tracked for the ethanol sink.

Two cold parts cleaners, Model No. 16, manufactured by Safety-Kleen Systems, Inc. (formerly of Source ID 204), have been moved to Section G (Miscellaneous), of the permit.

A cold parts cleaner not reflected in the originally issued permit has been added to the amended permit.

Administrative Amendment of State-only Operating Permit No. SMOP-46-00076 is issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code § 127.450.

23-00014: Kimberly-Clark Pennsylvania, LLC (Front and Avenue of the States, Chester, PA 19013) on October 27, 2005, to amend the facility for the incorporation of plan approval PA-23-0014C into the Title V Permit. The facility is in the City of Chester, **Delaware County**. The permit was revised for the addition of a venturi scrubber to Paper Machine No. 17. The emission rate of particulate matter from the scrubber is limited to 0.66 pound per hour and 2.89 tons per year, and the particulate concentration of the exhaust is limited to 0.02 grain per dry standard cubic feet. The company is required to monitor and record recirculation flow rate of the scrubber liquid and pressure drop across the scrubber.

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

06-05100: Ontelaunee Power Operating Co., LLC (5115 Pottsville Pike, Reading, PA 19605-9729) On October 25, 2005, to modify their electric generating plant controlled by SCR in Ontelaunee Township, **Berks County**. This operating permit was administratively amended to reflect a change of ownership from Calpine Construction Finance Company, LLC. This is revision No. 1.

67-05082: David Edward, Ltd. (252 North Franklin Street, Red Lion, PA 17356-1503) on October 25, 2005, to modify this operating permit to accept a facility VOC emission limit of 25 tons during any consecutive 12-month period in Red Lion Borough, **York County**. This is a Synthetic Minor Operating Permit. This is revision No. 1.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-7584.

S04-006: Sweet Ovations LLC—formerly Degussa Flavors and Fruit Systems, LLC (1741 Tomlinson Road, Philadelphia, PA 19116) amended October 26, 2005, for the operation of a flavor manufacturing facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission sources include three boilers. The facility's air pollution control devices include one cyclone.

ty's air emission sources include three boilers. The facility's air pollution control devices include one cyclone.

Operating permits denied, terminated, suspended or revoked under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.431 and 127.461.

Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19401, Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.

23-0005: BASF Corp. (602 Copper Road, Freeport, TX 77541) on October 28, 2005, the Department revoked the operating permit in Folcroft Borough, **Delaware County** for operation of facility VOC sources, because the facility was shut down in 2001.

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

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931, (814) 472-1900.

32000105 and NPDES No. PA0235326. DJ & W Mining, Inc., P. O. Box 425, Indiana, PA 15701-0425, permit renewal for the continue operation and restoration of a bituminous surface-auger mine in Washington Township, **Indiana County**, affecting 121.0 acres. Receiving streams: UNTs to/and South Branch of Plum Creek classified for the following use: CWF. The first downstream potable water supply intake from the point of discharge is Reliant Energy's Keystone Station. Application received August 18, 2005. Permit issued: October 24, 2005.

32000103 and NPDES No PA 0235300. AMFIRE Mining Co., LLC, One Energy Place, Latrobe, PA 15650-9628, permit renewal for reclamation only of a bituminous surface auger mine in Cherryhill Township, **Indiana County**, affecting 64.3 acres. Receiving streams: UNTs to/and Allen Run, and Penn Run, classified for the following use: CWF. The first downstream potable water supply intake from the point of discharge is PA American Water Company, Two Lick Creek SWI. Application received September 12, 2005. Permit issued October 24, 2005.

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

61050101 and NPDES Permit No. PA0257940. Ben Hal Mining Company (389 Irishtown Road, Grove City, PA 16127). Commencement, operation and restoration of a bituminous surface strip operation in Irwin Township, **Venango County** affecting 9.0 acres. Receiving stream: UNT to Gilmore Run. Application received: July 15, 2005. Permit issued: October 21, 2005.

37030101 and NPDES Permit No. PA0242314. Amerikohl Mining, Inc. (202 Sunset Drive, Butler, PA 16001). Commencement, operation and restoration of a bituminous surface strip operation in Wayne Township, **Lawrence County** affecting 132.0 acres. Receiving streams: UNT to Slippery Rock Creek; UNT to Squaw Run. Application received February 10, 2003. Permit issued October 27, 2005.

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

54773214R. B-D Mining Company (10 Gilberton Road, Gilberton, PA 17934), renewal of an existing anthracite surface mine operation in Mahanoy Township, **Schuylkill County** affecting 50.0 acres. Receiving stream: none. Application received February 28, 2005. Permit issued October 24, 2005.

Noncoal Permits Actions

Pottsville District Mining Office: 5 West Laurel Boulevard, Pottsville, PA 17901, (570) 9621-3118.

4873SM5C2 and NPDES Permit No. PA0009695. O-N Minerals (PenRoc) Co., LP (P. O. Box 1967, York, PA 17405), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in West Manchester Township, **York County** affecting 148.9 acres. Receiving stream: UNT to Codorus Creek. Application received July 7, 2005. Renewal issued October 24, 2005.

7775SM8C4. Dyer Quarry, Inc. (P. O. Box 188, Birdsboro, PA 19508), correction to an existing quarry operation in Robeson Township, **Berks County** affecting 323.4 acres. Receiving streams: Indian Corn Creek and Seidel Creek. Application received January 27, 2005. Correction issued October 24, 2005.

09050301. Naceville Materials (P. O. Box 161, Warminster, PA 18974), commencement, operation and restoration of a quarry operation in West Rockhill Township, **Bucks County** affecting 19.26 acres. Receiving stream: none. Application received February 24, 2005. Permit issued October 25, 2005.

ABANDONED MINE RECLAMATION

Knox District Mining Office: White Memorial Building, P. O. Box 669, Knox, PA 16232, (814) 797-2706.

Bond Forfeiture	BF 366-102.1
Contract Awarded	
Location	Irwin Township Venango County
Description	Act 181, Bond Forfeiture Reclamation, H & D Coal Company
Contractor	Neiswonger Construction, Inc. 17592 Route 322 Strattanville, PA 16258
Amount	\$28,850
Date of Award	October 24, 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.

Blasting Permits Actions

Cambria District Mining Office: 286 Industrial Park Road, Ebensburg, PA 15931.

32054005. Evergreen Landfill, Inc., Box 195, Coral, PA 15731. Landfill expansion, Center Township, **Indiana County**. Duration of blasting 365 days. Permit issued October 25, 2005.

31054003. Stone Valley Construction, P. O. Box 369, Pine Grove Mills, PA 16868. Victorian Heights subdivision—utility placement, Walker Township, **Huntingdon County**. Duration 90 days. Permit issued October 27, 2005.

Greensburg District Mining Office: Armbrust Building, R. R. 2, Box 603C, Greensburg, PA 15601-0982, (727) 925-5500.

02054008. KESCO, Inc. (P. O. Box 95, Adrian, PA 16210). Blasting activity permit for construction of a housing development, located in Franklin Park Borough, **Allegheny County**, with an expected duration of 180 days. Permit issued: October 17, 2005.

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

09054016. Eastern Blasting Co., Inc. (1292 Street Road, New Hope, PA 18938), construction blasting at Reserve at Hilltown in Hilltown Township, **Bucks County** with an expiration date of August 31, 2006. Permit issued October 24, 2005.

09054017. Eastern Blasting Co., Inc. (1292 Street Road, New Hope, PA 18938), construction blasting at Belmont Ridge in Bensalem Township, **Bucks County** with an expiration date of August 31, 2006. Permit issued October 24, 2005.

22054112. Hall Explosives, Inc. (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting for Deer Run in Derry Township, **Dauphin County** with an expiration date of October 30, 2005. Permit issued October 24, 2005.

22054113. Hall Explosives, Inc. (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting for Stone Creek in Hummelstown Borough and Derry Township **Dauphin County** with an expiration date of October 30, 2006. Permit issued October 24, 2005.

38054128. Keystone Blasting Service (381 Reifsnyder Road, Lititz, PA 17543), construction blasting for Beckley's Corner Retention Pond in South Lebanon Township, **Lebanon County** with an expiration date of December 30, 2005. Permit issued October 24, 2005.

21054172. M & J Explosives, Inc. (P. O. Box 608, Carlisle, PA 17013), construction blasting for the Bortek Job in Lower Allen Township, **Cumberland County** with an expiration date of October 31, 2005. Permit issued October 25, 2005.

28054160. Geological Technologies, Inc. (P. O. Box 70, Falling Waters, WV 25419), construction blasting for Five Forks Church in Quincy Township, **Franklin**

County with an expiration date of December 30, 2005. Permit issued October 25, 2005.

28054161. David H. Martin Excavating, Inc. (4961 Cumberland Highway, Chambersburg, PA 17201), construction blasting for Beacon Light Estates in Greene Township, **Franklin County** with an expiration date of October 18, 2006. Permit issued October 25, 2005.

28054162. M & J Explosives, Inc. (P. O. Box 608, Carlisle, PA 17013), construction blasting for Greens of Greencastle in Antrim Township, **Franklin County** with an expiration date of October 31, 2006. Permit issued October 25, 2005.

67054147. Fitz & Smith, Inc. (P. O. Box 178, Dal-lastown, PA 17313), construction blasting for Ashcombe Farms in Dover Township, **York County** with an expiration date of September 5, 2006. Permit issued October 25, 2006.

15054125. Brubacher Excavating, Inc. (P. O. Box 528, Bowmansville, PA 17507), construction blasting for Hide-A-Way Farm in East Brandywine Township, **Chester County** with an expiration date of December 31, 2006. Permit issued October 26, 2005.

36054164. Keystone Blasting Service (381 Reifsnyder Road, Lititz, PA 17543), construction blasting for a single dwelling in West Earl Township, **Lancaster County** with an expiration date of December 30, 2005. October 26, 2005.

36054165. Keystone Blasting Service (381 Reifsnyder Road, Lititz, PA 17543), construction blasting for utilities on Quarry Road in Upper Leacock Township, **Lancaster County** with an expiration date of December 30, 2005. Permit issued October 26, 2005.

39054122. Schlouch, Inc. (P. O. Box 69, Blandon, PA 19510), construction blasting for Trilagy in Weisenberg Township, **Lehigh County** with an expiration date of October 24, 2006. Permit issued October 26, 2005.

48054117. Brubacher Excavating, Inc. (P. O. Box 528, Bowmansville, PA 17507), construction blasting for the Bethlehem Landfill in Lower Saucon Township, **Northampton County** with an expiration date of December 31, 2006. Permit issued October 26, 2005.

67054048. Abel Construction Co., Inc. (P. O. Box 476, Mountville, PA 17554), construction blasting at Windsor Commons Townhouse Development in Windsor Township, **York County** with an expiration date of October 31, 2006. Permit issued October 27, 2005.

21054010. Keystone Blasting Service (381 Reifsnyder Road, Lititz, PA 17543), construction blasting at Weaver Project in Middlesex Township, **Cumberland County** with an expiration date of December 30, 2005. Permit issued October 27, 2005.

21054011. Rogele, Inc. (P. O. Box 1757, Harrisburg, PA 17105), construction blasting at Stony Ridge Park Phase 2 in Silver Spring Township, **Cumberland County** with an expiration date of February 28, 2006. Permit issued October 27, 2005.

67054049. J. Roy's, Inc. (Box 125, Bowmansville, PA 17507), construction blasting at Quentin's Meadow in Carroll Township, **York County** with an expiration date of October 15, 2006. Permit issued October 27, 2005.

36054163. Keystone Blasting Service (381 Reifsnyder Road, Lititz, PA 17543), construction blasting for Anglesea Development in West Earl Township, **Lancaster County** with an expiration date of December 30, 2006. Permit issued October 27, 2005.

40054122. Austin Powder Company (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for Hanover Crossings in Hanover Township, **Luzerne County** with an expiration date of September 30, 2006. Permit issued October 27, 2005.

40054126. Hayduk Enterprises (P. O. Box 554, Dalton, PA 18414), construction blasting for Ramblewood Estates in Dennison Township, **Luzerne County** with an expiration date of November 30, 2006. Permit issued October 27, 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).

WATER OBSTRUCTIONS AND ENCROACHMENTS

Southeast Region: Water Management Program Manager, 2 East Main Street, Norristown, PA 19401.

E15-745. Williston Township, 688 Sugartown Road, Malvern, PA 19355, Williston Township, **Chester County**, ACOE Philadelphia District.

To perform the following activities associated with the proposed Williston Township sanitary sewer system extension project:

1. To construct and maintain a 6-inch diameter sanitary sewer force main under the existing sugartown road culvert, which conveys the UNT to Crum Creek (EV).

2. To restore the banks of the UNT to Ridley Creek (HQ) by removing an existing outfall structure associated with removal of the existing sewage treatment plant.

This project also includes a utility line stream crossing previously registered as General Permit GP051505310 across a UNT to Ridley Creek. The site is located approximately 1,000 feet northwest of the intersection of Paoli Pike and Line Road, (Malvern, PA, USGS Quadrangle N: 1.7 inches; W: 4.3 inches).

The issuance of this permit also constitutes approval of a Water Quality Certification under section 401(a) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).

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

E34-115: Department of Transportation, Engineering District 2-0, 1924 Daisy Street Extension, Clearfield, PA 16830 in Port Royal Borough, Milford and Turbett Townships, **Juniata County**, ACOE Baltimore District.

To remove the existing structure and then to construct and maintain a three span bridge with a total clear span of 253 feet on a 45° skew with a minimum underclearance of 18.6 feet across Tuscarora Creek (CWF) and associated improvements on SR 0075, Section A02, Segment 0630, Offset 0000 to improve the traffic safety condition of the road located in Port Royal Borough (Mifflintown, PA Quadrangle N: 5.0 inches; W: 2.36 inches) in Port Royal Borough and Milford and Turbett Townships, Juniata County.

