

PENNSYLVANIA BULLETIN

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Practice and Procedure
Before the Commission

Part I

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**Latest Pennsylvania Code Reporter
(Master Transmittal Sheet):**

No. 377, April 2006

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

Pennsylvania Bulletin

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

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

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

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

Adoption, Amendment or Repeal of Regulations

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

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

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

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

Citation to the *Pennsylvania Bulletin*

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

Pennsylvania Code

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

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

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

How to Find Documents

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

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

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

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Printing Format

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

Fiscal Notes

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

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

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List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2006.

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THE GENERAL ASSEMBLY

Recent Actions during the 2006 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2006 Regular Session

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
2006 GENERAL ACTS ENACTED—ACT 022 through 028					
022	Apr 12	HB0058	PN3760	Immediately	Merchant Marine World War II Veterans Bonus Act—enactment
023	Apr 12	HB0200	PN3732	60 days	Ounce of Prevention Program Act—enactment
024	Apr 12	HB2157	PN2980	Immediately	Military and Veterans Code (51 Pa.C.S.)—certain duty for emergencies
025	Apr 12	HB2215	PN3089	Immediately	Conveyance—Commonwealth property in Columbia Borough, Lancaster County
026	Apr 13	SB0969	PN1554	60 days	Liquor Code—responsible alcohol remediation management for licensees and preservation of rights of municipalities
027	Apr 14	HB0213	PN3115	60 days	Crimes Code (18 Pa.C.S.) and Judicial Code (42 Pa.C.S.)—agricultural crop destruction and ecoterrorism
028	Apr 14	HB0893	PN3815	Immediately	Water Services Act—enactment

* denotes an effective date with exceptions

Effective Dates of Statutes

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

Advance Copies of Statutes

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

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

ROBERT ZECH,
Director
Legislative Reference Bureau

[Pa.B. Doc. No. 06-696. Filed for public inspection April 28, 2006, 9:00 a.m.]

THE COURTS

Title 255—LOCAL COURT RULES

DELAWARE COUNTY

Orphans' Court Division Rule No. 3.6; No. 06-225

Decree

And Now, this 4th day of April, 2006, it is hereby Ordered and Decreed that Delaware County Orphans' Court Division Rule No. 3.6 is Rescinded, and in its place and stead, substituted the following:

Rule 3.6 Practice as to Depositions, Discovery, Production of Documents and Perpetuation of Testimony

(1) Leave to take depositions, or to perpetuate testimony, or obtain discovery or the productions of documents, may be granted only on petition upon cause shown except upon agreement of counsel.

(2) The procedure relating to depositions, discovery, the production of documents, and the perpetuation of testimony shall be governed by special order of the court in every case.

By the Court

KENNETH A. CLOUSE,
President Judge

[Pa.B. Doc. No. 06-697. Filed for public inspection April 28, 2006, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Collection Fee and Late Payment Penalty for 2006-2007 Assessment Year

Notice is hereby given that in accordance with Pennsylvania Rule of Disciplinary Enforcement 219(d)(2) and 219(h)(2), The Disciplinary Board of the Supreme Court of Pennsylvania has established the collection fee for checks returned as unpaid and the late payment penalty for the 2006-2007 Assessment Year as follows:

Where a check in payment of the annual registration fee for attorneys has been returned to the Board unpaid, the collection fee will be \$50.00 per returned item.

At the time the final notices are transmitted by certified mail to an attorney who fails to timely file an annual registration form and pay the fee, the late payment penalty will be \$100.00. After 30 days, the names of every attorney who has failed to respond to the notice shall be

certified to the Supreme Court, at which time the late payment penalty will be increased to \$200.00.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 06-698. Filed for public inspection April 28, 2006, 9:00 a.m.]

Notice to Attorneys

Notice is hereby given that pursuant to Rule 221(b), Pa.R.D.E., the following List of Financial Institutions have been approved by the Supreme Court of Pennsylvania for the maintenance of fiduciary accounts of attorneys. Each financial institution has agreed to comply with the requirements of Rule 221, Pa.R.D.E., which provides for trust account overdraft notification.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

List of Approved PA Financial Institutions Who Have Been Approved as Depositories for Fiduciary Accounts of Attorneys

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302	Allegheny Valley Bank of Pittsburgh
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579	Alliance Bank
375	Altoona First Savings Bank
376	Ambler Savings and Loan Association
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502	American Eagle Savings Bank, PASA
581	American Home Bank, N. A.
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377	Apollo Trust Company
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485	Bank of America, N. A.
138	Bank of Canton
155	Bank of Hanover & Trust Company
3	Bank of Lancaster County, N. A.
415	Bank of Landisburg (The)
519	Beaver Valley Federal Credit Union

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397	Beneficial Savings Bank	500	Elderton State Bank
582	Berkshire Bank	567	Embassy Bank
391	Blue Ball National Bank	541	Enterprise Bank
392	Brentwood Savings Bank	28	Ephrata National Bank (The)
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161	Bryn Mawr Trust Company	552	Eureka Bank
156	Bucks County Bank		
	Bank Code C.		Bank Code F.
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540	C & G Savings Bank	205	Farmers National Bank of Emlenton
394	Charleroi Federal Savings Bank	436	Farmers National Bank of Kittanning
578	Charter One Bank, N. A.	34	Fidelity Deposit & Discount Bank
238	Citizens and Northern Bank	343	Fidelity Savings and Loan of Bucks County
561	Citizens Bank of Pennsylvania	311	Fidelity Bank
420	Citizens National Bank—Myersdale	583	Fifth Third Bank
206	Citizens Savings Association	174	First Citizens National Bank
353	Citizens Trust Company	191	First Columbia Bank & Trust Co.
576	Clarion County Community Bank	539	First Commonwealth Bank
16	Clearfield Bank & Trust Co.	551	First Cornerstone Bank
591	Clearview Federal Credit Union	369	First Federal Savings & Loan Assoc. of Bucks County
354	Coatesville Savings Bank	504	First Federal Savings & Loan Assoc. of Greene County
17	Columbia County Farmers National Bank	388	First Federal Savings Bank
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132	Community State Bank of Orbisonia	52	First National Bank of Chester County
590	Continental Bank	416	First National Bank of Fleetwood (The)
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382	CSB Bank	418	First National Bank of Liverpool (The)
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27	Dollar Bank	419	First National Bank of Mifflintown (The)
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	Bank Code E.	47	First National Bank of Newport (The)
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592	First Resource Bank	554	Landmark Community Bank
40	First Savings Bank of Perkasio	76	Laurel Savings Bank
349	First Star Savings Bank	187	Lebanon Valley Farmers Bank
158	First Summit Bank	182	Leesport Bank
408	First United National Bank	547	Legacy Bank
151	Firsttrust Bank	78	Luzerne National Bank
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241	Franklin Mint Federal Credit Union	361	M & T Bank
58	Fulton Bank	510	Marion Center National Bank
59	Fulton County National Bank & Trust Company	81	Mars National Bank (The)
		367	Mauch Chunk Trust Company
Bank Code	G.	5	Mellon Bank, N. A.
588	Gateway Bank of Pennsylvania	555	Mercer County State Bank
499	Gratz National Bank (The)	192	Merchants National Bank of Bangor (The)
593	Graystone Bank	478	Merchants National Bank of Kittanning
498	Greenville Savings Bank	294	Mid Penn Bank
Bank Code	H.	511	Mifflin County Savings Bank
402	Halifax National Bank	276	Mifflinburg Bank & Trust Company
244	Hamlin Bank and Trust Company	457	Milton Savings Bank
64	Harleysville National Bank and Trust Company	345	Minersville Safe Deposit Bank and Trust Company
362	Harleysville Savings Bank	346	Morton Savings Bank
363	Hatboro Federal Savings	484	Muncy Bank & Trust Company (The)
410	Herndon National Bank (The)	Bank Code	N.
559	Home Savings & Loan Company	337	National City Bank of Pennsylvania
68	Honesdale National Bank (The)	88	National Penn Bank
350	HSBC Bank of USA	347	Neffs National Bank (The)
143	Hudson United Bank	372	Nesquehoning Savings Bank
364	Huntingdon Valley Bank	15	NexTier Bank
Bank Code	I.	536	New Century Bank
365	Indiana First Savings Bank	434	New Tripoli National Bank (The)
575	Integrity Bank	545	Nittany Bank
557	Investment Savings Bank	492	North Penn Bank
200	Iron and Glass Bank	439	Northumberland National Bank
526	Iron Workers Savings Bank	93	Northwest Savings Bank
366	Irwin Bank & Trust Company	546	Nova Savings Bank
Bank Code	J.	Bank Code	0.
70	Jersey Shore State Bank	348	Old Forge Bank
127	Jim Thorpe National Bank	323	Omega Bank, NA
488	Jonestown Bank and Trust Company	489	OMEGA Federal Credit Union
72	Juniata Valley Bank (The)	94	Orrstown Bank
Bank Code	K.	Bank Code	P.
403	Keystone Nazareth Bank and Trust	267	Parkvale Bank
414	Kish Bank	584	Parkview Community Federal Credit Union