E07-398: United Mobile Homes, 1275 Forman Drive, Morgantown, WV 26508 in Allegheny Township, **Blair County**, ACOE Baltimore District.

To place 125 linear feet of fill material along the right bank of Spencer Run (WWF) to facilitate the rehabilitation of the bank; to remove 263 cubic yards of fill material on the left and right floodways of Spencer Run; to construct and maintain a total of ten rock deflectors along the left and right banks of Spencer Run; to remove 160 feet of existing 24-inch CMP culvert; and to construct and maintain a 225-foot vegetated channel on a UNT to Spencer Run (WWF) beginning at a point (Latitude: 40° 26' 43", Longitude: 78° 25' 43") approximately 630 feet downstream of SR 1002 and continuing to a point (Latitude: 40° 26' 46", Longitude: 78° 25' 33") approximately 1,800 feet downstream of SR 1002 in Allegheny Township, Blair County. The project proposes to directly affect approximately 637 linear feet of the channels of Spencer Run and a UNT to Spencer Run.

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

E08-451. DENIED: Bruce Fowler, R. D. 3, Box 151A, Towanda, PA 18848. Denied: Water Obstruction and Encroachment Permit in Burlington Township, **Bradford County**, ACOE Baltimore District (Powell, PA 7.5' Quadrangle N: 20.8 inches; W: 4.7 inches).

To excavate and maintain fill in 1.5 acres of a forested, palustrine emergent and scrub shrub wetland system for the purpose of constructing a pond for use as a heating/cooling source for a home along with providing a water source for area fire protection. Replacement wetlands are proposed. The site is located approximately 1,000 feet northeast of the intersection of SR 3009 (Berwick Turnpike) and T-360 (Bennett Road). This intersection is approximately 3.8 miles northwest of the SR 220 and SR 3009 intersection in Monroeton.

E18-398. John R. Dotterer, 6795 Nittany Valley Drive, Mill Hall, PA 17751. Bechdel Farm Culvert, in Lamar Township, **Clinton County**, ACOE Baltimore District (Jersey Shore, PA Quadrangle N: 8.25 inches; W: 12.00 inches).

To construct and maintain a 32-foot long steel beam and wood plank deck bridge on the R-5 riprapped stream banks to create a 9-foot clear span with an 8-foot underclearance accessed by means of the 2RC stoned approach roads across a UNT to Fishing Creek to create an agricultural equipment crossing. This permit was issued under Section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

E18-402. Gary and Patti Young, 584 Island Road, Lock Haven, PA 17745. Young's Fence, in Dunnstable Township, **Clinton County**, ACOE Baltimore District (Lock Haven, PA Quadrangle N: 4.31 inches; W: 15.95 inches).

To construct and maintain a 4-foot high permeable privacy barrier around their 865-linear foot residential property perimeter with an alternating pattern of 24 linear feet of woven wire fence on four 4-inch by 4-inch wooden posts separated by a 2-foot wide space for Rose-of-Sharon bushes to grow in the 100-year floodway of the West Branch Susquehanna River located 420 feet northeast on River Road from its intersection with Fargus Island Road in Dunnstable Township, Clinton County. This permit was issued under Section 105.13(e) "Small Projects."

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

E56-334. Somerset County Conservancy, P. O. Box 241, Somerset, PA 15501. To construct a foot bridge in Somerset Township, **Somerset County**, Pittsburgh ACOE District. (Murdock, PA Quadrangle N: 20.3 inches; W: 3.85 inches and Latitude: 39° 59' 12"—Longitude: 79° 01' 39"). To construct and maintain a pedestrian foot bridge, having a span of 32 feet with an underclearance of 6.5 feet across the channel of Kimberly Run (CWF) for the purpose of constructing a nature/education interpretive trail. The project is located approximately 5,000 feet southeast from the intersection of the Turnpike and US 219 and will impact 6 linear feet of stream channel.

E65-870. Hempfield Township Supervisors, R. D. 6, Box 500, Greensburg, PA 15601. To construct a culvert in Hempfield Township, **Westmoreland County**, Pittsburgh ACOE District. (Greensburg, PA Quadrangle N: 11.96 inches; W: 0.74 inch and Latitude: 40° 18' 57"—Longitude: 79° 30' 19"). To remove the existing structure and to construct and maintain a 60-inch diameter culvert approximately 33 feet in length, a concrete apron and a R-7 riprap energy dissipater and to extend an existing 48-inch diameter culvert approximately 12 feet long in the channel of a UNT to Jacks Run (WWF) for the purpose of improving First Street and highway safety. The project is located on First Street, just east from the intersection of

First Street and Township Route 385, and will impact approximately 75 linear feet of stream channel.

E65-871. Greengate Development, LLC, 2127 Innerbelt Business Center Drive, Suite 200, St. Louis, MO 63114. To construct culverts in Hempfield Township, **Westmoreland County**, Pittsburgh ACOE District (Greensburg, PA Quadrangle N: 11.0 inches; W: 12.0 inches and Latitude: 40° 18' 38"—Longitude: 79° 35' 10"). To construct and maintain four 54" diameter culverts (with the two center culverts depressed 6") approximately 154' long with wingwalls at both ends and a riprap apron at the downstream end, in a UNT to Brush Creek (TSF) and to construct various stormwater outfalls to the same stream. The project is part of a proposed internal circulation roadway system for the reconstruction and reuse of two existing commercial retail centers, Hempfield Plaza and Greengate Centre. The project is located on the north side of Route 30 next to the existing Greengate Mall.

SPECIAL NOTICES

Plan Revision Approval under the Municipal Waste Planning, Recycling and Waste Reduction Act of 1988, Act 101

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

The Department of Environmental Protection (Department) approved the Adams County Municipal Waste Management Plan Revision on October 26, 2005.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P. S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O.

Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users may contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

For individuals who wish to challenge an action, appeals must reach the Board within 30 days. A lawyer is not needed to file an appeal with the Board.

Important legal rights are at stake, however, so individuals should show this notice to a lawyer at once. Persons who cannot afford a lawyer may qualify for free pro bono representation. Call the Secretary to the Board at (717) 787-3483 for more information.

The plan revision is a public document and may be viewed at the Department Regional Office previously noted.

Questions concerning this approval should be directed to Sally Lohman, Chief, Waste Planning Section, Department of Environmental Protection, Bureau of Land Recycling and Waste Management, Division of Waste Minimization and Planning, P. O. Box 8472, Harrisburg, PA 17105-8472 or to Mark Vottero, Regional Planning and Recycling Coordinator, Bureau of Land Recycling and Waste Management at the regional office previously noted.

Drinking Water State Revolving Fund

Special Notice under the Federal Safe Drinking Water Act

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

Project Location:

<i>Applicant</i>	<i>Applicant Address</i>	<i>Municipality and County</i>
Southwestern Pennsylvania Water Authority	P. O. Box 187 1442 Jefferson Road Jefferson, PA 15344	West and East Bethlehem Townships and Marianna Borough, Washington County

Project Description: The Pennsylvania Infrastructure Investment Authority, which administers the Commonwealth's State Revolving Fund, is intended to be the funding source for this project. The Applicant, Southwestern Pennsylvania Water Authority, West and East Bethlehem Townships and Marianna Borough, Washington County, proposed the installation of approximately 18,350 linear feet of 8-inch water line, 2,600 linear feet of 6-inch water line, 21 fire hydrants and all necessary fittings, valves, stream crossings, service connections and restoration work. In addition, the project includes two master metered connections, the replacement of pumps and addition of disinfection equipment at an existing water pumping station. The Department of Environmental Protection's (Department) review of the project and the information received in the Environmental Report for the project have not identified any significant, adverse environmental impact resulting from this proposal. The Department hereby approves the Environmental Assessment.

[Pa.B. Doc. No. 05-2088. Filed for public inspection November 11, 2005, 9:00 a.m.]

Availability of Technical Guidance

Technical guidance documents are on the Department of Environmental Protection's (Department) website: www.dep.state.pa.us (DEP Keyword: Participate). The "Current Inventory" heading is the Governor's list of nonregulatory guidance documents. The "Final Documents" heading is the link to a menu of the various Department bureaus and from there to each bureau's final technical guidance documents. The "Draft Technical Guidance" heading is the link to the Department's draft technical guidance documents.

The Department will continue to revise its nonregulatory documents, as necessary, throughout 2005.

Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view guidance documents. When this option is not available, persons can order a bound paper copy of the latest inventory or an unbound paper copy of any of the final documents listed on the inventory by calling the Department at (717) 783-8727.

In addition, bound copies of some of the Department's documents are available as Department publications. Check with the appropriate bureau for more information about the availability of a particular document as a publication.

Changes to Technical Guidance Documents

Following is the current list of recent changes. Persons who have questions or comments about a particular document should call the contact person whose name and phone number is listed with each document.

Draft Technical Guidance—Substantive Revision

DEP ID: 012-0200-001. Title: Policy for Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Permits for Facilities and Infrastructure. Description: The Department permit review process considers, and under certain conditions relies upon, comprehensive planning and zoning ordinances in the decision-making process for authorizations related to facilities and infrastructure as required by the acts of 67, 68 and 127 of 2000. This policy provides direction and guidance to applicants and to Department staff on how the Department incorporates the requirements of these acts with Departmental decision-making processes. A Letter of Understanding (LOU) Regarding Consistency in Implementation of 2000 Amendments to the Pennsylvania Municipalities Planning Code (PA MPC) (53 P.S. §§ 10101—11202) was recently signed by the heads of ten State agencies, including the Departments of Community and Economic Development, Conservation and Natural Resources, Environmental Protection, Transportation, Agriculture and Education; the Pennsylvania Infrastructure Investment Authority; the Pennsylvania Public Utility Commission; the Historical and Museum Commission; and the Pennsylvania Emergency Management Agency. This LOU establishes a more consistent approach to applying the PA MPC across these ten State agencies. The proposed revision to the Department's policy incorporates changes necessary to implement the LOU. The specific changes to the policy being proposed to implement the LOU are a revised definition of facilities and infrastructure, the expansion of the applicability of the policy to conform to the wording of section 1105 of the PA MPC (53 P.S. § 11105) by including municipalities that have adopted a county plan, and a revised process to have applicants obtain a letter from municipalities and the county, prior to submission of the application, regarding

the consistency of the project with local comprehensive plans and zoning ordinances in areas where the PA MPC requirements are applicable. Written Comments: The Department is seeking comments on the specific changes identified previously. In particular, the Department seeks comments on the revised process and invites the public to propose alternatives that more efficiently accomplish the same result. Interested persons may submit written comments on the substantive revisions to this technical guidance document by December 12, 2005. Comments submitted by facsimile will not be accepted. The Department will accept comments submitted by e-mail. A return name and address must be included in each e-mail transmission. Written comments should be submitted to Lou Guerra, Jr., Department of Environmental Protection, Policy Office, P. O. Box 2063, Harrisburg, PA 17105-2063, lguerra@state.pa.us. Effective Date: Upon publication of notice as final in the *Pennsylvania Bulletin*. Contact: Questions regarding the draft technical guidance document should be directed to Lou Guerra, Jr. at (717) 783-8727 or at the e-mail address provided previously.

DEP ID: 012-0200-002. Title: Policy for Consideration of Comprehensive Plans and Zoning Ordinances in DEP Review of Grants and Funding for Facilities and Infrastructure. Description: This policy was developed to promote sound land use planning and development by considering comprehensive plans and generally consistent zoning ordinances in Departmental decision-making processes for grant and funding decisions related to facilities and infrastructure. A LOU Regarding Consistency in Implementation of 2000 Amendments to the PA MPC was recently signed by the heads of ten State agencies, including the Departments of Community and Economic Development, Conservation and Natural Resources, Environmental Protection, Transportation, Agriculture and Education; the Pennsylvania Infrastructure Investment Authority; the Pennsylvania Public Utility Commission; the Historical and Museum Commission; and the Pennsylvania Emergency Management Agency. This LOU establishes a more consistent approach to applying the PA MPC across these ten State agencies. The proposed revision to the Department's policy incorporates changes necessary to implement the LOU. The specific changes to the policy being proposed to implement the LOU are a revised definition of facilities and infrastructure, the expansion of the applicability of the policy to conform to the wording of section 1105 of the PA MPC by including municipalities that have adopted a county plan and a revised process to have applicants obtain a letter from municipalities and the county, prior to submission of the application, regarding the consistency of the project with local comprehensive plans and zoning ordinances in areas where the PA MPC requirements are applicable. Written Comments: The Department is seeking comments on the specific changes identified previously. In particular, the Department seeks comments on the revised process and invites the public to propose alternatives that more efficiently accomplish the same result. Interested persons may submit written comments on the substantive revisions to this technical guidance document by December 12, 2005. Comments submitted by facsimile will not be accepted. The Department will accept comments submitted by e-mail. A return name and address must be included in each e-mail transmission. Written comments should be submitted to Lou Guerra, Jr., Department of Environmental Protection, Policy Office, P. O. Box 2063, Harrisburg, PA 17105-2063, lguerra@state.pa.us. Effective Date: Upon publication of notice as final in the *Pennsylvania Bulletin*. Contact: Questions regarding the draft

technical guidance document should be directed to Lou Guerra, Jr. at (717) 783-8727 or at the e-mail address provided previously.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 05-2089. Filed for public inspection November 11, 2005, 9:00 a.m.]

Nutrient Trading Program; Stakeholder Involvement Meetings

The Department of Environmental Protection (Department) has scheduled two stakeholder involvement meetings for the purpose of collecting public input on the Commonwealth's Nutrient Trading Program (Program) and the Chesapeake Bay Tributary Strategy. Both meetings will begin at 6 p.m. as follows: November 14, 2005, Days Inn, 240 S. Pugh Street, State College, PA; November 15, 2005, Dauphin County Conservation District, 1451 Peters Mountain Road, Dauphin, PA.

On October 1, 2005, the Department issued interim policy guidelines for the trading of nutrient and sediment reduction credits. See 35 Pa.B. 5431 (October 1, 2005). These guidelines were created to help the Department reach short-term goals related to the Chesapeake Bay and long-term goals of reducing the impairment of existing waterways, producing positive water quality effects locally and downstream and enhancing aquatic habitats and protecting natural resources.

Interested individuals are invited to attend the meetings to provide input concerning the Department's proposed guidelines. Additional information on the Program can be obtained on the Department's website at www.dep.state.pa.us/river/river_trading.htm.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Department at (717) 772-4785 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. 05-2090. Filed for public inspection November 11, 2005, 9:00 a.m.]

DEPARTMENT OF HEALTH

Application of Eyes of York Surgical Center, LLC for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Eyes of York Surgical Center, LLC 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 standard contained in this publication: 9.2.B3 (relating to handwashing station).

This request is on file with the Department. Persons may receive a copy of a request for exception by request-

ing 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 the 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, V/TT (717) 783-6154 for speech and/or hearing impaired persons 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. 05-2091. Filed for public inspection November 11, 2005, 9:00 a.m.]

Application of Kensington Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Kensington Hospital 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 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 the 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, V/TT (717) 783-6154 for speech and/or hearing impaired persons 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. 05-2092. Filed for public inspection November 11, 2005, 9:00 a.m.]

Application of Phoenixville Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives

notice that Phoenixville Hospital has requested an exception to the requirements of 28 Pa. Code § 107.2 (relating to medical staff membership).

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, paexcept@health.state.pa.us.

Persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address 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. 05-2093. Filed for public inspection November 11, 2005, 9:00 a.m.]

Application of Surgical Institute of Reading for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Surgical Institute of Reading 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*. Specifically, the facility requests exception to the following standards contained in this publication: 7.6A, 7.9.C1 and 7.9.C7 (relating to the seclusion room; triage area; and isolation room in the emergency services area).

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 the 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, V/TT (717) 783-6514 for speech and/or hearing impaired persons 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. 05-2094. Filed for public inspection November 11, 2005, 9:00 a.m.]

Decisions on Requests for Exceptions to Health Care Facility Regulations

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), effective June 6, 1998, the Department of Health (Department) has published in the *Pennsylvania Bulletin* all requests by entities licensed under the Health Care Facilities Act (35 P.S. §§ 448.101—448.904b) for exceptions to regulations contained in 28 Pa. Code Part IV, Subparts B—G.

Section 51.33(d) provides that the Department will publish notice of all approved exceptions on a periodic basis. The Department has determined that it will publish notice of all exceptions, both approved and denied. The following list contains the decisions made on exception requests published in the *Pennsylvania Bulletin* from July 1, 2005, through September 30, 2005. Future publications of decisions on exception requests will appear on a quarterly basis.

Requests for additional information on the exception requests and the Department's decision should be made to the relevant division of the Department. Inquiries regarding hospitals and ambulatory surgical facilities shall be addressed to the Division of Acute and Ambulatory Care, Sandra Knoble, Director, Room 532, Health and Welfare Building, Harrisburg, PA 17108. Inquiries regarding long-term care facilities shall be addressed to the Division of Nursing Care Facilities, William Bordner, Director, Room 528, Health and Welfare Building, Harrisburg, PA 17108. Persons requiring special assistance for speech and/or hearing impairment should call V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT).

Exception Requests—Hospitals

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Decision</i>
Hazleton General Hospital	28 Pa. Code § 101.191	multiclinical facilities	denied
West Chester Rehabilitation Hospital	28 Pa. Code § 107.2	medical staff membership—podiatrists	granted
Temple East	28 Pa. Code § 107.2	medical staff membership—podiatrists	granted

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Decision</i>
Allegheny General Hospital	28 Pa. Code § 107.23	clinical department chairperson	denied
Somerset Hospital	28 Pa. Code § 107.26(b)(2)	tissue committee meetings	granted
Mercy Jeannette Hospital	28 Pa. Code § 107.26(b)(2)	tissue committee meetings	granted
Punxsutawney Area Hospital, Inc.	28 Pa. Code § 107.26(b)(2)	tissue committee	granted
Frick Hospital	28 Pa. Code § 107.26(b)(2)	tissue committee	granted
Westmoreland Regional Hospital	28 Pa. Code § 107.26(b)(2)	tissue committee	granted
UPMC Braddock	28 Pa. Code § 107.31	medical staff meetings	granted
Brandywine Hospital	28 Pa. Code § 138.1	cardiac catheterization	denied
St. Joseph's Medical Center	28 Pa. Code § 139.12(a)	neonatal units	denied
Mercy Fitzgerald Hospital	28 Pa. Code § 153.1	NFPA Life Safety Code	granted
Select Specialty Hospital of McKeesport	28 Pa. Code § 153.1	7.2.B10 exam room	granted
St. Joseph's Medical Center	28 Pa. Code § 153.1	7.9.D25 decontamination area; 7.3.A8 hand washing stations; 7.3.A3f(3)(k) staff clothing change areas; 7.14.B9 examination room; 7.14.B11 soiled work room; 7.14.B14 environmental	granted/denied in part
St. Joseph's Medical Center	28 Pa. Code § 153.1	7.14.B17 storage space; 7.2.E seclusion room; 7.2.B18 storage space; 7.3.A16h storage space; 7.22.C general storage rooms	granted/denied in part
Magee-Womens Hospital of University of Pittsburgh Medical Center	28 Pa. Code § 153.1	7.7.A4 cystoscopic procedure room	granted
DuBois Regional Medical Center	28 Pa. Code § 153.1	7.9.D24 secure holding	granted
Albert Einstein Medical Center	28 Pa. Code § 153.1	7.2.B17 equipment storage room or alcove—requires 10 sq. ft. per patient bed (48 pt beds or 480 sq. ft.)	denied
Memorial Hospital of Towanda	28 Pa. Code § 153.1	7.2.B19 showers and tubs	granted
UPMC Northwest	28 Pa. Code § 153.1	7.2.A3 each patient room shall have a window	denied
St. Clair Hospital	28 Pa. Code § 153.1	construction standards—room; 7.2.A4 handwashing stations; 7.2.B4 handwashing stations;	granted
St. Clair Hospital	28 Pa. Code § 153.1	7.2.B2 dictation area; 7.2.B5 charting area; 7.2.B6 staff toilet room; 7.2.B7 staff lounge; 7.2.B9 multipurpose room; 7.2.B10 exam/tx	not necessary
St. Clair Hospital	28 Pa. Code § 153.1	7.2.B11 clean workroom; 7.2.B12 soiled workroom; 7.2.B13a medication prep room; 7.2.B14 clean linen storage	not necessary
St. Clair Hospital	28 Pa. Code § 153.1	7.2.B15 nourishment area; 7.2.B16 ice machine; 7.2.17 equipment storage room; 7.2.B19 showers and tubs; 7.2.B22	not necessary

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Decision</i>
Exception Requests—Ambulatory Surgical Facilities			
The Scranton Endoscopy Center	28 Pa. Code § 551.3	classification levels	granted
The Eye Surgery Center	28 Pa. Code § 551.3	classification—Class B	granted
Carbon-Schuylkill Endoscopy Center	28 Pa. Code § 551.3	classification levels—Class B facility	granted
Carlisle Regional Surgery Center	28 Pa. Code § 551.3	definitions	denied
Digestive Health Center	28 Pa. Code § 551.3	definitions	denied
Aestique Ambulatory Surgical Center	28 Pa. Code § 551.21(a)(1)	criteria for ambulatory surgery	denied
Aestique Ambulatory Surgical Center	28 Pa. Code § 551.21(a)(2)	criteria for ambulatory surgery	denied
Heritage Valley Surgery Center	28 Pa. Code § 551.21(d)(2)	criteria for ambulatory surgery—laparoscopic cholecystectomy	denied
Apple Hill Surgical Center	28 Pa. Code § 551.21(d)(2)	criteria for ambulatory surgery—laparoscopic cholecystectomy	granted
Fairgrounds Surgical Center	28 Pa. Code § 551.21(d)(2)	criteria for ambulatory surgery	denied
Surgery Center at Limerick	28 Pa. Code § 551.21(d)(2)	criteria for ambulatory surgery	granted/denied in part
Digestive Health Center of Indiana P. C.	28 Pa. Code § 551.31(d)	licensure	denied
South Surgery Center Indiana P. C.	28 Pa. Code §§ 553.1, 555.2, 555.3	governing body, medical staff membership	granted
Ambulatory Surgical Facility at Ford Road Campus	28 Pa. Code Chapter 553	governance and management	granted
Harrisburg Interventional Pain Management Center	28 Pa. Code § 553.31(a)	administrative	granted
Ambulatory Surgical Facility at Ford Road Campus	28 Pa. Code Chapter 555	medical staff	granted
Digestive Health Center of Indiana, P. C.	28 Pa. Code §§ 555.3, 555.31	anesthesia services—propofol	granted
Hazleton Endoscopy Center	28 Pa. Code §§ 555.3, 555.31	anesthesia services—propofol	granted
South Hills Endoscopy	28 Pa. Code § 555.31(a)	anesthesia services	granted
20/20 Surgery Center	28 Pa. Code § 555.31(a)	anesthesia services—propofol	granted
Eynon Surgery Center	28 Pa. Code § 555.31(a)	anesthesia—diprivan	granted
North Shore Endoscopy Center, LLC	28 Pa. Code § 555.31(a)	anesthesia services	granted
Ambulatory Surgical Facility at Ford Road Campus	28 Pa. Code Chapter 557	quality assurance	granted
Ambulatory Surgical Facility at Ford Campus	28 Pa. Code Chapter 563	medical records	granted
South Hills Endoscopy	28 Pa. Code § 567.11(7)	operating room equipment—thoracotomy tray	denied
Blair Plastic Surgery	28 Pa. Code § 571.1	9.5F3c recovery stations	granted
Surgery Center at Edgeworth Commons	28 Pa. Code § 571.1	9.5.F3c recovery stations	granted
Plastic Surgery Associates of Johnstown, Inc.	28 Pa. Code § 571.1	9.5.H2a.(3) OR ceilings; 9.5.F5(i) staff clothing change area; 9.5.F3 post anesthesia recovery; 9.5.E1 soiled workroom	granted

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Decision</i>
The Skin Center	28 Pa. Code § 571.1	9.5.H1a corridor width; 9.5.F2c OR dimensions; 9.5.F5K stretcher storage	granted
The Skin Center	28 Pa. Code § 571.1	9.5.F5j outpatient change area	not necessary

Exception Requests—Nursing Care Facilities

Lancashire Hall	28 Pa. Code § 201.3	definitions	granted
Willowbrooke at Brittany Pointe Estates	28 Pa. Code § 201.3	definitions	granted
Masonic Homes	28 Pa. Code § 201.3	definitions	granted
UPMC Transitional Care	28 Pa. Code § 201.18(e)	management	temporary approval
UPMC Horizon Transitional Care Center Greenville	28 Pa. Code § 201.18(e)	management	granted
UPMC Horizon Transitional Care Center Shenango	28 Pa. Code § 201.18(e)	management	granted
Harmarville Transitional Rehab Unit	28 Pa. Code § 201.18(e)	management	no longer required
Transitional Care Center at Warren General	28 Pa. Code § 201.18(e)	management	denied
Monticello House	28 Pa. Code § 205.6(a)	function of building	granted
Moravian Village Long-Term Care Facility	28 Pa. Code § 205.6(a)	function of building	granted
Monticello House at Riddle Village	28 Pa. Code § 205.6(a)	function of building	granted
HealthSouth Transitional Rehab Unit	28 Pa. Code § 205.6(a)	function of building	granted
Valley View Haven, Inc.	28 Pa. Code § 205.6(a)	function of building	granted
Lock Haven Hospital Extended Care Unit	28 Pa. Code § 205.6(a)	function of building	granted
Laurel Ridge Center Rehab Center	28 Pa. Code § 205.6(a)	bathing facilities	granted
Orchard Manor, Inc.	28 Pa. Code § 205.19(b)	windows and windowsills	granted
Frick Hospital Skilled Nursing Unit	28 Pa. Code § 205.24(a)	dining room	granted
Westmoreland Skilled Care Center	28 Pa. Code § 205.24(a)	dining room, lounge and rec rooms	granted
Hospitality Care Center of Hermitage, Inc.	28 Pa. Code § 205.24(a)	dining room	granted
HealthSouth Transitional Rehab Unit	28 Pa. Code § 205.26(e)	laundry	granted
Frick Hospital Skilled Nursing Unit	28 Pa. Code § 205.27	lounge and recreation room	granted
Bethlen Home of the Hungarian Reformed Federation of America	28 Pa. Code § 205.28(b)	nurses' station	granted
HealthSouth Transitional Rehab Unit	28 Pa. Code § 205.33(c)	utility room	granted
Rolling Fields, Inc.	28 Pa. Code § 205.36(b)	bathing facilities	withdrawn
HealthSouth Transitional Rehab Unit	28 Pa. Code § 205.36(f) and (g)	bathing facilities	granted
Harmarville Transitional Rehab Unit	28 Pa. Code § 205.36(h)	bathing facilities	granted
Landis Homes	28 Pa. Code § 205.36(h)	bathing facilities	granted
HealthSouth Transitional Rehab Unit	28 Pa. Code § 205.36(h)	bathing facilities	granted
Beverly Healthcare—Erie	28 Pa. Code § 205.38(a)	toilet facilities	granted
Barbara J. Egan Nursing & Rehab	28 Pa. Code § 205.38(a)	toilet facilities	granted

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Decision</i>
HealthSouth Transitional Rehab Unit	28 Pa. Code § 205.38(d)	toilet facilities	granted
HealthSouth Transitional Rehab Unit	28 Pa. Code § 205.39(b)	toilet room equipment	granted
HealthSouth Transitional Rehab Unit	28 Pa. Code § 205.67(e)	electric requirements	granted
Homestead Village, Inc.	28 Pa. Code § 205.67(k)	electric requirements for existing and new construction	granted
UPMC Transitional Care Unit	28 Pa. Code § 211.12(b)	nursing services	temporary approval
Lawson Nursing Home, Inc.	28 Pa. Code § 211.12(b)	nursing services	temporary approval
Mercy Jeannette Hospital Skilled Nursing	28 Pa. Code § 211.12(b)	nursing services	granted

CALVIN B. JOHNSON, M.D., M.P.H.,
Secretary

[Pa.B. Doc. No. 05-2095. Filed for public inspection November 11, 2005, 9:00 a.m.]