580	Penn Liberty Bank	385	Susquehanna Bank
97	Penn Security Bank & Trust Company	30	Susquehanna Bank PA
168	Pennstar Bank	282	Susquehanna Patriot Bank
544	Pennsylvania Business Bank	236	Swineford National Bank
445	Pennsylvania State Bank	Bank Code	T.
99	PeoplesBank, A Codorus Valley Company	594	Team Capital Bank
447	Peoples National Bank of Susquehanna County	463	The Haverford Trust Company
491	Peoples State Bank (The)	26	Third Federal Savings Bank
556	Philadelphia Federal Credit Union	467	Turbotville National Bank (The)
448	Phoenixville Federal Bank & Trust	Bank Code	U.
79	PNC Bank, N. A.	113	Union Bank and Trust Company
534	Pocono Community Bank	481	Union Building and Loan Savings Bank
528	Polonia Bank	483	Union National Bank of Mount Carmel (The)
449	Port Richmond Savings	133	Union National Community Bank
454	Portage National Bank	472	United Bank of Philadelphia
450	Premier Bank	475	United Savings Bank
451	Progressive Home Federal	232	Univest National Bank & Trust Company
456	Prudential Savings Bank	Bank Code	V.
Bank Code	Q.	589	Valley Green Bank
107	Quakertown National Bank (The)	136	Vartan National Bank
560	Quaint Oak Savings Bank	Bank Code	W.
Bank Code	R.	338	Wachovia
452	Reliance Savings Bank	119	Washington Federal Savings Bank
220	Republic First Bank	121	Wayne Bank
208	Royal Bank of America	553	Wesbanco Bank
Bank Code	S.	122	West Milton State Bank
153	S & T Bank	494	West View Savings Bank
464	Scottdale Bank & Trust Company (The)	473	Westmoreland Federal Savings
460	Second Federal Savings & Loan Assoc. of Philadelphia	476	William Penn Savings and Loan Association
516	Sentry Federal Credit Union	160	Wilmington Trust of PA
458	Sharon Savings Bank	272	Woodlands Bank
312	Sky Bank	573	Woori America Bank
462	Slovenian Savings & Loan Assoc. of Franklin—Conemaugh	Bank Code	X.
459	Smithfield State Bank	Bank Code	Y.
486	Somerset Trust Company	571	Yardville National Bank
316	Sovereign Bank, FSB	577	York Traditions Bank
518	Standard Bank PASB	Bank Code	Z.
542	Stonebridge Bank		
517	Sun National Bank		
440	SunTrust		

[Pa.B. Doc. No. 06-699. Filed for public inspection April 28, 2006, 9:00 a.m.]

RULES AND REGULATIONS

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; Turkey

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 24, 2006, meeting, adopted amendments to § 141.45 (relating to turkey).

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 36 Pa.B. 22 (January 7, 2006).

1. Purpose and Authority

Formerly, § 141.45 did not clearly define the types of devices that may lawfully be used to harvest wild turkey during the fall season, as it did for the spring gobbler season and for seasons of other game species. The absence of this type of language created confusion for hunters and Commission staff regarding what implements may lawfully be used during the fall turkey season. In addition, the Commission has been receiving many requests to expand the permissible use of crossbows to the fall and spring turkey seasons. After consideration of the safety and wildlife management aspects involved, the Commission has determined that an expansion is presently justified. Therefore, to be consistent with other hunting seasons, eliminate confusion and also expand hunting opportunity, the Commission amended § 141.45 to clearly define the types of implements that may lawfully be used to hunt turkey during the fall season and also expand the lawful use of crossbows during both the fall and spring turkey season.

Section 322(c)(5) of the code (relating to powers and duties of commission) specifically empowers the Commission to "Fix the type and number of devices which may be used to take game or wildlife." Section 2102(d) of the code (relating to regulations) authorizes the Commission to "promulgate regulations stipulating . . . the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." Section 2102(a) of the code 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 § 141.45 was adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 141.45 to clearly define the types of devices that may lawfully be used to harvest wild turkey during the fall turkey season and also expand the lawful use of crossbows to both the fall and spring turkey seasons.

3. Persons Affected

Persons wishing to hunt wild turkey during the fall and spring turkey seasons will be affected by the final 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 141, are amended by amending § 141.45 to read as set forth at 36 Pa.B. 22.

(b) The Executive Director of the Commission shall certify this order and 36 Pa.B. 22 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*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-221 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 06-700. Filed for public inspection April 28, 2006, 9:00 a.m.]

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121 AND 127]

Nonattainment New Source Review

The Environmental Quality Board (Board) proposes to amend § 121.1 (relating to definitions) and Chapter 127, Subchapter E (relating to new source review) to read as set for in Annex A.

This notice is given under the Board by an order at its meeting of December 20, 2005.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact John Slade, Chief, Division of Permits, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4325; or Robert "Bo" Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. *Statutory Authority*

This proposed rulemaking is being made under the authority of section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P. S. § 4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background and Summary*

The primary goal of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7401–7642) is to ensure the attainment and maintenance of air quality under the National Ambient Air Quality Standards (NAAQS) requirements under section 110 of the CAA (42 U.S.C.A. § 7410). The NAAQS are set at a level designed to protect public health and the general welfare. See section 109 of the CAA (42 U.S.C.A. § 7409). Standards have been established for the following six pollutants: sulfur dioxides (SO_x), nitrogen oxides (NO_x), particulate matter (PM₁₀ and PM_{2.5}), carbon monoxide (CO), ozone (O₃) and lead (Pb).

Section 107 of the CAA (42 U.S.C.A. § 7407) and section 110 of the CAA give each state primary responsibility for assuring that air quality within its borders is maintained at a level consistent with the NAAQS. This responsibility is achieved through the establishment of source-specific requirements in state implementation plans (SIPs) addressing the NAAQS.

A primary means of achieving the NAAQS is through the New Source Review (NSR) program, which places preconstruction review and permitting requirements on certain new and modified sources of air pollution to protect public health and air quality. The nature of the requirements depends on whether the source is to be located in an area that attains, or does not attain, the NAAQS for the pollutant in question.

In enacting the CAA, Congress expressed a concern that the costs of retrofitting existing sources with state-of-the-art air pollution control technologies could be pro-

hibitively expensive. Congress concluded that it would be more cost-effective to require high levels of technological performance at new and modified sources, because they have more flexibility as to the location and design of control equipment than do existing sources. As a result, new and modified sources are subject to more stringent levels of control, and hence more costly controls, under the CAA than existing sources.

There are two sets of regulatory requirements that subject new and modified sources to more stringent levels of control: the Prevention of Significant Deterioration (PSD) under Title I, Part C of the CAA (42 U.S.C.A. §§ 7470–7479) and the nonattainment NSR requirements under Title I, Part D of the CAA (42 U.S.C.A. §§ 7501–7515) under the NSR preconstruction permitting program.