Requests for Exception; Long-Term Care Nursing Facilities

The following long-term care nursing facilities are seeking an exception to 28 Pa. Code § 201.18(e) (relating to management).

Somerset Hospital Center for Health
225 South Center Avenue
Somerset, PA 15501
FAC ID 193202

HRH Transitional Care Unit
1648 Huntingdon Pike
Meadowbrook, PA 19046
FAC ID 083902

These requests are on file with the Department of Health (Department). Persons may receive a copy of a request for exception by requesting a copy from the Division of Nursing Care Facilities, Room 526, Health and Welfare Building, Harrisburg, PA 17120, (717) 787-1816, fax (717) 772-2163, 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 15 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact V/TT (717) 783-6514 for speech and/or hearing impaired persons 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. 05-2096. Filed for public inspection November 11, 2005, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Availability of the Temporary Assistance for Needy Families State Plan

The Department of Public Welfare (Department) has prepared and is making available for comment an updated Temporary Assistance for Needy Families (TANF) State Plan. The State Plan was developed in accordance with the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (act) (Pub. L. No. 104-193). The act provides each state with a TANF Block Grant and the opportunity, with broad Federal guidelines, to design and operate its own programs. The original State Plan was published at 27 Pa.B. 342 (January 18, 1997). Updated Plans were published at 29 Pa.B. 5658 (October 30, 1999) and 32 Pa.B. 6401 (December 28, 2002). A new TANF plan for subsequent 2-year periods must be submitted to the United States Department of Health and Human Services (DHHS) for completeness.

The updated State Plan incorporates changes identified through suggestions and recommendations from the public and through an ongoing review of the TANF program. The updated State Plan will be submitted to DHHS in December 2005.

Public Comment

Future amendments to the State Plan will incorporate suggestions and recommendations received during the comment period. The 45-day comment period begins on the date this notice is published in the *Pennsylvania Bulletin*.

Copies of the State Plan are available for all interested individuals and groups by written request or at the Department's website at www.dpw.state.pa.us. Written requests should be directed to Edward J. Zogby, Attention: TANF State Plan, Director, Bureau of Policy, Office

of Income Maintenance, Room 431, Health and Welfare Building, Harrisburg, PA 17120. Persons may also request copies by facsimile machine at (717) 787-6765, using the previously listed address on the cover document.

Interested persons are invited to submit written comments regarding this notice to the Department at the previously listed address. Comments received within 45 days will be reviewed and considered for any subsequent revision of the State Plan.

Persons with a disability who require an 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

[Pa.B. Doc. No. 05-2097. Filed for public inspection November 11, 2005, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Finding

Montgomery County

Under section 2002(b) of The Administrative Code of 1929 (71 P. S. § 512(b)), the Deputy Secretary for Highway Administration makes the following written finding:

The Department of Transportation (Department) plans to replace the existing River Road Bridge in Lower Merion Township, Montgomery County. The project includes minor approach roadway work in conjunction with replacing the River Road Bridge. The River Road Bridge is a contributing resource to the Mill Creek Historic District. The project will also require right-of-way from Flat Rock Park. Measures to minimize harm to the resources will include the use of local stone on the surface of the proposed bridge, architectural steel railings along the sidewalk, removal and retention of the two historic plaques on the existing bridge, installation of weathered steel guide rails on the approaches of the proposed bridge and guarding against impacts to potential sensitive archaeological sediments.

The State Historic Preservation Officer (SHPO) will review final design plans prior to bridge construction. These stipulations are outlined in a Memorandum of Agreement between the Federal Highway Administration and the SHPO and concurred by the Department and Lower Merion Township.

The Deputy Secretary for Highway Administration has considered the environmental, economic, social and other effects of the proposed project as enumerated in section 2002 of The Administrative Code of 1929 and has concluded that there is no feasible and prudent alternative to the project as designed, and all reasonable steps have been taken to minimize effects.

GARY L. HOFFMAN, P. E.,
Deputy Secretary for Highway Administration

[Pa.B. Doc. No. 05-2098. Filed for public inspection November 11, 2005, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Comments Issued

Section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)) provides that the Independent Regulatory Review Commission (Commission) may issue comments within 30 days of the close of the public comment period. The Commission comments are based upon the criteria contained in section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b).

The Commission has issued comments on the following proposed regulations. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.

<i>Reg No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
31-3	State Employees' Retirement Board Preliminary Provisions 35 Pa.B. 4923 (September 3, 2005)	10/3/05	11/2/05
31-4	State Employees' Retirement Board Membership, Credited Service and Eligibility for Benefits 35 Pa.B. 4922 (September 3, 2005)	10/3/05	11/2/05

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**State Employees' Retirement Board
Regulation #31-3
(IRRC #2490)**

Preliminary Provisions

November 2, 2005

We submit for your consideration the following comments on the proposed rulemaking published in the September 3, 2005 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Employees' Retirement Board (Board) to respond to all comments received from us or any other source.

1. Section 241.1. Definitions.—Clarity.

The Board is proposing to delete the definition of "class of service multiplier" from its regulations. We agree the current definition is cumbersome as written. However, we suggest the Board replace the existing language with a cross reference to the definition of "class of service multiplier" found in 71 Pa.C.S.A. § 5102.

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**State Employees' Retirement Board
Regulation #31-4
(IRRC #2491)**

**Membership, Credited Service and
Eligibility for Benefits**

November 2, 2005

We submit for your consideration the following comments on the proposed rulemaking published in the September 3, 2005 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Employees' Retirement Board (Board) to respond to all comments received from us or any other source.

1. Section 243.8.—Classes of service.—Reasonableness; Clarity.

The Board is proposing to delete the list of classes of service that have been closed to new members since March 1, 1974, from its regulations. In its Preamble to the regulation, the Board states that since the classes of service proposed to be deleted were closed to new members over 30 years ago "there are few, if any, Commonwealth employees subject to this regulation."

Board staff indicated that there are still active and inactive members of Class C, Class D-3 and Class E-2 contained in Subsection (a). It is our recommendation that the Board retain all classes of service in its regulations that still have active or inactive members.

Additionally we recommend the retention of Subsection (b) for the same reason previously mentioned.

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 05-2099. Filed for public inspection November 11, 2005, 9:00 a.m.]

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Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulations on the dates indicated. To obtain the date and time of the meeting at which the Commission will consider these regulations, contact the Commission at (717) 783-5417 or visit its website at www.irrc.state.pa.us. To obtain a copy of the regulation, contact the promulgating agency.

Final-Form

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>
10-177	Department of Health Schedules of Controlled Substances	11/1/05
18-392	Department of Transportation Official Traffic Control Devices	11/2/05

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 05-2100. Filed for public inspection November 11, 2005, 9:00 a.m.]

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INSURANCE DEPARTMENT

**Children's Health Insurance Program; Children's
Health Advisory Council Meeting**

The Insurance Department (Department) has scheduled a meeting of the Children's Health Advisory Council (Council) on Friday, December 16, 2005, at 1 p.m. in the Honors Suite, 1st Floor, Education Building, 333 Market Street, Harrisburg, PA. The Children's Health Care Act (40 P.S. §§ 991.2301—991.2361) charges the Council with the responsibilities of overseeing outreach activities and evaluating access and quality of service provided to children enrolled in the Children's Health Insurance Program. The public is invited to attend. Persons who need accommodations due to a disability who wish to attend the meeting should contact Peter Dalina, Insurance Department, 1300 Strawberry Square, Harrisburg, PA 17120, (717) 787-4298 at least 24 hours in advance so that arrangements can be made.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 05-2101. Filed for public inspection November 11, 2005, 9:00 a.m.]

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**PENNSYLVANIA PUBLIC
UTILITY COMMISSION**

Monitoring and Enforcement of Network Modernization Plans

Public Meeting held
October 27, 2005

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson, statement concurring in part and dissenting in part follows; Bill Shane; Kim Pizzigrilli; Terrance J. Fitzpatrick, dissenting statement follows

Monitoring and Enforcement of Network Modernization Plans; M-00051872

Verizon Pennsylvania Inc. Petition and Plan for Alternative Form of Regulation under Chapter 30; 2000 Biennial Update to Network Modernization Plan (Amendment to NMP); P-00930715F0002

Verizon Pennsylvania Inc. Petition and Plan for Alternative Form of Regulation Under Chapter 30; 2000 Biennial Update to Network Modernization Plan (Petition For Reconsideration of May 15, 2002 Order); P-00930715

Re: Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations; M-00001353

Final Order

By the Commission:

This docket is intended to develop appropriate monitoring and enforcement procedures in incumbent local exchange carriers' (ILECs) network modernization plans (NMPs) consistent with the provisions of the new Chapter 30, commonly known as Act 183. 66 Pa.C.S. §§ 3011—3019.

A. Background and Procedural History Prior to August 31, 2005 Tentative Order at this Docket

On September 17, 2003, the Commission entered an Order (September Order) in the above "P" dockets concerning Verizon Pennsylvania Inc.'s (Verizon PA) Petition and Plan for Alternative Form of Regulation under Chapter 30; 2000 Biennial Update to Network Modernization Plan. In the September Order, the Commission, at Ordering Paragraph No. 16, directed Commission staff to prepare a recommendation dealing with the nature and scope of an appropriate audit plan regarding the network plans of Verizon PA and other Chapter 30 companies. *Verizon Pennsylvania Inc. Petition and Plan for Alternative Form of Regulation under Chapter 30; 2000 Biennial Update to Network Modernization Plan*, Docket No. P-00930715F0002, et al., Ordering Paragraph No. 16 (Order entered September 17, 2003). In directing such a recommendation, the Commission was determined to ensure that the public had full confidence in the representations made by telecommunications carriers in their respective network modernization filings through an audit program that independently verifies the reported progress of each Chapter 30 plan.¹

Effective November 30, 2004, Act of 2004, P. L. 1398, No. 183 (Act 183), became the new Chapter 30 to Title 66 of the Pennsylvania Consolidated Statutes. Prior to Act 183, ILECs who submitted NMPs were able to seek an alternate form of regulation. 66 Pa.C.S. § 3003 (repealed 2004). Act 183 continued the NMPs that were then currently in effect but also allowed ILECs to amend them so as to accelerate broadband deployment.²

Act 183 also requires that the Commission "monitor and enforce companies' compliance with their interim and final 100% commitments for broadband availability in their amended network modernization plans."³ ILECs

¹ A Secretarial Letter dated April 21, 2004, was thereafter issued noticing our intent to "commence the NMP audit program envisioned by the September Order" to ensure that the progress of each NMP "can be adequately tracked and independently verified." After setting forth the specific areas targeted for the audit, the Secretarial Letter indicated that a Request for Proposal (RFP) would be released in the first quarter of 2005 "in order to commence the audit program in a timely manner upon receipt of Verizon's 2004 Biennial Update which is due by June 30, 2005." Finally, while the initial audit would be limited to Verizon PA, the Secretarial Letter stated that the NMP audit program "may extend to other ILECs in subsequent years," and it was served on all ILECs with Chapter 30 plans.

² See 66 Pa.C.S. § 3014(a)—(b). Since the effective date of Act 183, the Commission has received petitions to amend from all 33 ILEC NMPs currently in effect and has approved all these petitions.

³ See 66 Pa.C.S. § 3015(a)(2).

failing to meet their NMP commitments may be required to provide refunds and may also be subject to civil or other penalties pursuant to the Commission's general authority under Chapter 33. 66 Pa.C.S. §§ 3301—3316.

At our Public Meeting of March 23, 2005, the Commission had before it a proposed Tentative Order setting forth the details for an audit of the NMP of Verizon PA in response to our previous directive in the September Order. Because of the statutory change, however, which occurred after we announced our intent to audit Verizon PA's NMP, we concluded that further evaluation was necessary to determine the best way to fulfill our statutory role of monitoring and enforcing companies' compliance with the NMP provisions of Act 183. We, therefore, directed staff to prepare an appropriate order seeking comments.

Thereafter, an Order was entered on April 15, 2005, asking for comments from interested parties on all relevant issues related to ensuring that the Commission had the information needed to develop a useful, comprehensive and appropriate NMP monitoring and enforcement program in accordance with Act 183. The Commission was particularly interested in comments addressing the nature, extent and funding of any monitoring and enforcement program that may be needed to verify independently each company's network deployment as reported in its NMP updates. Additionally, we sought comments on the appropriate timing of embarking upon such a program in consideration of the time lapse between the Commission's decision to implement an NMP audit program and the passage of Act 183 allowing ILECs to amend their NMPs. Due to the complexity of the issues raised, we directed that comments be due within 30 days of the publication of this Order in the *Pennsylvania Bulletin* with replies due 20 days thereafter.

B. Interested Parties' Comments to April 15, 2005 Order

Following publication of the April 15, 2005 Order on April 30, 2005, at 35 Pa.B. 2708, the Commission received initial comments on or about May 31, 2005, from Verizon PA and Verizon North Inc. (collectively, "Verizon"), the Pennsylvania Telephone Association (PTA), and the Rural Company Coalition (RCC).⁴ No reply comments were received.

Verizon argued in its initial comments that the Commission's review should conform to Act 183's mandate of focusing on whether the ILEC has met its broadband availability commitments. As such, Verizon maintained that the review can be done by internal staff only and does not require the hiring of outside experts. If, however, the Commission decided it must use an external consultant to perform some or all of the review, then the Commission should pay for these services through its normal budgeting process. Alternatively, Verizon asserted it would not object to paying for outside consultants if they were paid for from the unspent monies in the "Escrow Fund" established by the Commission's April 11, 2001 Order in the Verizon PA Structural Separation proceeding at M-00001353 (April 11, 2001 Order). This fund was originally established to hire an outside consultant to train and to assist Commission staff in the analysis of Verizon PA performance metric reports. Verizon also stated that any audit should wait until after the first biennial report filed that covers the time period subsequent to enactment of Act 183, i.e., the biennial

⁴ The RCC is a group of rural ILECs, all of which except for ALLTEL Pennsylvania, Inc., have elected to amend their existing NMPs to expedite the provision of 100% broadband availability to December 31, 2008.

report to be filed in June 2007 covering the period from January 1, 2005, through December 31, 2006.

In its comments, the PTA took a very narrow view of the Commission's monitoring abilities, arguing that the Commission is limited to reviewing the biennial reports filed under 66 Pa.C.S. § 3014(f). In making this argument, the PTA asserted that Act 183 specifies the nine "filing and audit requirements" that may be required of ILECs, and that section 3015(f) prevents the Commission from requiring any other report or filing requirement. Thus, according to the PTA, any further review of company records or on-site inspection beyond the report specified in section 3014(f) is not permitted. On the funding issue, the PTA asserted that the Commission's monitoring role must be paid from the assessments currently paid by the utilities subject to our jurisdiction.

The RCC in its initial comments took the position that the underlying proceeding giving rise to the entire audit question never involved or implicated the RCC companies and that all the RCC companies have been controversy free regarding Chapter 30 compliance; therefore, they should not be subject to an audit as contemplated in this proceeding. Alternatively, the RCC companies urged the Commission to defer considering audits for them until after their final deployment obligations are met, given that all the RCC companies, except one, have elected to expedite deployment of 100% broadband availability to December 31, 2008. Under these facts, they contended, performing audits before the end of 2008 would entail an unwarranted expenditure of time and resources. They also found support for their position of deferment in the Secretarial Letter issued by the Commission dated April 21, 2004, which stated that the Commission would defer addressing to a later time the need and merit of NMP audits for non-Verizon companies.

C. August 31, 2005 Tentative Order

After reviewing the initial comments filed by interested parties, the Commission entered a Tentative Order on August 31, 2005. In this Order, the Commission tentatively concluded that Verizon's alternative plan to pay for Verizon PA's amended NMP audits by using the unspent monies in the "Escrow Fund" established in our April 11, 2001 Order is reasonable and should be adopted.⁵ In reaching this tentative conclusion, the Commission made clear in its August 31, 2005 Order that Verizon would still be obligated to make up any funding shortfall if the Escrow Fund is insufficient to cover the full cost of the NMP audit. Recognizing, however, that others might find this redirection of funds to a different purpose inappropriate, the Commission established a second comment period to address Verizon's alternative funding proposal. Following publication of the August 31, 2005 Order on September 17, 2005, at 35 Pa.B. 5209, comments were received from Verizon, the RCC, and the Office of Consumer Advocate (OCA) and late comments were filed by the PTA.

In its comments to the alternative funding proposal, Verizon argues that use of the remaining Escrow Fund dollars for Verizon PA's NMP audits is appropriate for three reasons. First, there is no legal restriction, Verizon argues, prohibiting the Commission from exercising its discretion to redirect the use of these monies to another purpose. The Escrow Fund was established by the Commission's April 11, 2001 Order, and the fund has no

separate legal existence or other restrictions that would prevent the remaining monies being devoted to another purpose.

Second, Verizon asserts that the monies are no longer needed for their original purpose, and, therefore, the monies can now be diverted to another purpose. To support this argument, Verizon argues that additional training is not needed as Commission staff has developed sufficient expertise in analyzing metric reports. Verizon finds support for this conclusion from the fact that the average monthly payment has dwindled from about \$25,000 per month to \$10,000 per month, and from the fact that no new deposits have been made into the Escrow Fund since April 2003 when new Carrier-to-Carrier guidelines and performance metrics were adopted by this Commission. Thus, Verizon concludes, it is appropriate that monies from the Escrow Fund now be diverted to another regulatory purpose related to Verizon PA.

Finally, Verizon states that use of the remaining Escrow Fund monies for Verizon PA's NMP compliance reviews will avoid the legal issue of whether the Commission has the power to require Verizon PA to pay the cost of outside consultants used to perform the compliance review. Verizon argues that the Commission lacks the authority to require ILECs to pay the cost of outside consultants used to perform amended NMP audits as Act 183 makes no provision for this outcome. However, Verizon further states that Verizon PA will not object to the proviso that it be required to make up any funding shortfall if the Escrow Fund is inadequate to cover the costs of any Verizon PA NMP audit, so long as Verizon PA reserves the right to contest the size, scope and total cost of any such audits.

The OCA, in its comments, asserts that the Commission's rationale for using the Escrow Fund for a purpose other than intended is unclear and should be reconsidered. The OCA states that our Tentative Order is unclear in explaining why we tentatively concluded to use the Escrow Fund to pay for Verizon PA's amended NMP audits in 2007 and possibly beyond. For example, the OCA asserts that the Tentative Order does not make clear whether we now believe that competitive performance metrics and remedies no longer merit analysis, whether Commission staff no longer needs training relating to performance metrics, or whether the Commission is no longer concerned about Verizon PA's compliance with the performance metrics established by this Commission. The OCA agrees with the Vice Chairman's dissent in the August 31, 2005 Order that the Commission has the authority under section 516 of the Public Utility Code to require Verizon or any other ILEC to pay for such audits directly.

While the comments to be filed pursuant to the August 31, 2005 Order were to be limited to the alternative funding issue, the OCA also argues in its comments that the Commission should not delay Verizon PA's amended NMP audit until 2007. The OCA asserts that any such delay will not be in the public interest and it also may be contrary to section 3015(a)(2) of the Public Utility Code, which establishes the Commission's enforcement duty to ensure that ILECs comply with their interim deployment goals. 66 Pa.C.S. § 3015(a)(2).⁶

D. Discussion

The first issue we address is our authority to conduct an audit of the network plans of Verizon PA and other

⁵ As of the date of this Order, the unspent monies in the Escrow Fund is approximately \$800,000.

⁶ The third set of comments were filed by the RCC that simply attached a copy of the comments it filed on May 31, 2005, so additional discussion of these comments is not necessary.

Chapter 30 companies. The PTA particularly questions the Commission's authority to conduct NMP audits, citing section 3015(f) of the new Chapter 30 that specifies nine filing requirements. The PTA then argues that NMP audits as contemplated in this proceeding are not covered by this section, and thus, by implication, not authorized.

We disagree with the PTA's position on this issue. We do not believe that section 3015(f) can be read in isolation from the rest of Chapter 30. Section 3014(f), which addresses NMP reports, states that local exchange telecommunications companies operating under a NMP shall continue to file biennial reports with the Commission "in the form and detail required by the commission as of July 1, 2004 [which is before the enactment of Act 183]," and that "[n]othing in this subsection shall be construed to impede the ability of the commission to require the submission of further information to support the accuracy of or to seek an explanation of" the biennial reports filed by the Chapter 30 companies. 66 Pa.C.S. § 3014(f)(1) and (2) (emphasis added).

Notwithstanding the PTA's comments to the contrary, the Commission concludes that performing the type of NMP audit program outlined in our April 21, 2004 Secretarial Letter and as envisioned by the September Order is consistent with the newly enacted Act 183's mandate to the Commission to investigate and confirm the accuracy of the information contained in the NMP biennial reports. 66 Pa.C.S. § 3014(f). Under section 3014(f), as discussed above, the Commission has a duty to ensure that the information in the NMP report is accurate and reliable. In our judgment, we cannot fulfill our statutory obligation under section 3014(f) without performing the type of NMP audit program envisioned in the April 21, 2004 Secretarial Letter.

Further, we disagree with Verizon that the type of review that needs to be done can be performed by internal staff only and does not require outside experts. Based on the audit scope and plan developed by the Commission prior to asking for comments in this proceeding, the Commission concluded, at least as to Verizon PA's NMP, that it was necessary to issue a Request for Proposals (RFP) to retain an outside consultant pursuant to sections 331(a) and 516 of the Public Utility Code, 66 Pa.C.S. § 331(a) and 516, to assist Commission staff in the NMP verification process. This conclusion was based on our own internal assessment that we do not have the resources to conduct the type of audit contemplated nor does our staff possess sufficient technical expertise to audit Verizon PA's compliance with its network deployment commitments without such technical assistance. Nothing in the comments filed herein has convinced us to change our view that the RFP process should be utilized to retain an outside consultant to assist us in performing the audit of Verizon PA's NMP.

We also disagree with Verizon and the PTA that this audit should be paid from the assessments of utilities as part of our normal budgeting process. Examining prior Commission decisions and the language of section 516, we are of the opinion that the NMP audit contemplated by our September Order and the April 21, 2004 Secretarial Letter, because it is directed at ensuring the "effectiveness" of the specific reporting company's process for reporting on its NMP implementation progress, falls within the purview of section 516. We, therefore, conclude

that the audited telecommunications company can legally be required to pay for the audit pursuant to section 516(c).⁷

Additionally, while the enactment of Act 183 raises issues regarding changes to an existing NMP and, in particular, restricts the Commission's authority at 66 Pa.C.S. § 3013(b) to make any changes to an NMP without the utility's consent, in the Commission's judgment, the imposition of costs pursuant to section 516 is not a change to the NMP requiring the consent of the audited telecommunications company pursuant to section 3013(b). Rather, the audit is simply an investigative tool used by the Commission to perform its assessment of the company's NMP reporting accuracy under section 516 and is consistent with the Commission's duty to exercise oversight over the NMPs and to confirm the accuracy of the information contained in the NMP biennial reports. 66 Pa.C.S. §§ 3013(d) and 3014(f).

As we previously held in *In re: Pennsylvania Telecommunications Infrastructure Study; Petition of the Pennsylvania Telephone Association for Reconsideration or in the Alternative, Supersedeas*, Docket No. M-00910284 (Order entered June 27, 1991), the Commission has implicit authority to require mandatory funding of this audit under its general investigatory powers granted at 66 Pa.C.S. § 331(a). As we stated in that earlier decision, it is clear that utilities are required to cooperate and assist in the conduct of Commission investigations, and "the imposition of costs on the utility in the first instance does not merely facilitate the work of an investigation but actually makes the investigation possible, such funding is a necessary function of a utility's adherence to the applicable provisions of the Code." *Id.* at 7. It is also worth noting that neither section 331 nor 516 have been repealed or otherwise modified by Act 183.

Having established our authority to conduct NMP audits and the ILECs' responsibility to pay for them, we next turn our attention to Verizon's recommendation to use the Escrow Fund established by the Commission's April 11, 2001 Order to pay for Verizon PA's amended NMP audits. Only two comments were received that provided substantive input on this topic; one by Verizon in favor and one by the OCA in opposition. After reviewing the comments filed by both parties, we agree with Verizon that there is no legal restriction prohibiting the Commission from exercising its discretion to redirect the use of these monies to pay for Verizon PA's NMP audit. In addition, we also reviewed how the Escrow Fund monies have been spent in the past and the proposed usage for the remaining amount, which Commission staff estimates is approximately \$800,000, and agree that the original purpose for the monies has generally been satisfied. In particular, our staff now has more experience and knowledge regarding the analysis of metric reporting results than when the fund was created.

Under these circumstances, it is appropriate and reasonable for the Commission to accept Verizon's proposal to apply the remaining, unencumbered monies towards Verizon PA's NMP audits. Finally, this acceptance is subject to the requirement that Verizon PA will make up

⁷ See, e.g., *Final Opinion and Order on Performance Measures and Remedies for Wholesale Performance for Verizon Pennsylvania Inc.*, Docket No. M-00011468 (Order entered December 10, 2002) (Commission directed Bureau of Audits to issue an RFP to hire an outside consulting firm to provide an independent analysis/audit to be paid for by Verizon PA of the results of the first three months of metrics and remedies reports for Verizon PA's wholesale performance); *In re: Pennsylvania Telecommunications Infrastructure Study; Petition of the Pennsylvania Telephone Association for Reconsideration or in the Alternative, Supersedeas*, Docket No. M-910284 (Order entered June 27, 1991) (Commission finds that it has authority under both sections 331(a) and 516 to order comprehensive study of Pennsylvania's telecommunications infrastructure and to have major utilities pay for it).

any funding shortfall if the Escrow Fund is insufficient to cover the full cost of the Verizon PA NMP audits(s) in 2007 or beyond.⁸

Finally, we must address the question of timing. The RCC companies contend that they should not be subject to an audit given their controversy-free history regarding Chapter 30 compliance, or, alternatively, that any decision be deferred until their final deployment obligations are met after December 31, 2008. For its part, Verizon argues that any Verizon NMP audit should cover a post-Act 183 reporting period. In Verizon PA's case, that would be the biennial NMP report to be filed on June 30, 2007, covering the years 2005-2006, and for Verizon North Inc., it would be the report due on March 31, 2007.

Taking Verizon's concerns first, we agree that deferring their audits until after their 2007 biennial reports are filed is the best course under the circumstances. In reaching this decision, we do not intend to infer in any way that Act 183 somehow limits our ability to audit pre-Act 183 compliance (especially given that Verizon's amended NMPs do not change the compliance benchmarks established in the earlier-approved plans). It may be recalled that Verizon PA's June 2005 report was the subject of our earlier proposed audit in this proceeding. However, the delay that has been created while we examined the impact of Act 183 on our ability to conduct NMP audits has effectively eliminated the possibility of conducting a meaningful audit of the June 2005 filing. This is because we have not issued an RFP to hire an outside consultant, and the RFP process—from drafting the RFP to starting the fieldwork—is expected to take up to six months. This means that an audit could not be started before mid-2006 and by then the data will have become outdated. Further, we will, at that point, be only one year away from receiving Verizon PA's 2007 biennial report. Under these circumstances and given the other changes that were created by Act 183, we conclude that the best course is to wait until Verizon's next filings in 2007 to conduct any audit of Verizon's NMP commitments.