The NSR program subjects major new or "modified" sources of air pollution to preconstruction review and permitting requirements. The PSD program applies to sources that have the potential to emit at least 250 tons per year (tpy) of a regulated pollutant, or at least 100 tpy of a regulated pollutant, if the source falls within a listed source category. See 40 CFR 52.21(b)(1) (relating to prevention of significant deterioration of air quality). SIPs must also contain provisions to prevent significant deterioration of air quality. See 40 CFR 51.166 (relating to prevention of significant deterioration of air quality).

The NSR program applies to sources that have the potential to emit at least 100 tpy of a regulated nonattainment pollutant. See section 302(j) of the CAA (42 U.S.C.A. § 7602(j)). These thresholds have been lowered for areas with more acute nonattainment problems, for instance, to 50 tpy for volatile organic compound (VOC) and 100 tpy for NO_x in moderate areas, to 50 tpy for VOC and NO_x in serious ozone nonattainment areas, to 25 tpy for VOC and NO_x for severe areas and 10 tpy for VOC and NO_x for extreme areas. See section 182 of the CAA (42 U.S.C.A. § 7511a).

The purpose of the NSR program is to ensure that the proposed source meets all applicable air quality requirements before it is constructed. The nature of the NSR preconstruction requirements depends upon whether the source is to be located in an area that meets or fails to meet the applicable ambient air quality standards.

Major stationary sources located in attainment areas are subject to the PSD permit program. Before a person can construct a major source in an attainment area, that person must receive a permit under the PSD program. To receive that permit, a person must show that the proposed source will, among other things, comply with the ambient air quality levels designed to prevent air quality deterioration and will employ the "best available control technology" for each regulated pollutant. See section 165 of the CAA (42 U.S.C.A. § 7475).

Major stationary sources located in nonattainment areas are subject to the NSR area permit program, which the states are responsible for implementing through their SIPs. Before a person can construct a major source in a nonattainment area, that person must receive a permit under the nonattainment permit program. To receive that permit, a person must show that the proposed source will, among other things, offset its potential to emit nonattainment pollutants by securing emission reductions from a nearby facility at a greater than 1:1 ratio and will employ

the "lowest achievable emission rate" (LAER) for each regulated pollutant. See section 173 of the CAA (42 U.S.C.A. § 7503).

In 1996, the United States Environmental Protection Agency (EPA) published a proposed NSR rule at 61 FR 38250, 38251 (July 23, 1996) "to provide States with greater flexibility to customize their own regulations implementing the NSR program." The EPA also decided to ease the burden on industry of complying with NSR requirements by "significantly reduc[ing] the number and types of activities at sources that would otherwise be subject to major NSR under the existing NSR program regulations." See 61 FR 38251. The EPA estimated that the changes, if finalized, would result in approximately 50% fewer sources being subject to requirements under the PSD and nonattainment NSR provisions of the CAA. See 61 FR 38319. However, the EPA explained that it would not allow environmental benefits to be sacrificed to relieve the alleged burden on industry. See 61 FR 38250.

Two years later, the EPA published a Notice of Availability (NOA) at 63 FR 39857 (July 24, 1998) that presented its preliminary conclusions on certain aspects of the proposed rule and requested additional public comment. The EPA concluded that several of the reforms proposed in 1996 required additional safeguards to protect the environment and ensure accountability on the part of industry. See 63 FR 39859—39862.

In June 2002, after completing a review of the NSR program directed by the President's National Energy Policy Development Group, the EPA announced that it would finalize five elements of the proposed rule: (1) a revised methodology for determining whether a change at a source will increase emissions significantly, and thereby be considered a "modification;" (2) a new way to determine the emissions baseline used in measuring whether a significant emission increase will occur; (3) a plantwide applicability limit (PAL) permit that would allow a source to avoid triggering NSR requirements if it does not exceed an emissions cap; (4) an exclusion from NSR for any projects at a source designated as a "clean unit;" and (5) an exclusion from NSR for changes that are classified as pollution control projects.

At 67 FR 80186 (December 31, 2002), the EPA published the NSR rule, which finalized the previous five elements. For the PSD program, the NSR rule went into effect in this Commonwealth on March 3, 2003, because the Commonwealth automatically incorporates the Federal PSD requirements by reference under Chapter 127, Subchapter D (relating to prevention of significant deterioration of air quality). Since the Commonwealth does not incorporate the Federal nonattainment NSR provisions by reference, this proposed rulemaking is to address amendments regarding the Commonwealth's nonattainment NSR program in Chapter 127, Subchapter E, and will be submitted to the EPA as a revision to the Pennsylvania SIP.

The final version of the EPA's December 2002 rule contained neither the flexibility for states in implementing the rule provisions advertised in its proposed rule nor the additional accountability discussed in the NOA. Moreover, the regulations are likely to lead to increased air pollution, in turn causing harm to human health and the environment. To address these flaws, the Department, together with a number of other states, filed a petition for review in the D.C. Circuit Court of Appeals challenging the rule. See *New York et al. v. EPA*, (D.C. Cir.) (No. 02-1387 and consolidated cases).

On June 24, 2005, the Court of Appeals for the District of Columbia Circuit issued its opinion in *New York et al. v. EPA*, which addressed the challenges of the states and other petitioners to the EPA's NSR regulations published at 67 FR 80186. See *New York et al. v. EPA*, 413 F.3d 3, (D.C. Cir. 2005). The Court of Appeals upheld the NSR regulations in part, vacated them in part and remanded them in part. The Court of Appeals upheld the EPA's revised methodology for calculating emissions increases, which determines whether those increases are significant thereby triggering the NSR requirements, by comparing prechange actual emission levels to post-change projected actual emission levels or "actual-to-projected-actual" calculation methodology. The Court of Appeals upheld the EPA's 10-year "look-back" provision for calculating baseline emissions. This provision allows regulated entities to choose any 2 consecutive years in the preceding 10 (5 years for utilities) as their baseline. The Court of Appeals also upheld the EPA's newly prescribed use of the 10-year look-back period for purposes of determining baseline emissions levels and for measuring contemporaneous increases and decreases in the context of setting PALs. The Court of Appeals also upheld the EPA's "demand growth exclusion" which excludes from the calculation of emissions increases those increases not related to the change at the facility, but rather are attributable to growth in production as a response to increased product demand, which could have been accommodated by the facility before the change in question.

The Court of Appeals vacated the clean unit exemption provision on the grounds that the CAA requires any regulatory provision to evaluate emissions increases based on actual emissions, instead of potential or allowable emissions. This provision would have exempted an emissions unit from additional control technology if state-of-the-art controls based on an NSR review had been installed within the preceding 10 years or employed comparable state-of-the-art technology to comply with permit emission limits that would not violate other air quality requirements, even if any change in the emissions unit had increased the facility's net actual emissions.

The Court of Appeals also vacated the pollution control project exclusion provision on the grounds that the CAA provided no authority to exempt modifications causing significant emissions increases of a pollutant, even if the modifications are implemented primarily to reduce emissions of other pollutants. This provision would have excluded projects from NSR review that reduced emissions of some pollutants, allowed increases in others, but had a net beneficial environmental effect.

In this same opinion, the Court of Appeals remanded to the EPA for further consideration its provision that exempted facility owners or operators from any recordkeeping requirements if they believed a change had no reasonable possibility of producing a significant emissions increase. The Court of Appeals found that the EPA had not adequately explained how it would be able to detect and enforce against facilities improperly employing this exemption without adequate records being available.

In addition to the EPA's NSR rule published at 67 FR 80186, the EPA promulgated a number of other final rules that the Board addresses in this proposed rule related to when a facility is considered a major facility for the purposes of NSR. On April 30, 2004, the EPA published two final rules regarding the 8-hour ozone NAAQS. The first rule published at 69 FR 23858 is entitled "Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards: Early

Action Compact Areas With Deferred Effective Dates.” Among other things, this rule designated Bucks, Chester, Delaware, Montgomery and Philadelphia Counties as moderate nonattainment with the 8-hour ozone NAAQS. See 69 FR 23931.