As for all the other local exchange carriers, including the RCC, we do not agree that their "controversy-free history" exempts them from being audited at all to ensure NMP compliance. However, we do agree that deferring any audits until after December 31, 2008, is the best course in light of enactment of Act 183 and the election by many of those same companies to expedite deployment of 100% broadband availability by the end of 2008. This deferment will also ensure that the Verizon PA audit in 2007-2008 will be the first one conducted by the Commission, and the experience gained therein will help ensure a more thorough and efficient audit of the other Chapter 30 companies with less involvement, or even possibly the elimination, of an outside consultant.

To conclude, after considering the impact of Act 183 and the input of interested parties, we find that the audit plan adopted herein will allow the Commission to fulfill its statutory responsibility of monitoring and enforcing ILECs' NMP commitments. In this way, the Commission will be able to ensure that all Pennsylvanians have the opportunity to receive the benefit of the advanced broadband services contemplated by both the previous version of Chapter 30 as well as Act 183; *Therefore*,

⁸ In determining that Verizon PA is responsible for any funding shortfall, however, our decision today is not intended to deprive Verizon PA of its ability to reserve its right to contest the size, scope, or resultant cost of any amended NMP audit conducted by this Commission to meet its statutory obligations under the new Chapter 30.

It Is Ordered That:

1. The Commission has the authority under the Public Utility Code to perform an investigative-type audit for the purpose of independently verifying the reported progress of any incumbent local exchange carrier Chapter 30 network modernization plan and to require the audited incumbent local exchange carrier to pay for the audit.

2. Any unencumbered monies remaining as of June 30, 2005, in the Escrow Fund established by the Commission's April 11, 2001 Order in the Verizon Pennsylvania Inc. Structural Separation proceeding at M-00001353, be redirected to pay for Verizon Pennsylvania Inc.'s amended network modernization plan audits in 2007 and beyond.

3. The Commission will defer conducting any such audits consistent with the discussion in the body of this Order.

4. The Secretary serve a copy of this Order on all incumbent local exchange telecommunications carriers, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Telephone Association and also cause a copy of this Order to be published in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

**Statement of Vice Chairperson James H. Cawley
Concurring in Part and Dissenting in Part**

*Public Meeting: October 27, 2005; OCT-2005-L-0109**

*Monitoring and Enforcement of Network Modernization
Plans; M-00051872*

*Verizon Pennsylvania Inc. Petition for Alternative Form of
Regulation under Chapter 30; 2000 Biennial Update to
Network Modernization Plan (Amendment to NMP);
P-00930715F0002*

*Verizon Pennsylvania Inc. Petition and Plan for
Alternative Form of Regulation Under Chapter 30; 2000
Biennial Update to Network Modernization Plan (Petition
For Reconsideration of May 15, 2002 Order); P-00930715*

*Re: Structural Separation of Bell Atlantic-Pennsylvania,
Inc. Retail and Wholesale Operations; M-00001353*

Consistent with my Dissenting Statement during the Public Meeting of August 11, 2005, I concur in part to and dissent in part from the recommended disposition of the Commission's Procedures for the Monitoring and Enforcement of the incumbent local exchange carrier (ILEC) Chapter 30 amended Network Modernization Plans (NMPs). I agree that this Commission possesses the requisite statutory authority to conduct the necessary audits of the ILECs' amended NMPs, and that such authority has not been impaired by the new Chapter 30. See generally 66 Pa.C.S. § 516(a) and 66 Pa.C.S. §§ 3011—3019. Furthermore, I believe that this auditing function is a vital enforcement tool at the disposal of this Commission that is consistent with this agency's statutory mandate and regulatory obligations under Section 3015(a)(2) of the new Chapter 30, 66 Pa.C.S. § 3015(a)(2).

I completely disagree with the recommended postponement of the contemplated audit activities of the ILECs' amended NMPs until the 2007-2008 time frame. I reiterate my previous position that, without the utilization of timely, comprehensive, and independent audits of the ILECs' amended NMPs, this Commission will be unable to exercise, in any meaningful or timely way, its oversight duties under Chapter 30.

I also continue to be opposed to the use of the "Escrow Fund" monies established by the Commission through its April 11, 2001 Order in the Verizon Pennsylvania Inc. (Verizon PA) Structural Separation proceeding at Docket No. M-00001353, in order to offset the contemplated costs of the independent audit of the Verizon PA amended NMP in 2007 and beyond. I continue to believe that the "Escrow Fund" monies should continue to be used for purposes that pertain to issues of interconnection and competition between Verizon PA and other telecommunications services providers, and that the costs of the contemplated NMP audit can be fully borne by Verizon PA.

For these reasons, I concur in part and dissent in part.

**Dissenting Statement of
Commissioner Terrance J. Fitzpatrick**

*Public Meeting: October 27, 2005; OCT-2005-L-0109**

Monitoring and Enforcement of Network Modernization Plans; M-00930715F0002; P-00930715F0002; P-00930715; M-00001353

This matter involves the Final Order to develop monitoring and enforcement procedures related to network modernization plans (NMPs) of incumbent local exchange carriers (ILECs) under the new Chapter 30 law, 66 Pa.C.S. § 3011, et seq. In the Order, a majority of the Commission concludes, among other things, that the Commission has legal authority to impose a new set of audit requirements upon ILECs to ensure compliance with NMPs. I respectfully dissent from this conclusion.

As the Pennsylvania Telephone Association (PTA) points out, the new Chapter 30 law specifically restricts the authority of the Commission to impose "filing and audit requirements" beyond the nine listed, existing requirements set forth in the law. 66 Pa.C.S. § 3015(e). This list of permissible requirements includes biennial NMP reports described in Section 3014(f), but does not include an across-the-board audit requirement for the NMPs of ILECs. Accordingly, it must be assumed that a generic NMP audit requirement is not permitted under this section.

The Final Order adopted by the Majority concludes that the Commission is empowered to establish a generic NMP audit requirement under Section 3014(f). This subsection provides, first, that ILECs shall continue to file biennial NMP reports as previously required, unless the Commission reduces this reporting requirement. 66 Pa.C.S. § 3014(f)(1). The subsection goes on to state:

(2) Nothing in this subsection shall be construed to impede the ability of the commission to require the submission of further information *to support the accuracy of or to seek an explanation of the reports specified in this subsection.*

66 Pa.C.S. § 3014(f)(2) (Emphasis added). The "reports specified in this subsection" obviously refers to the biennial NMP reports authorized in Section 3014(f)(1).

The language quoted in the preceding paragraph clarifies that the Commission retains authority to seek additional information from ILECs upon reviewing an ILEC's biennial NMP report. The language does not authorize the Commission to impose an across-the-board require-

ment⁹ for audits of NMPs—a requirement that is obviously independent of the specific contents of the biennial reports.

Accordingly, it is clear to me that the NMP audit requirement is a new regulatory requirement that is not authorized by 66 Pa.C.S. §§ 3014(f) or 3015(e). For this reason, I respectfully dissent.

[Pa.B. Doc. No. 05-2102. Filed for public inspection November 11, 2005, 9:00 a.m.]

October 2005 Review of Fuel Cost Recovery Surcharge; S. P. 28208

Public Meeting held
October 27, 2005

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzigrilli; Terrance J. Fitzpatrick

Order

By the Commission:

The Pennsylvania Public Utility Commission (Commission) by its Fuel Cost Recovery Surcharge Order at Special Permission Number 28208, adopted June 10, 2004, authorized call or demand, paratransit and airport transfer carriers under the jurisdiction of this Commission to adjust rates and fares to offset unanticipated fuel expenditures. At its Public Meeting of June 2, 2005 the Commission approved an extension of the temporary fuel surcharge until June 12, 2006. The Commission also required the Bureau of Transportation and Safety to investigate the merits of the fuel surcharge on a quarterly basis.

As a result of the volatile nature of gasoline prices in the aftermath of Hurricane Katrina, the amounts for the fuel surcharge were adjusted accordingly at the Public Meeting of September 9, 2005. Recognizing that the price of fuel is likely to fluctuate in the future months, the Commission also ordered that the temporary fuel surcharge was to be evaluated on a monthly basis until further notice to ensure that the surcharge is appropriately adjusted to the price of fuel.

The most recent data for the week ending October 24, 2005 indicates that the price of gasoline is \$2.56 per gallon, which is a decrease of \$.73 or 22% from the average price for September 5, 2005. The effect of this decrease results in an average cost of fuel per trip of \$1.16 for call or demand operations. The average cost of fuel per trip for paratransit and airport transfer operations is \$2.68. Considering this decrease, effective October 31, 2005, the surcharge shall be adjusted to \$.55 per trip for each paying passenger for call or demand service and \$1.25 per trip for each paying passenger for airport transfer and paratransit services.

The changes which have occurred in the Fuel Cost Recovery Surcharge at S. P. 28208 are summarized in the following table.

⁹This general requirement for NMP audits is in the nature of a regulation, even though the Commission is attempting to impose it through an Order. See, *Commonwealth, DER v. Rushton Mining Co.*, 591 A.2d 1168 (Pa. Commw. Ct. 1991), allocatur denied, 600 A.2d 591 (Pa. 1991).

*Historical Charges for Fuel Cost Recovery Surcharge at
S. P. 28208*

<i>Effective Date</i>	<i>Call or Demand</i>	<i>Airport Transfer/ Paratransit</i>
June 14, 2004	\$.30	\$.70
September 2, 2005	\$.70	\$1.55
September 12, 2005	\$.90	\$2.00
October 3, 2005	\$.70	\$1.55
October 31, 2005	\$.55	\$1.25

Based upon the evidence available, we are of the opinion that the passenger motor carrier industry continues to have a need for the fuel surcharge. However, due to the decrease in prices we believe it is necessary to make adjustments to the fuel cost recovery surcharge; *Therefore,*

It Is Ordered That:

1. The Fuel Cost Recovery Surcharge established at Special Permission No. 28208 be continued.
2. Call or demand carriers rendering transportation service under the jurisdiction of the PA Public Utility Commission shall decrease the surcharge to \$.55 per trip for each paying passenger.
3. Paratransit carriers and airport transfer carriers rendering transportation service under the jurisdiction of the PA Public Utility Commission shall decrease the surcharge to \$1.25 per trip for each paying passenger.
4. The decreases be approved to become effective October 31, 2005.
5. The Fuel Cost Recovery Surcharge will continue to be reviewed on a monthly basis with the next review taking place at the Public Meeting of December 1, 2005.
6. Call or demand motor carriers shall notify the public by placing a notice in all vehicles, which shall read: "The PA Public Utility Commission has authorized a fuel surcharge under Special Permission No. 28208. The surcharge is \$.55 per trip for each paying passenger and is effective on October 31, 2005. The fuel surcharge shall terminate on June 12, 2006."
7. Paratransit and airport transfer motor carriers shall notify the public by placing a notice in all vehicles, which shall read: "The PA Public Utility Commission has authorized a fuel surcharge under Special Permission No. 28208. The surcharge has been decreased to \$1.25 per trip for each paying passenger and is effective on October 31, 2005. The fuel surcharge shall terminate on June 12, 2006."
8. The Secretary of this Commission shall duly certify this order and deposit same with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-2103. Filed for public inspection November 11, 2005, 9:00 a.m.]

Order

Public Meeting held
October 27, 2005

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzingrilli; Terrance J. Fitzpatrick

*Law Bureau Prosecutory Staff v. NECC Telecom, Inc.
(2004.0267); Doc. No. C-20044040*

*NECC Telecom, Inc. Petition for Reinstatement; Doc. No.
A-311209*

Order

By the Commission:

On December 14, 2004, Law Bureau Prosecutory Staff filed a Formal Complaint against NECC Telecom, Inc. (NECC), a reseller of toll service certificated at A-311209. In the Complaint, Prosecutory Staff alleged that the Commission sent by certified mail prior written notices to NECC that its 2003 Annual Report was due. The Complaint charged that NECC violated 66 Pa.C.S. § 504 by failing to file its 2003 Annual Report. The Complaint requested that the Commission issue an order canceling NECC's certificate of public convenience for failure to file its 2003 Annual Report.

According to the U. S. Postal Service return receipt, the Complaint was served on December 20, 2004, but NECC failed to file an answer or its 2003 Annual Report. As a result of NECC's failure to respond to the Complaint, the Commission entered a Default Order on July 20, 2005 that sustained the Complaint and cancelled NECC's certificate of public convenience. The notice of the Default Order was published August 6, 2005 at 35 Pa.B. 4516 with a 20-day comment period.

On September 29, 2005, NECC filed a letter-petition for reconsideration along with its 2003 and 2004 Toll Reseller Annual Report, but failed to include a check for the late-filing fee in the amount of \$250. NECC was then advised by Commission Staff that it needed to pay the late-filing fee in order to satisfy the Complaint. On October 12, 2005, NECC paid the late-filing fee. In its petition, NECC seeks reconsideration of the Default Order and reinstatement of its certificate. We will treat this petition as a request for reinstatement.

In its Petition, NECC apologized for failing to timely file its 2003 Annual Report. NECC states that it has taken steps to ensure that it timely complies with future filing deadlines.

It is well-settled that decisions such as whether to grant a petition for reinstatement are left to the Commission's discretion. *Hoskins Taxi Service v. Pa. P.U.C.*, 486 A.2d 1030 (Pa. Cmwlth. 1985). In ruling upon a reinstatement petition, it is incumbent upon this Commission to examine all relevant factors in order to reach an equitable result. *Medical Transportation, Inc.*, 57 Pa. P.U.C. 79 (1983).

The Commission has identified five factors that are particularly relevant to the adjudication of a petition to reinstate: 1) the amount of time that elapsed between the cancellation of the certificate of public convenience and the filing of the petition, 2) whether the petitioner has a record of habitually violating the Public Utility Code, 3) the reasonableness of the excuse given for the violation that caused the certificate to be cancelled, 4) whether the petitioner has implemented procedures to prevent a recurrence of the circumstances giving rise to the cancellation, and 5) whether the petitioner is current in the payment of all Commission fines and assessments. *Re: M. S. Carriers, Inc.*, Docket No. A-00110601 (May 4, 1999).

In considering the first factor, we note that only 34 days elapsed between the effective date of the cancellation on August 26, 2005 and NECC's request for reinstatement on September 29, 2005. This short period of time supports reinstatement.

In regard to the second factor, NECC does not have a record of habitually violating the Public Utility Code. NECC was issued its certificate of public convenience in 2002. Since the issuance of its certificate, only one Formal Complaint has been issued against NECC in addition to the instant Complaint. That Complaint, which involved a billing dispute, was resolved by the parties. NECC's record also supports reinstatement.

In considering the third and fourth factors, NECC is appropriately apologetic in its Petition for the delinquency in filing its 2003 Annual Report. NECC further stated that it has taken steps to ensure that its regulatory compliance remains in good standing. In the meantime, NECC has also filed its 2004 Annual Report. The fact that NECC has now complied with our reporting requirements and has taken steps to ensure future compliance militates toward reinstatement. Specifically, NECC has hired a CPA and assistant CPA, and are in the process of moving its regulatory compliance function in house. NECC is also planning to implement a new computer system to ensure its timely regulatory compliance in the future.

The fifth factor requires that all outstanding fines and/or assessments be paid prior to reinstatement. A review of Commission records shows that NECC has no unpaid fines or assessments.

Based upon the foregoing, we will grant NECC's petition for reinstatement. However, we caution NECC that in the future annual reports must be complete and timely filed. We also emphasize that all Commission correspondence must be answered in a timely manner. *Therefore,*

It Is Ordered That:

1. The Petition to Reinstate filed by NECC Telecom, Inc. at C-20044040 on September 29, 2005, is hereby granted.

2. The certificate of public convenience held by NECC Telecom Inc. at A-311209 is hereby reinstated.

3. The Secretary cause a copy of this Order to be published in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-2104. Filed for public inspection November 11, 2005, 9:00 a.m.]

Order

Public Meeting held
October 27, 2005

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzingrilli; Terrance J. Fitzpatrick

Law Bureau Prosecutory Staff v. Worldxchange Corp.
(2004.0267); Doc. No. C-20044007

Worldxchange Corp. Petition for Reinstatement;
Doc. No. A-310972

Order

By the Commission:

On December 13, 2004, Law Bureau Prosecutory Staff filed a Formal Complaint against Worldxchange Corp. (Worldxchange), a facilities based toll carrier and CLEC carrier certificated at A-310972. In the Complaint, Prosecutory Staff alleged that the Commission sent by certified mail prior written notices to Worldxchange that its 2003 Annual Report was due. The Complaint charged that Worldxchange violated 66 Pa.C.S. § 504 by failing to file its 2003 Annual Report. The Complaint requested that the Commission issue an order canceling Worldxchange's certificate of public convenience for failure to file its 2003 Annual Report.

According to the U. S. Postal Service return receipt, the Complaint was presumably not served, but the post office did not return the green card. As a result of Worldxchange's failure to respond to the Complaint, the Commission entered a Default Order on July 22, 2005 that sustained the Complaint and cancelled Worldxchange's certificate of public convenience. The notice of the Default Order was published August 6, 2005 at 35 Pa.B. 4534 with a 20-day comment period.

On September 19, 2005, Worldxchange filed a letter-petition for reconsideration along with its 2003 Toll Reseller Annual Report, and a check for the late-filing fee in the amount of \$250. Worldxchange was then advised by Commission Staff that it needed to file separate annual reports for its 2003 CLEC and Toll operations in order to be in compliance with Commission regulation. On September 26, 2005, Worldxchange filed separate annual reports for its Toll and CLEC operations. In its petition, Worldxchange seeks reconsideration of the Default Order and reinstatement of its certificate. We will treat this petition as a request for reinstatement.

In its Petition, Worldxchange apologized for failing to timely file its 2003 Annual Reports. Worldxchange states that it has taken steps to ensure that it timely complies with future filing deadlines.

It is well-settled that decisions such as whether to grant a petition for reinstatement are left to the Commission's discretion. *Hoskins Taxi Service v. Pa. P.U.C.*, 486 A.2d 1030 (Pa. Cmwlth. 1985). In ruling upon a reinstatement petition, it is incumbent upon this Commission to examine all relevant factors in order to reach an equitable result. *Medical Transportation, Inc.*, 57 Pa. P.U.C. 79 (1983).

The Commission has identified five factors that are particularly relevant to the adjudication of a petition to reinstate: 1) the amount of time that elapsed between the cancellation of the certificate of public convenience and the filing of the petition, 2) whether the petitioner has a record of habitually violating the Public Utility Code, 3) the reasonableness of the excuse given for the violation that caused the certificate to be canceled, 4) whether the petitioner has implemented procedures to prevent a recurrence of the circumstances giving rise to the cancellation, and 5) whether the petitioner is current in the payment of all Commission fines and assessments. *Re: M. S. Carriers, Inc.*, Docket No. A-00110601 (May 4, 1999).

In considering the first factor, we note that only 24 days elapsed between the effective date of the cancellation on August 26, 2005 and Worldxchange's request for reinstatement on September 19, 2005.

In regard to the second factor, Worldxchange does not have a record of habitually violating the Public Utility Code. Worldxchange was issued its certificate in 2000. However, Worldxchange's certificate was incorrectly cancelled due to an administrative error by Default Order entered October 29, 2002. That Default Order was rescinded by Order entered January 16, 2003. On December 9, 2004, Rising Tide Development, a property manager, filed a Formal Complaint against Worldxchange for failure to release a line so that a new tenant could receive service from Verizon. That Complaint was resolved by mediation and the case was closed by Secretarial Letter dated July 8, 2005. On February 4, 2005, Sandra Brletic-Smith filed a Formal Complaint alleging slamming by Worldxchange. On March 14, 2005, Worldxchange filed an answer denying the slamming allegation and stating that its investigation revealed that no slamming occurred. That Complaint has not yet been resolved. Worldxchange's record is not so egregious as to prohibit reinstatement.

In considering the third and fourth factors, Worldxchange is extremely apologetic in its Petition for the delinquency in filing its 2003 Annual Report. Worldxchange further stated that it has taken steps to ensure that its regulatory compliance remains in good standing. In the meantime, Worldxchange has also filed its 2004 CLEC and Toll Annual Reports. The fact that Worldxchange has now complied with our reporting requirements and has taken steps to ensure future compliance militates toward reinstatement.

The fifth factor requires that all outstanding fines and/or assessments be paid prior to reinstatement. A review of Commission records shows that Worldxchange has no unpaid fines or assessments.

Based upon the foregoing, we grant Worldxchange's petition for reinstatement. However, we caution Worldxchange that in the future annual reports must be complete and timely filed. We also emphasize that all Commission correspondence must be answered in a timely manner. *Therefore,*

It Is Ordered That:

1. The Petition to Reinstate filed by Worldxchange Corp. at C-20044007 on September 19, 2005, is hereby granted.

2. The certificate of public convenience held by Worldxchange Corp. at A-310972 is hereby reinstated.

3. The Secretary cause a copy of this Order to be published in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-2105. Filed for public inspection November 11, 2005, 9:00 a.m.]

Rescission Order

Public Meeting held
October 27, 2005

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzingrilli; Terrance J. Fitzpatrick

Law Bureau Prosecutory Staff v. McGraw Communications, Inc. (2004.0267); Doc. No. C-20044043

*McGraw Communications, Inc.
Petition to Rescind; Doc. No. A-311160*

Rescission Order

By the Commission:

On December 14, 2004, Law Bureau Prosecutory Staff filed a Formal Complaint against McGraw Communications, Inc. (Respondent), a non-facilities based reseller of toll service carrier certificated at A-311160, for failure to file its 2003 Annual Report. Subsequently, on July 22, 2005, the Commission entered a Default Order that sustained the complaint and cancelled Respondent's certificate. Notice of the Default Order was published August 6, 2005, at 35 Pa.B. 4529.

On August 10, 2005, Staff communications with Respondent revealed that the Commission sent the annual report notices and the Complaint to an incorrect address. On September 7, 2005, subsequent to the entry of the Default Order, Respondent filed its 2003 and 2004 Annual Reports along with a request to have the Default Order rescinded. The 2003 Annual Report was deemed incomplete because the balance sheet was missing. Respondent was then informed that the balance sheet had to be filed in order to satisfy the Complaint.

On September 14, 2005, Respondent filed its balance sheet thereby fulfilling its 2003 Annual report Requirement. In its request for rescission, Respondent noted that it never received the letters notifying it of its filing obligations or of the Complaint because they were sent to the wrong address. Commission records reveal that a typo existed in the data base that caused the notices and the Complaint to be sent to the incorrect address. The notices and Complaint were sent to 128 E. 45th Street, New York, NY 10017, when the documents should have been sent to 228 E. 45th Street. Because of the mix-up, Respondent was unaware that its 2003 Annual Report was delinquent. Respondent became aware of the delinquency upon entry of the Default Order.

A review of Commission records reveal that no other complaints have been instituted against McGraw since the issuance of its certificate in 2002. Based upon the fact that Commission sent correspondence to McGraw at an incorrect address, we see no public benefit by imposing a late-filing fee upon McGraw as a condition of reinstatement.

Because Respondent has now filed its delinquent Annual Report, we will grant Respondent's request for rescission. However, we caution Respondent that all

future Annual Reports must be timely filed and all Commission correspondence must be answered in a timely manner. The Commission hereby puts McGraw Communications, Inc. and the rest of the industry on notice that we will not hesitate to invoke our authority under the Public Utility Code to ensure timely compliance with our regulations and orders including the ordering of such other remedy as the Commission may deem appropriate; *Therefore,*

It Is Ordered That:

1. The Default Order entered July 22, 2005 at this docket against McGraw Communications, Inc. is hereby rescinded.

2. A copy of this order be published in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-2106. Filed for public inspection November 11, 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, on or before December 5, 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.

Applications of the following for approval to *begin operating as common carriers for transportation of persons as described under each application.*

A-00122196. City Limo-Taxi, Inc. (575 Long Avenue, Yardley, Bucks County, PA 19067) a corporation of the Commonwealth—persons, in limousine service, from all points lying on and south of SR 532, Bucks County to points in Pennsylvania, and return.

A-00119891, Folder 2. Mahmoud Awad (4610 Jonestown Road, Apt. 46, Harrisburg, Dauphin County, PA 17109-6236)—persons, upon call or demand, in the Counties of Dauphin, York and Cumberland.

A-00122205. EMS Southwest, Inc. (4158 Old William Penn Highway, Murrysville, Westmoreland County, PA 15668), a corporation of the Commonwealth—persons, in paratransit service, from points in the County of Greene, to points in Pennsylvania, and return.

A-00122204. Penn Taxi Services, Inc. (P. O. Box 2518, West Lawn, Berks County, PA 19609), a corporation of the Commonwealth—persons, upon call or demand, in the County of Berks. *Attorney:* Lisa A. Thompson, P. O. Box 6286, 2640 Westview Drive, Wyomissing, PA 19610.

A-00122197. Edward Allen Ritter (141 House Rock Road, Pequea, Lancaster County, PA 17565)—persons in

paratransit service, from points in the County of Lancaster, and points in West Caln Township, Chester County, located within an airline distance of 7 statute miles of the limits of the Borough of Christiana, Lancaster County, to points in Pennsylvania, and vice versa; subject to the following conditions: (1) that service is limited to persons whose personal convictions prevent them from owning or operating motor vehicles; and (2) that no service shall originate in Chester County, except points in West Caln Township located within an airline distance of 7 statute miles of the limit of the Borough of Christiana, Lancaster County, which is to be a transfer of all the right authorized under the certificate issued at A-00119291 to Ricky and Leslie Bone, tenants by entirety, subject to the same limitations and conditions.

Application of the following for *amendment to the certificate of public convenience approving the operation of motor vehicles as common carriers for transportation of persons as described under the application.*

A-00121720, Folder 1, Am-A. Leonard R. Lewandowski t/d/b/a D & L Cab Co. (106 Morningside Drive, Red Lion, York County, PA 17356), which grants the right, to transport, by motor vehicle, persons, upon call or demand in the Boroughs of Red Lion, Dallastown, Jacobus, Windsor, Loganville, Winterstown, Glen Rock, Shrewsbury, Stewartstown, Felton, Cross Roads and Yoe and the Townships of York, Springfield, Shrewsbury, Windsor, North Hopewell, East Hopewell and Hopewell, all located in York County: *So As To Permit* the transportation of persons upon call or demand in the Townships of Springettsbury, Spring Garden, West Manchester and Manchester and the City of York, all located in York County.

Application of the following for approval of the *additional right and privilege of operating motor vehicles as common carriers for transportation of persons as described under the application.*

A-00106038, Folder 3. Valley Association for Specialized Transportation, Inc. (430 Allentown Drive, Allentown, Lehigh County, PA 18109), a corporation of the Commonwealth—persons, in group and party service, in vehicles seating 11 to 15 passengers, including the driver, from points in the Counties of Lehigh and Northampton, to points in Pennsylvania, and return.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-2107. Filed for public inspection November 11, 2005, 9:00 a.m.]

Transfer of Assets

A-120002F2001. Gasco Distribution Systems, Inc.—Claysville Division Application of Gasco Distribution Systems, Inc.—Claysville Division for approval of the transfer of Gasco Distribution Systems, Inc.—Claysville Division assets to Utility Pipeline, Ltd., including the immediate transfer of Gasco Distribution Systems, Inc.—Claysville Division assets to Knox Energy Cooperative Association, Inc., and for the abandonment of natural gas service of Gasco Distribution Systems, Inc.—Claysville Division.