The second rule EPA published at 69 FR 2395 (April 30, 2004) is entitled “Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1.” In that final action, the EPA addressed certain implementation issues related to the 8-hour standard, including the nonattainment major NSR program mandated by Title I, Part D of the CAA. This rule, among other things, determined that the CAA does not compel the EPA to retain the 1-hour ozone NAAQS major NSR requirements in implementing the 8-hour ozone NAAQS because, it concludes, NSR is not a control measure. Since the Department views this conclusion a violation of the CAA’s antibacksliding provisions, it and a number of other states, on June 29, 2004, filed a joint petition for review challenging this rule in the Court of Appeals for the District of Columbia Circuit. See *Massachusetts v. EPA* (D.C. Cir.) (No. 04-1207).

The EPA published a final rule at 70 FR 44470 (August 3, 2005) entitled “Identification of Ozone Areas for Which the 1-Hour Standard Has Been Revoked and Technical Correction to Phase 1 Rule.” This rule codifies the revocation of the 1-hour standard for those areas with effective 8-hour ozone designations. This rule revoked the 1-hour ozone standard effective June 15, 2005, for all areas in this Commonwealth. See 70 FR 44477.

This proposed rulemaking incorporate some, but not all of the changes, which survived judicial scrutiny in *New York et al., v. EPA*, since the Board has determined that not all of the EPA’s final NSR regulatory provisions are sufficiently protective of the air quality needs of this Commonwealth. In addition, this proposed rulemaking is consistent with the Commonwealth’s litigation position in *Massachusetts et al., v. EPA*, that under the antibacksliding provisions of sections 172(e) and 193 of the CAA (42 U.S.C.A. §§ 7502(e) and 7515), the EPA is required retain the 1-hour ozone NAAQS major NSR requirements in implementing the 8-hour ozone NAAQS. Moreover, the Board has determined that to the extent any of the proposed amendments are more stringent than those required under the CAA, they are necessary to achieve or maintain the NAAQS, and therefore permissible actions under section 4.2(b)(1) of the APCA (35 P. S. § 4004.2(b)(1)).

One of the areas where this proposed rulemaking is different than the EPA’s approach is the “look-back” provision for calculating baseline emissions. Under the EPA’s approach, this provision allows regulated entities to choose any 2 consecutive years in the preceding 10 as their baseline, and in the case of utilities any 2 consecutive years in the preceding 5 years as their baseline. By extending this baseline period back from 5 years to 10 years, in the case of nonutilities, the EPA now allows facilities to select a higher baseline and reduce the possibility that NSR would apply. Under the Commonwealth’s proposed approach in § 127.203a (relating to applicability determination), regulated entities operating in this Commonwealth may choose any 2 consecutive years in the preceding 5 as their baseline. By limiting this baseline period to 5 years there is an increased possibility that NSR would apply and state-of-the-art air pollution control technology would need to be installed. As a result, this proposed approach will reduce air pollution

protecting public health and the environment, and ensuring that this Commonwealth can achieve and maintain the NAAQS.

In addition to the differences on this general “look-back” provision for calculating baseline emissions, the EPA allows regulated entities to choose any 2 consecutive years in the preceding 10 as their baseline for a PAL. Under the Commonwealth’s proposed approach in § 127.218 (relating to PALs), regulated entities operating in this Commonwealth may choose any 2 consecutive years in the preceding 5 as their PAL baseline. Again, by limiting this baseline period to 5 years there is an increased possibility that NSR would apply and state-of-the-art air pollution control technology would need to be installed, which would reduce emissions and ensure that the NAAQS can be achieved and maintained.

Another area where the proposed amendments are more protective than the EPA’s approach is the installation of emission controls on new emission units under an existing PAL. Under the EPA’s approach, the installation of emission controls on new emission units under an existing PAL is not necessary if a facility is able to continue to comply with its PAL. Under the Commonwealth’s proposed approach in § 127.218, the owners and operators of new emission units added under an existing PAL will need to reduce or control emissions by using the best available technology as required under section 6.6(c) of the APCA (35 P. S. § 4006.6(c)).

Another area of difference between the EPA’s approach and the Commonwealth’s proposed approach relates to the establishment of an emission limit for a proposed project. Under the EPA’s approach, owners or operators are only required to track emissions for a period of time following a modification. Under the Commonwealth’s proposed approach in § 127.203a(a)(6) and (7), an emission limit for the proposed project is established using the sum of three elements: 1) baseline actual emissions; 2) emissions that could previously be accommodated prior to the proposed modification; and 3) the projected actual emission increase due to the proposed project. The owner or operator shall demonstrate compliance with the established total emission limit and for 5 years, or 10 years when there will be a capacity increase, shall also demonstrate compliance with the projected actual emission increase which is due solely to the project. This proposed approach ensures that emissions from any modifications are legally enforceable.

In addition to the differences between the EPA’s and the Commonwealth’s approaches to the general NSR rule provisions, the Board also proposes that facilities in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties that emit or have the potential to emit at least 25 tpy of VOCs or NO_x will continue to be considered a major facilities and will be subject to the requirements applicable to a major facility located in a “severe” nonattainment area of ozone. This means that any facility that was major for VOCs or NO_x while the region was classified as “severe” nonattainment for the 1-hour ozone standard will be major for those pollutants while the region is classified as moderate nonattainment under the 8-hour ozone standard. This is different than the EPA’s approach which treats these facilities as major, and therefore subject to NSR, only if they emit 50 tpy for VOCs and 100 tpy for NO_x since the area is classified as moderate nonattainment with the 8-hour ozone standard. Moreover, under the EPA’s approach, offset requirements change from 1:3 to 1:1.15, while under the Commonwealth’s proposed approach the offset requirements would

remain unchanged. Additionally, these sources will continue to be subject to reasonably available control technology requirements. Because the 8-hour ozone standard is more stringent than the revoked 1-hour ozone standard, and to ensure that the Philadelphia area achieves and maintains the NAAQS, the proposed amendment is reasonably necessary to ensure that these facilities emit no more VOCs and NO_x than previously allowed for attaining the 1-hour ozone standard.

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) and the Citizens Advisory Council (CAC) in the development of this proposed rulemaking. The AQTAC and the CAC recommended that the Board consider the proposed rulemaking and seek public comment on the following issues: (1) whether the program should specify a 5-year or 10-year look-back; (2) whether PALs should have a 10-year term, should be fixed or declining, should be based on actual or potential emissions, should be reopened if emission limits change during the 10-year period and the potential enforcement consequences of noncompliance with a PAL; (3) whether the severe ozone nonattainment area provisions should be included for the five-county Philadelphia area; (4) whether permit limits should reflect the physical and legal capability of a source to operate without any modification (that is, demand growth exclusion); (5) to what extent should the Commonwealth develop an NSR regulation that differs from the Federal requirements; (6) de minimis aggregation with regard to hourly, daily and yearly applicability; and (7) the proposed emission limits under the advanced clean coal technology provision.

In addition to the issues identified by AQTAC and CAC, the Department is seeking public comment on what types of incentives may be offered through this proposed rulemaking to the owners and operators of facilities that implement voluntary proactive strategies to achieve "environmental excellence." Incentives may include: (1) whether the program should offer a 10-year look back period if the 2-year period immediately preceding the construction or modification of a major new source within the 5-year contemporaneous period is not representative of normal operations, or other incentives for facilities that purchase electricity generated from alternative energy sources, generally, and integrated combined coal gasification technology, specifically, as provided under the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1647.1—1647.7); and (2) whether the program should offer an extended 10-year look back period if the 2-year period immediately preceding the construction or modification of a major new source within the 5-year contemporaneous period is not representative of normal operations, or other incentives to facilities that enter into power purchase agreements with power plants that have committed to "repower" under the Commonwealth's recently announced Energy Deployment for a Growing Economy initiative, which promotes advanced coal gasification technology.

E. Summary of Regulatory Revisions

Certain definitions for terms in Chapter 121 (relating to general provisions) are proposed to be amended to ensure that reasonably available control technology remains applicable to major stationary sources of NO_x and VOCs in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties. The definitions include "major NO_x emitting facility" and "major VOC emitting facility." The proposed amendments are consistent with the changes being made in Chapter 127, Subchapter E regarding major facilities in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties.

The amendments propose to delete definitions for terms in Chapter 121 that pertain only to Chapter 127, Subchapter E, which will be added to new § 127.201a (relating to definitions). The definitions include "creation," "de minimis emission increase," "generation," "major facility," "major modification" and "secondary emissions."

Section 127.201 (relating to general requirements), which applies to an owner or operator of a facility at which an emission increase that is significant would occur, is proposed to be amended. An additional proposed amendment under this section provides that facilities in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties that emit or have the potential to emit at least 25 tpy of VOCs or NO_x will be considered a major facility and shall be subject to the requirements applicable to a major facility located in a "severe" nonattainment area of ozone.

The proposed rulemaking adds § 127.201a for definitions of terms used in the substantive provisions of Chapter 127, Subchapter E. The new definitions include: "actual emissions," "actual PAL for a major facility," "allowable emissions," "baseline actual emissions," "begin actual construction," "CEMS—continuous emissions monitoring system," "CERMS—continuous emissions rate monitoring system," "CPMS—continuous parameter monitoring system," "calendar year emissions," "commence construction," "creation," "deactivation," "de minimis emission increase," "electric utility steam generating unit," "emissions unit," "Federally enforceable," "fugitive emissions," "generation," "major facility," "major modification," "necessary preconstruction approvals or permits," "net emissions increase," "PAL—plantwide applicability limit," "PAL effective date," "PAL effective period," "PAL major emissions unit," "PAL major modification," "PAL permit," "PAL pollutant," "PEMS—predictive emissions monitoring system," "project," "projected actual emissions," "regulated NSR pollutant," "secondary emissions," "significant," "significant emissions unit," "significant net emissions increase" and "small emissions unit."

Section 127.201b (relating to measurements, abbreviations and acronyms) adds measurements, abbreviations and acronyms. These include "BAT—best available technology," "CO₂—carbon dioxide," "CO—carbon monoxide," "Hg—mercury," "KWH—kilowatt hour (based on electric generation)," "lb—Pounds," "µg/m³—micrograms per cubic meter," "mg/m³—milligrams per cubic meter," "O₂—oxygen," "SO_x—sulfur oxides" and "tpy—Tons per year."

Section 127.202 (relating to effective date) is proposed to be amended to include, among other things, PM_{2.5} and its precursors as pollutants.

Section 127.203 (relating to facilities subject to special permit requirements) is proposed to be amended and applies to the construction of a new major facility or modification at an existing facility located in a nonattainment area or located in an attainment or unclassified area, which impacts a nonattainment area in excess of certain significance levels. This section also includes provisions that would apply to an owner or operator of a facility in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties or an area classified as a serious or severe ozone nonattainment area. Additionally, this section identifies when the NSR requirements apply and do not apply to owners and operators of facilities.

Section 127.203a is proposed to be amended and identifies the provisions the Department of Environmental Protection (Department) will use during its review of a plan approval application for the construction of a new

major facility or modification at an existing major facility to determine if the NSR requirements are applicable to that major facility. The proposed amendments include provisions to determine net emission increases, baseline actual emissions and projected actual emissions.

Section 127.204 (relating to emissions subject to this subchapter) is proposed to be amended to make minor clarifications to ensure consistency with other proposed amendments to the subchapter.

Section 127.205 (relating to special permit requirements) is proposed to be amended to add additional provisions as to when LAER applies to a proposed modification within the contemporaneous period of a proposed emission increase and when emission offsets are required for the entire net emission increase that occurred over the contemporaneous period.

Section 127.206 (relating to ERC general requirements) is proposed to be amended to make minor clarifications to ensure that it is consistent with the other proposed amendments being made to the subchapter.

Section 127.207 (relating to ERC generation and creation) is proposed to be amended to include that emission reductions necessary to meet BAT and allowance-based programs required by the CAA or APCA may not be used to generate emission reduction credits.

Sections 127.208, 127.209, and 127.210 (relating to ERC use and transfer requirements; ERC registry system; and offset ratios) are proposed to be amended to make minor clarifications to ensure consistency with other proposed amendments being made to the subchapter.

Section 127.211 (relating to applicability determination) is proposed to be deleted. Remaining applicable provisions are proposed to be moved to new § 127.203a.

Section 127.212 (relating to portable facilities) is proposed to be amended to include PM-2.5 and its precursors as pollutants and to make minor clarifications to ensure that it is consistent with the other proposed amendments being made to the subchapter.

Section 127.213 (relating to construction and demolition) is proposed to be amended to make minor clarifications to ensure that it is consistent with the other proposed changes being made to the subchapter.

Section 127.214 (relating to exemptions) is proposed to be rescinded.

Proposed § 127.214a (relating to special provisions for advanced clean coal generation technology) applies to an owner or operator of a project that uses advanced clean coal generation technology in a new electric utility steam generating unit or to retrofit or repower an existing electric utility steam generation unit. The qualifying electric utility steam generation unit will be deemed to meet the LAER control technology requirements of § 127.205 unless the Department determines that the performance requirements specified are less stringent than LAER.

Sections 127.215 and 127.217 (relating to reactivation; and Clean Air Act Titles III-V applicability) are proposed to be amended to make minor clarifications to ensure that it is consistent with the other proposed amendments being made to the subchapter.

Section 127.218 is proposed to be added to include PALs. If a facility follows the proposed provisions of this section and emissions are kept below a plantwide actual emissions cap, then these regulations allow the facility to

avoid the major NSR permitting process when making changes to the facility or individual emissions units. The PAL will impose an annual emissions limitation in tons per year for the entire major facility. Each PAL must regulate emissions of only one pollutant. Each PAL will have an effective period of 10 years.

F. *Benefits, Costs and Compliance*

Benefits

Overall, the citizens of this Commonwealth will benefit from this proposed rulemaking because they will result in improved air quality by reducing criteria pollutant emissions, recognize and encourage pollution prevention practices and encourage new technologies and practices that reduce emissions.

Compliance costs

This proposed rulemaking will reduce the operating costs of industry through enhanced operational flexibility under PALs.

Compliance assistance

The Department plans to educate and assist the public and regulated community with understanding any newly amended requirements and how to comply with them. This will be accomplished through the Department's ongoing Regional Compliance Assistance Program.

Paperwork requirements

The proposed rulemaking will not increase the paperwork that is already generated during the normal course of business. However, the owner or operator of a facility that voluntarily elects a 10-year PAL shall retain records for at least 10 years to document that the emission limit was not exceeded.

G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking has incorporated the following pollution prevention incentives. The result of NSR requirements is that a company has a significant incentive to minimize their emissions to avoid NSR. If a company is unable to avoid NSR, then it must demonstrate that it is employing the lowest achievable emission reduction possible with existing technology. These minimized emissions can be achieved through process modifications and do not have to come from add-on control equipment. Pollution prevention is one of the most cost effective means to eliminate costly add-on controls or to reduce the costs of running add-on controls.

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 14, 2006, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. 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 Department, the General Assembly and the Governor of comments, recommendations or objections raised.

J. Public Comments

Written comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be postmarked by June 28, 2006. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be postmarked by June 28, 2006. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by June 28, 2006. A subject heading of the proposal and a return name and address must be included in each transmission.

K. Public Hearings

The Board will hold three public hearings for the purpose of accepting comments on this proposed rulemaking. The hearings will be held as follows:

- June 6, 2006 7 p.m. Department of Environmental Protection
Rachel Carson State Office Building,
Room 105
400 Market Street
Harrisburg, PA 17105
- June 13, 2006 1 p.m. Department of Environmental Protection
Southwest Regional Office
Waterfront A and B Conference Rooms
400 Waterfront Drive
Pittsburgh, PA 15222.
- June 19, 2006 1 p.m. Department of Environmental Protection
Delaware Room
Southeast Regional Office
2 East Main Street
Norristown, PA 19401

Persons wishing to present testimony at a public hearing are requested to contact Natalie Shepherd, Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral

testimony is limited to 10 minutes per each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Board at (717) 787-4526 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,
Chairperson

Fiscal Note: 7-399. No fiscal impact; (8) recommends adoption.