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, Pennsyl-

vania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant, on or before November 28, 2005. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: Gasco Distribution Systems, Inc.—Claysville Division

Through and By Counsel: William T. Hawke, Esquire, Hawke, McKeon, Sniscak and Kennard, LLP, 100 North Tenth Street, Harrisburg, PA 17101.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-2108. Filed for public inspection November 11, 2005, 9:00 a.m.]

Water Service

A-221500F2000. Borough of Herndon. Application of the Borough of Herndon for approval of the abandonment or discontinuance of water 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 November 28, 2005. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: The Borough of Herndon

Through and By Counsel: Joseph C. Michetti, Jr., Esquire, Dluge & Michetti, 921 Market Street, Trevorton, PA 17881.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-2109. Filed for public inspection November 11, 2005, 9:00 a.m.]

Water Service

A-211871F2001. Somerset Water Company. Application of Somerset Water Company, an entity owned by the Estate of William Jerome McCormick a/k/a William McCormick, deceased, for approval of the abandonment of its certificate of public convenience as a water utility 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 November 28, 2005. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: Somerset Water Company

Through and By Counsel: Kris A. Vanderman, Esquire, Vanderman Law Offices, 142 Fallowfield Avenue, Charleroi, PA 15022.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 05-2110. Filed for public inspection November 11, 2005, 9:00 a.m.]

PHILADELPHIA REGIONAL PORT AUTHORITY

Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project #05-110.1, New Gate Facility and Security Improvements at the Tioga Marine Terminal, until 2 p.m. on Thursday, December 15, 2005. The bid documents can be obtained from the Director of Procurement, PRPA, 3460 North Delaware Avenue, 2nd Floor, Philadelphia, PA 19134, (215) 426-2600 and will be available November 22, 2005. Additional information and project listings may be found at www.philaport.com. The cost of the bid document is \$35 (includes 7% Pennsylvania Sales Tax). The cost is nonrefundable. PRPA is an equal opportunity employer. Contractors must comply with all applicable equal opportunity laws and regulations. Bidders must provide to the Procurement Department, in writing, the names of individuals that will be attending prebid meetings. This information is needed 24 hours prior to the meeting. Fax to (215) 426-6800, Attn: Procurement Department.

A mandatory prebid job site meeting will be held on December 1, 2005, at 10 a.m. at PRPA, 3460 North Delaware Avenue, 2nd Floor, Philadelphia, PA 19134.

JAMES T. MCDERMOTT, Jr.,
Executive Director

[Pa.B. Doc. No. 05-2111. Filed for public inspection November 11, 2005, 9:00 a.m.]

STATE CONSERVATION COMMISSION

2006 Commission Meeting Dates and Conference Call Dates

The State Conservation Commission (Commission) will hold a briefing session from 9 a.m. to 12 p.m. and a business meeting from 1 p.m. to 4 p.m. on the following dates: January 19, 2006, jointly with Pennsylvania Association of Conservation Districts (PACD), State College; March 15, 2006, Dauphin County Conservation District; May 23, 2006, in conjunction with the Envirothon at Mt. Alto, Chambersburg; July 26, 2006, jointly with PACD, State College; September 13, 2006, Harrisburg, Adams County Conservation District, Gettysburg; November 16, 2006, Harrisburg. The Commission also announces the

following 2006 conference call dates: February 15, April 19, June 21, August 16, October 18 and December 20 from 8:30 a.m. to 10 a.m. A conference call also was confirmed for December 14, 2005, from 8:30 a.m. to 10 a.m.

DENNIS C WOLFF,
Chairperson

[Pa.B. Doc. No. 05-2112. Filed for public inspection November 11, 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

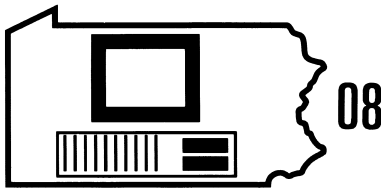
DO BUSINESS WITH STATE AGENCIES

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.patreasury.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

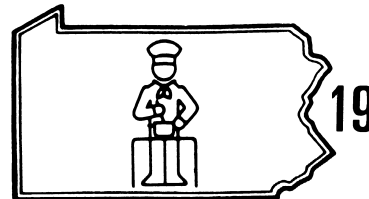
SERVICES



Computer Related Services

RFP-AQ-1-2005 A New Air Quality Continuous Emission Monitoring (CEM) Data Processing System (CEMDPS). You can download bidding documents from our website at www.dep.state.pa.us/dep/deputate/airwaste/airwaste/airwaste/airwaste/default.htm, www.dep.state.pa.us/dep/deputate/airwaste/airwaste/airwaste/airwaste/airwaste/cems.htm.

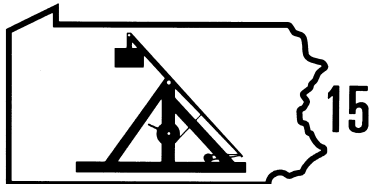
Department: Environmental Protection
Location: Harrisburg, PA
Duration: Upon execution through December 31, 2006
Contact: Greg Parrish, 717-787-6547



Food

SU-05-09 Food Service: The Head Start Program based at Shippensburg University is seeking vendors interested in providing food service for five Head Start Centers located in Shippensburg, PA; Newville, PA; Carlisle, PA; and Boiling Springs, PA. Meals will be prepared in accordance with USDA regulations on a daily basis in accordance with the menu cycle. Contract award will be made for the period December 1, 2006 through September 30, 2006 with two additional 1-year renewal options. Interested vendors may send their request for bid package to Karen Smith via fax to (717) 477-1350 or e-mail to kmsmit@ship.edu. All responsible bidders are encouraged to participate including MBE/WBE firms.

Department: State System of Higher Education
Location: Shippensburg University, 1871 Old Main Drive, Shippensburg, PA
Duration: January 1, 2006 to September 30, 2006 with two additional 1-year renewal options
Contact: Karen Smith, (717) 477-1386



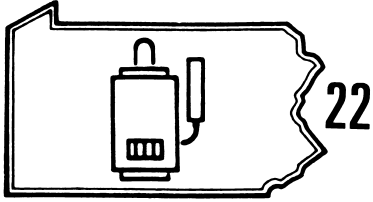
Environmental Maintenance Service

OSM 40(3734)101.1 Abandoned Mine Reclamation, West Suscon. The principal items of work and approximate quantities include 901,700 cubic yards of Grading, 8,890 cubic yards of Drainage Excavation, 8,320 square yards of Rock Lining and 127.9 acres of Seeding. This project issues on November 10, 2005 and bids will be opened on December 6, 2005 at 2:00 p.m. Bid documents cost \$15.00 per set and will not be mailed until payment has been received. Federal funds have been made available for this project from the \$26,051,154 for Pennsylvania's 2004 AML Grant.

Department: Environmental Protection
Location: Jenkins Township, Luzerne County
Duration: 420 calendar days after the official starting date.
Contact: Construction Contracts Section, 717-787-7820

SU-05-08 Shippensburg University is seeking proposals for a vendor to provide year round dining service at Shippensburg University. Vendors interested in obtaining a bid package must request in writing to Deborah K. Martin, Shippensburg University, 1871 Old Main Drive, Shippensburg, 17257; Phone (717) 477-1121 or fax: (717) 477-4004, or e-mail: DKMART@ship.edu.

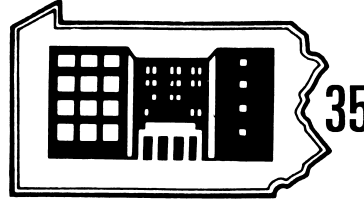
Department: State System of Higher Education
Location: Shippensburg, PA 17257
Duration: 5 year base year, with 2 one year options
Contact: Deborah K. Martin, 717-477-1121



HVAC Services

SU-05-07 Shippensburg University is seeking vendors who are interested in furnishing and installing panels, breakers, conduits and all necessary wiring for the addition of 14 each Model #S62083D10-3020 AccuTemp Steam 'N' Hold Convection Countertop Steamers in Kriner Dining Hall and Reisner Dining Hall. Interested bidders may request a bid package by faxing a request to (717) 477-1350 or sending an e-mail to kmsmit@ship.edu. All responsible bidders are encouraged to participate including MBE/WBE firms.

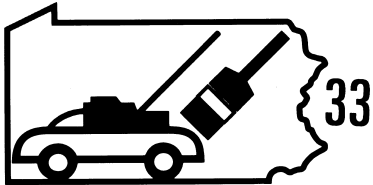
Department: State System of Higher Education
Location: Shippensburg University, 1871 Old Main Drive, Shippensburg, PA 17257
Contact: Karen Smith, (717) 477-1386



Real Estate Services

93920 The Department of General Services will accept bids for the purchase of 0.32 acre of property and one building located at the northwest intersection of Ridge Avenue and Spring Street, City of Latrobe, Westmoreland County. Bids are due on December 1, 2005. Interested parties wishing to receive a copy of solicitation # 93920 should view the Department of General Services' website at www.dgs.state.pa.us.

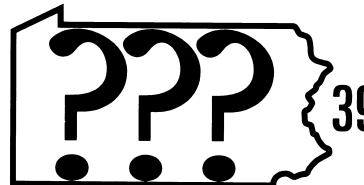
Department: General Services
Location: 505 North Office Building, Harrisburg, PA 17125
Contact: Stephen J. Squibb, (717) 783-0228



Property Maintenance

8941 Furnish all labor, materials and equipment for snow removal services from sidewalks, driveways and parking areas at the PA State Police, Laporte Station. Totals are based on estimated snow removal and granular deicing material in hours/tons. Detailed Work Schedule and Request for Quote must be obtained from Facility Management Division, 717-705-5951.

Department: State Police
Location: Troop P, Laporte Station, P. O. Box 70, Laporte, PA 18626. Contact: Sgt. Steven Krasucki, phone 570-946-4610
Duration: 01/01/06 to 06/30/08
Contact: Sandy Wolfe, 717-705-5951



Miscellaneous

RFP 08-04 Cancellation. The Department of Public Welfare has determined that it is in the best interest of the Commonwealth to cancel RFP 08-04, Philadelphia Medical Assistance Transportation Program (MATP). A new RFP for MATP is expected to be released in the near future. The Department appreciates the efforts made in submitting proposals and regrets any inconvenience this decision has caused. It is hoped that all interested offerors will accept other RFPs released in the future and will submit additional proposals for evaluation.

Department: Public Welfare
Contact: Daniel R. Boyd, 717-783-3767

[Pa.B. Doc. No. 05-2113. Filed for public inspection November 11, 2005, 9:00 a.m.]

DESCRIPTION OF LEGEND

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| <p>1 Advertising, Public Relations, Promotional Materials</p> <p>2 Agricultural Services, Livestock, Equipment, Supplies & Repairs: Farming Equipment Rental & Repair, Crop Harvesting & Dusting, Animal Feed, etc.</p> <p>3 Auctioneer Services</p> <p>4 Audio/Video, Telecommunications Services, Equipment Rental & Repair</p> <p>5 Barber/Cosmetology Services & Equipment</p> <p>6 Cartography Services</p> <p>7 Child Care</p> <p>8 Computer Related Services & Equipment Repair: Equipment Rental/Lease, Programming, Data Entry, Payroll Services, Consulting</p> <p>9 Construction & Construction Maintenance: Buildings, Highways, Roads, Asphalt Paving, Bridges, Culverts, Welding, Resurfacing, etc.</p> <p>10 Court Reporting & Stenography Services</p> <p>11 Demolition—Structural Only</p> <p>12 Drafting & Design Services</p> <p>13 Elevator Maintenance</p> <p>14 Engineering Services & Consultation: Geologic, Civil, Mechanical, Electrical, Solar & Surveying</p> <p>15 Environmental Maintenance Services: Well Drilling, Mine Reclamation, Core & Exploratory Drilling, Stream Rehabilitation Projects and Installation Services</p> <p>16 Extermination Services</p> <p>17 Financial & Insurance Consulting & Services</p> <p>18 Firefighting Services</p> <p>19 Food</p> <p>20 Fuel Related Services, Equipment & Maintenance to Include Weighing Station Equipment, Underground & Above Storage Tanks</p> <p>21 Hazardous Material Services: Abatement, Disposal, Removal, Transportation & Consultation</p> | <p>22 Heating, Ventilation, Air Conditioning, Electrical, Plumbing, Refrigeration Services, Equipment Rental & Repair</p> <p>23 Janitorial Services & Supply Rental: Interior</p> <p>24 Laboratory Services, Maintenance & Consulting</p> <p>25 Laundry/Dry Cleaning & Linen/Uniform Rental</p> <p>26 Legal Services & Consultation</p> <p>27 Lodging/Meeting Facilities</p> <p>28 Mailing Services</p> <p>29 Medical Services, Equipment Rental and Repairs & Consultation</p> <p>30 Moving Services</p> <p>31 Personnel, Temporary</p> <p>32 Photography Services (includes aerial)</p> <p>33 Property Maintenance & Renovation—Interior & Exterior: Painting, Restoration, Carpentry Services, Snow Removal, General Landscaping (Mowing, Tree Pruning & Planting, etc.)</p> <p>34 Railroad/Airline Related Services, Equipment & Repair</p> <p>35 Real Estate Services—Appraisals & Rentals</p> <p>36 Sanitation—Non-Hazardous Removal, Disposal & Transportation (Includes Chemical Toilets)</p> <p>37 Security Services & Equipment—Armed Guards, Investigative Services & Security Systems</p> <p>38 Vehicle, Heavy Equipment & Powered Machinery Services, Maintenance, Rental, Repair & Renovation (Includes ADA Improvements)</p> <p>39 Miscellaneous: This category is intended for listing all bids, announcements not applicable to the above categories</p> |
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JAMES P. CREEDON,
Secretary