Annex A

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

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

[**Creation**—The process of generating usable and tradable ERCs to be used to offset emissions. This process includes the following steps: application, documentation, quantification, verification and entry in the registry.]

* * * * *

[**De minimis emission increase**—An increase in actual or potential emissions which is below the threshold limits specified in § 127.203 (relating to facilities subject to special permit requirements).]

* * * * *

[**Generation**—An action taken by a source or facility that results in the actual reduction of emissions.]

* * * * *

[**Major facility**—A facility which has the potential to emit a pollutant equal to or greater than an applicable annual emissions rate in § 127.203.]

[**Major modification**—

(i) A physical change or change in the method of operation of a major facility that would result in an increase in emissions equal to or exceeding an emission rate threshold or significance level specified in § 127.203.

(ii) A net emissions increase that is significant for VOCs or NO_x will be considered significant for ozone.

(iii) A physical change or change in the method of operation does not include:

(A) Routine maintenance, repair and replacement.

(B) The use of an alternative fuel or raw material by reason of any order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA) (15 U.S.C.A. § 79(a) and (b)) (or any superseding legislation) or by reason of a natural gas curtailment plan under the Federal Power Act (16 U.S.C.A. §§ 792—825r).

(C) The use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act (42 U.S.C.A. § 7425).

(D) The use of an alternative fuel or raw material by a stationary source which meets one of the following conditions:

(I) The source was capable of accommodating before January 6, 1975, unless the change would be prohibited under an operating permit condition.

(II) The source is approved to use under an operating permit.

(E) An increase in the hours of operation or in the production rate, authorized under the conditions of an operating permit.

(F) Any change in ownership at a stationary source.

(G) The addition, replacement or use of a pollution control project at an existing source, unless the Department determines that the addition, replacement or use renders the source less environmentally beneficial, or except when the following apply:

(I) The Department has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emission of any criteria pollutant, VOC or NO_x over levels used for that facility in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any (42 U.S.C.A. §§ 7401—7515).

(II) The Department determines that the increase will cause or contribute to a violation of any National ambient air quality standard or PSD increment, or visibility limitation.

(H) The installation, operation, cessation or removal of a temporary clean coal technology demonstration project, if the project complies with the following:

(I) The SIP.

(II) Other requirements necessary to attain and maintain the National ambient air quality standards during the project and after it is terminated.

(I) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the source. This exemption applies on a pollutant-by-pollutant basis.

(J) The reactivation of a very clean coal-fired electric utility system generating source.]

Major NO_x emitting facility—A facility which emits or has the potential to emit NO_x from the processes located

at the site or on contiguous properties under the common control of the same person at a rate greater than one of the following:

* * * * *

(v) 25 tpy or more of NO_x and is located in Bucks, Chester, Delaware, Montgomery or Philadelphia County.

Major VOC emitting facility—A facility which emits or has the potential to emit VOCs from processes located at the site or on contiguous properties under the common control of the same person at a rate greater than one of the following:

* * * * *

(iv) 25 tpy or more of VOC and is located in Bucks, Chester, Delaware, Montgomery or Philadelphia County.

* * * * *

[*Secondary emissions*—Emissions which occur as a result of the construction or operation of a major stationary source or major modification of a major stationary source, but do not come from the major stationary source or facility or major modification itself. The secondary emissions shall be specific, well defined, quantifiable and impact the same general area as the stationary source or modification which causes secondary emissions. The term includes emissions from an offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. The term does not include emissions which come directly from a mobile source regulated under Title II of the Clean Air Act (42 U.S.C.A. §§ 7521—7589).]

* * * * *

CHAPTER 127. CONSTRUCTION, MODIFICATION, REACTIVATION AND OPERATION OF SOURCES

Subchapter E. NEW SOURCE REVIEW

§ 127.201. General requirements.

* * * * *

(c) The new source review requirements of this subchapter also apply to a facility located in an attainment area for ozone and within an ozone transport region that emits or has the potential to emit at least 50 tons per year of VOC or 100 tons per year of NO_x. A facility within either an unclassifiable/attainment area for ozone or within a marginal or incomplete data nonattainment area for ozone or within a basic nonattainment area for ozone and located within an ozone transport region will be considered a major [stationary] facility and shall be subject to the requirements applicable to a major [stationary] facility located in a moderate nonattainment area.

(d) The NSR requirements of this subchapter apply to an owner or operator of a facility at which a net emissions increase that is significant would occur as determined in accordance with § 127.203a (relating to applicability determination). If an emissions increase meets or exceeds the applicable emissions rate that is significant as defined in § 127.201a (relating to definitions), the facility is subject to the permitting requirements under § 127.205 (relating to special permit requirements).

An emissions increase subject to this subchapter must also be offset through the use of ERCs at the offset ratios specified in § 127.210 (relating to offset ratios). The generation, use, transfer and registration requirements for ERCs are listed in §§ 127.206—127.209.

(e) In the event of an inconsistency between this rule and any other rule promulgated by the Department, the inconsistency must be resolved by the application of the more stringent provision, term, condition, method or rule.

(f) A facility located in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties that emits or has the potential to emit at least 25 tpy of VOC or NO_x will be considered a major facility and shall be subject to the requirements applicable to a major facility located in a severe nonattainment area for ozone.

§ 127.201a. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) and Chapter 121 (relating to general provisions) apply to this subchapter unless otherwise indicated. In addition, the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Actual emissions—The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with the following:

(i) Actual emissions as of a particular date must equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the consecutive 2-year period which immediately precedes the particular date and which is representative of normal source operations. The Department will allow the use of a different time period upon a written determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates and types of materials processed, stored or combusted during the selected time period.

(ii) For an emissions unit that has not begun normal operations on the particular date, actual emissions equal the potential to emit of the unit on that date.

Actual PAL for a major facility—A PAL based on the baseline actual emissions of all emissions units at a major facility that emit or have the potential to emit the PAL pollutant.

Allowable emissions—The emissions rate of a source calculated using the maximum rated capacity of the source unless the source is subject to Federally enforceable limits which restrict the operating rate, or hours of operation, or both, and the most stringent of the following:

(i) The applicable standards set forth in 40 CFR Part 60 or Part 61 (relating to standards of performance for new stationary sources; and National emission standards for hazardous air pollutants).

(ii) An applicable SIP emissions limitation, including those with a future compliance date.

(iii) The emissions rate specified under a requirement or permit condition that is Federally enforce-

able or enforceable as a practical matter, including those with a future compliance date.

Baseline actual emissions—The rate of emissions, in tpy, of a regulated NSR pollutant, as determined in accordance with § 127.203a(a)(5) (relating to applicability determination).

Begin actual construction—Initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. These activities include installation of building supports and foundations, laying of underground pipe work and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those onsite activities other than preparatory activities which mark the initiation of the change.

CEMS—Continuous emissions monitoring system—All of the equipment that may be required to meet the data acquisition and availability requirements of this subchapter, to sample, condition, analyze and provide a record of emissions on a continuous basis.

CERMS—Continuous emissions rate monitoring system—The total equipment required for the determination and recording of the pollutant mass emissions rate, in terms of mass per unit of time.

CPMS—Continuous parameter monitoring system—All of the equipment necessary to meet the data acquisition and availability requirements to monitor process and control device operational parameters including control device secondary voltages and electric currents, other information like gas flow rate and O₂ or CO₂ concentrations, and to record average operational parameter values on a continuous basis.

Calendar year emissions—The rate of emissions of an NSR pollutant, in tpy, from an emissions unit during a calendar year.

Commence construction—The owner or operator of a major facility has all necessary approvals or permits including plan approval and has either:

(i) Begun, or caused to begin, a continuous program of actual onsite construction of the source, to be completed within a reasonable time.

(ii) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

Creation—The process of generating usable and tradable ERCs to be used to offset emissions. This process includes the following elements:

(i) Application.

(ii) Documentation.

(iii) Quantification.

(iv) Verification.

(v) Entry into the registry.

Deactivation—Cessation of the emissions of an air pollutant from a unit or facility.

De minimis emissions increase—An increase in actual emissions or potential to emit which is less than the emissions rate that is significant as specified in this section.

Electric utility steam generating unit—A steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to a utility power distribution system for sale. Steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

Emissions unit—A part of a facility that emits or has the potential to emit a regulated NSR pollutant including an electric utility steam generating unit as defined in this section. For purposes of this subchapter, there are two types of emissions units:

(i) A new emissions unit, which is or will be newly constructed and which has existed for less than 2 years from the date the emissions unit first operated. An emissions unit which is constructed or installed for the purpose of replacing an existing unit, or an emissions unit which is relocated from another facility for the purpose of replacing an existing unit, is considered a new emissions unit at the time of replacement and until 2 years from the date the new unit commenced operation.

(ii) An existing emissions unit which is not a new emissions unit.

Federally enforceable—All limitations and conditions which are legally enforceable by the EPA, including:

(i) Those requirements developed under 40 CFR Parts 60 and 61.

(ii) Those requirements within an applicable SIP.

(iii) Permit requirements established under 40 CFR 52.21 (relating to prevention of significant deterioration of air quality) or under regulations approved under 40 CFR Part 51, Subpart I (relating to review of new sources and modifications), including operating permits issued under an EPA-approved program that is incorporated into the SIP and expressly requires adherence to a permit issued under the program.

(iv) Permit requirements not designated as "State-only" in a Federal operating permit.

Fugitive emissions—Those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

Generation—With respect to emission reduction credits, an action taken by an owner or operator of a source or facility that results in the actual reduction of emissions.

Major facility—

(i) The term includes the following:

(A) A facility which emits or has the potential to emit 100 tons per year or more of any regulated NSR pollutant subject to regulation under the Clean Air Act, except that lower emissions thresholds apply as follows:

(I) Fifty tons per year of VOCs in a serious nonattainment area for ozone.

(II) Fifty tons per year of VOCs in an area within an ozone transport region except for a severe or extreme nonattainment area for ozone.

(III) Twenty-five tons per year of VOCs in a severe nonattainment area for ozone.

(IV) Ten tons per year of VOCs in an extreme nonattainment area for ozone.

(V) Seventy tons per year of PM-10 or, where applicable, 70 tons per year of a specific PM-10 precursor, in a serious nonattainment area for PM-10.

(VI) Fifty tons per year of CO in a serious nonattainment area for CO.

(B) For the purposes of applying the requirements of this subchapter to the owner or operator of a facility which emits or has the potential to emit NO_x located in an ozone nonattainment area or in an ozone transport region, as follows:

(I) One hundred tons per year or more of NO_x in an ozone nonattainment area classified as marginal, basic or moderate.

(II) One hundred tons per year or more of NO_x in an ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when the area is located in an ozone transport region.

(III) One hundred tons per year or more of NO_x in an area designated under section 107(d) of the Clean Air Act (42 U.S.C.A. § 7407(d)) as attainment or unclassifiable for ozone that is located in an ozone transport region.

(IV) Fifty tons per year or more of NO_x in a serious nonattainment area for ozone.

(V) Twenty-five tons per year or more of NO_x in a severe nonattainment area for ozone.

(VI) Ten tons per year or more of NO_x in an extreme nonattainment area for ozone.

(C) A physical change that occurs at a facility which does not exceed the major facility thresholds specified in this subchapter is considered a major facility, if the change constitutes a major facility by itself.

(ii) A facility which is major for VOCs or NO_x is considered major for ozone.

(iii) A facility which emits, or has the potential to emit, 25 tpy or more of NO_x or VOC and is located in Bucks, Chester, Delaware, Montgomery or Philadelphia Counties.

Major modification—

(i) A physical change at or change in the method of operation of a major facility that results in:

(A) An increase in emissions of a regulated NSR pollutant equal to or exceeding the emissions rate that is significant as specified in this section.

(B) A significant net emissions increase of that pollutant from the major facility.

(ii) A significant emissions increase from an emissions unit or net emissions increase at a major facility that is significant for VOCs or NO_x is considered significant for ozone.

(iii) A physical change at or change in the method of operation of a major facility does not include:

(A) Routine maintenance, repair and replacement.

(B) The use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA) (15 U.S.C.A. § 79(a) and (b)) (or superseding legislation) or by reason of a natural gas curtailment plan under the Federal Power Act (16 U.S.C.A. §§ 792—825r).

(C) The use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act (42 U.S.C.A. § 7425).

(D) The use of an alternative fuel or raw material by a facility which meets one of the following conditions:

(I) The source was capable of accommodating the fuel before January 6, 1975, unless the change would be prohibited under a Federally-enforceable operating permit condition.

(II) The source is approved to use the fuel or material under a Federally-enforceable operating permit.

(E) An increase in the hours of operation or in the production rate, unless the change is prohibited under a condition of a Federally-enforceable plan approval or an operating permit.

(F) A change in ownership at a facility.

(iv) The term does not apply to a particular regulated NSR pollutant when the major facility is complying with the requirements under § 127.218 (relating to PALs). Instead, the definition of PAL major modification applies.

Necessary preconstruction approvals or permits—Those permits or approvals required under the Clean Air Act or the act and its regulations, which are part of the applicable SIP.

Net emissions increase—Emission changes at an existing major facility that result from a physical change or change in the method of operation as determined in accordance with § 127.203a(a)(4).

PAL—Plantwide applicability limit—An emissions limit expressed in tpy, for a pollutant at a major facility, that is legally enforceable and established source-wide in accordance with § 127.218.

PAL effective date—The date of issuance of the PAL permit. The PAL effective date for an increased PAL is the date an emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

PAL effective period—The period beginning with the PAL effective date and ending 10 years later.

PAL major emissions unit—An emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major facility threshold for the PAL pollutant.

PAL major modification—Notwithstanding the definitions for major modification and net emissions increase under this section, a physical change at or change in the method of operation of the PAL facility that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

PAL permit—The major or minor plan approval, the state operating permit or the Title V permit issued by the Department that establishes a PAL for a major facility.

PAL pollutant—The pollutant for which a PAL is established at a major facility.

PEMS—Predictive emissions monitoring system—All of the equipment necessary to monitor parameters including control device secondary voltages and electric currents, other information including gas flow rate and O₂ or CO₂ concentrations, and calculate and record the mass emissions rate in terms of mass per unit time, like lb/hr, on a continuous basis.

Project—Physical change in or change in the method of operation of an existing facility, including a new emission unit.

Projected actual emissions—The emission rates at which an existing emissions unit is projected to emit a regulated NSR pollutant, determined in accordance with § 127.203a(a)(6).

Regulated NSR pollutant—

(i) NO_x or VOCs.

(ii) A pollutant for which a NAAQS has been promulgated.

(iii) A pollutant that is a constituent or precursor of a pollutant listed under subparagraph (i) or (ii), if the constituent or precursor pollutant may only be regulated under NSR as part of regulation of the pollutant listed under subparagraph (i) or (ii).

Secondary emissions—

(i) Emissions which occur as a result of the construction or operation of a major facility or major modification of a major facility, but do not come from the major facility or major modification itself. The secondary emissions must be specific, well defined, quantifiable and impact the same general area as the facility or modification which causes the secondary emissions.

(ii) The term includes emissions from an offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major facility or major modification.

(iii) The term does not include emissions which come directly from a mobile source regulated under Title II of the Clean Air Act (42 U.S.C.A. §§ 7521—7589).

Significant—

(i) A net emissions increase or the potential of a facility to emit one of the following pollutants at a rate of emissions that would equal or exceed the following emissions rates except as specified in subparagraphs (ii)—(v):

Pollutant Emissions Rate

Carbon monoxide (CO): 100 tpy

Nitrogen oxides (NO_x): 40 tpy or 100 lbs/hr or 1,000 lbs/day, whichever is more restrictive

Sulfur oxides (SO_x): 40 tpy

Ozone: 40 tpy of VOCs or 100 lbs/hr or 1,000 lbs/day, whichever is more restrictive

Lead: 0.6 tpy

PM₁₀ or PM₁₀ precursor: 15 tpy

PM 2.5 or PM 2.5 precursor: 15 tpy

(ii) The emissions rate that is significant for VOCs in a serious or severe ozone nonattainment area is 25 tpy or 100 lbs/hr or 1,000 lbs/day, whichever is more restrictive.

(iii) For the purposes of applying the requirements of this subchapter to the owner or operator of modifications at major facilities located in an ozone nonattainment area or in an ozone transport region that emit or have the potential to emit NO_x, the emissions rate that is significant and other requirements for VOCs in subparagraphs (i) and (ii) apply to NO_x emissions.

(iv) The emissions rate that is significant for CO in a serious nonattainment area is 50 tpy if the EPA has determined that the affected facility contributes significantly to CO levels in that area.

(v) The emissions rate that is significant for VOCs in an extreme nonattainment area for ozone is any amount above zero.

Significant emissions unit—An emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the emissions rate that is significant as defined in this section or in the Clean Air Act for that PAL pollutant, whichever is lower, but less than the amount that would qualify the unit as a major facility as defined in this section.

Significant net emissions increase—For a regulated NSR pollutant, a net emissions increase that is significant.

Small emissions unit—An emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the emissions rate that is significant for that PAL pollutant as defined in this section or in the Clean Air Act, whichever is lower.

§ 127.201b. Measurements, abbreviations and acronyms.

Measurements, abbreviations and acronyms used in this subchapter are defined as follows:

- BAT—Best available technology
- BACT—Best available control technology
- CEMS—Continuous-emissions monitoring system
- CERMS—Continuous emissions rate monitoring system
- CPMS—Continuous parametric monitoring system
- CO₂—Carbon dioxide
- CO—Carbon monoxide
- ERC—Emission reduction credit
- Hg—Mercury
- KWH**—Kilowatt hour (based on electric generation)
- LAER—Lowest achievable emission rate
- MACT—Maximum achievable control technology
- NSPS—New source performance standard
- NSR—New source review
- PEMS—Predictive emissions monitoring system
- lb—Pounds
- µg/m³—Micrograms per cubic meter

- mg/m³—Milligrams per cubic meter
- NO_x—Nitrogen oxides
- O₂—Oxygen
- PAL—Plantwide Applicability Limit
- PM—Particulate matter
- RACT—Reasonably available control technology
- SO_x—Sulfur oxides
- tpy—Tons per year
- VOC—Volatile organic compound

§ 127.202. Effective date.

(a) The special permit requirements in this subchapter apply to an owner or operator of a facility submitting a complete plan approval application to the Department [after January 15, 1994].

(b) For SO_x, [particulate matter,] PM-10, PM-10 precursors, [PM-10] PM 2.5 precursors, PM 2.5, lead and CO, this subchapter applies until a given nonattainment area is redesignated as an unclassifiable or attainment area. After a redesignation, special permit conditions remain effective until the Department approves a permit modification request and modifies the permit.

§ 127.203. Facilities subject to special permit requirements.

[(a) This subchapter applies to a facility with the potential to emit 100 tons per year or more of one of the following pollutants and meeting the requirements for that pollutant:

(1) For PM-10, PM-10 precursors and particulate matter, either a new facility, or a modification to an existing facility including the addition of a new source at an existing facility, which when aggregated with the other emissions increases determined in accordance with § 127.211 (relating to applicability determination) results in an increase in the potential to emit PM-10, PM-10 precursors or particulate matter that would yield 15 tons per year of PM-10 or 25 tons per year of particulate matter, or 1,000 pounds per day, or 100 pounds per hour of PM-10 or particulate matter, or more, whichever is more restrictive, and which new facility or modification is located in one of the following:

- (i) A nonattainment area.
- (ii) An attainment or unclassifiable area which impacts a part of a nonattainment area in excess of the following significance levels:

<i>Averaging Period</i>	<i>Significance Levels</i>
Annual	1.00 µg/m ³
24-hour	5.00 µg/m ³

(2) For sulfur oxides, either a new facility, or a modification to an existing facility including the addition of a new source at an existing facility, which when aggregated with the other emissions increases determined in accordance with § 127.211 results in an increase in the potential to emit of 40 tons per year, or 1,000 pounds per day, or 100 pounds per hour of SO_x, or more, whichever is more restrictive, and which new facility or modification is located in one of the following:

- (i) A nonattainment area.

(ii) An attainment or unclassifiable area which impacts a nonattainment area in excess of the following significance levels:

<i>Averaging Period</i>	<i>Significance Levels</i>
Annual	1.00 µg/m ³
24-hour	5.00 µg/m ³
3-hour	25.00 µg/m ³

(3) For carbon monoxide, either a new facility, or a modification to an existing facility, including the addition of a new source at an existing facility which, when aggregated with the other emissions increases determined in accordance with § 127.211, results in an increase in the potential to emit of 50 tons per year, 1,000 pounds per day or 100 pounds per hour of CO, or more, whichever is more restrictive, and which new facility or modification is located in one of the following:

(i) A nonattainment area.

(ii) An attainment or unclassifiable area which impacts a nonattainment area in excess of the following significance levels:

<i>Averaging Period</i>	<i>Significance Levels</i>
8-hour	0.5 mg/m ³
1-hour	2.0 mg/m ³

(4) For lead, either a new facility, or a modification to an existing facility including the addition of a new source at an existing facility, which when aggregated with the other emissions increases determined in accordance with § 127.211, results in an increase in the potential to emit of 0.6 tons per year, 10 pounds per day or 1 pound per hour of lead, or more, whichever is more restrictive, and which new facility or modification is located in one of the following:

(i) A nonattainment area.

(ii) An attainment or unclassifiable area which impacts a nonattainment area in excess of the following significance level:

<i>Averaging Period</i>	<i>Significance Level</i>
24-hour	0.1 µg/m ³

(b) This subchapter applies to a VOC or NO_x facility located in or having an impact on one of the following areas and meeting the applicable requirements:

(1) For an area either classified at 40 CFR 81.339 (relating to Pennsylvania) as a moderate nonattainment area for ozone, or an area included in an ozone transport region established under section 184 of the Clean Air Act (42 U.S.C.A. § 7511c), which is either classified as a marginal or incomplete data nonattainment area for ozone or designated as an unclassifiable/attainment area for ozone, this subchapter applies to the following:

(i) A new facility with the potential to emit 100 tons or more per year of NO_x or 50 tons or more per year of VOCs.

(ii) A modification to an existing facility with the potential to emit 100 tons or more per year of NO_x or 50 tons or more per year of VOCs, or a new source at an existing facility resulting in an increase in the potential to emit either VOC or NO_x which, when aggregated with the other emissions increases determined in accordance with § 127.211,

results in an increase of 40 tons per year, 1,000 pounds per day or 100 pounds per hour of VOC or NO_x, or more, whichever is more restrictive.

(2) For an area classified at 40 CFR 81.339 as a serious nonattainment area for ozone, this subchapter applies to the following:

(i) A new facility with the potential to emit 50 tons or more per year of NO_x or VOCs.

(ii) A modification to an existing facility with the potential to emit 50 tons or more per year of VOC or NO_x, or a new source at an existing facility resulting in an increase in the potential to emit either VOC or NO_x which, when aggregated with the other emissions increases determined in accordance with subsection (c)(1), results in an increase of 25 tons per year, 1,000 pounds per day or 100 pounds per hour of VOC or NO_x, or more, whichever is more restrictive.

(3) For an area classified at 40 CFR 81.339 as a severe nonattainment area for ozone, this subchapter applies to the following:

(i) A new facility with the potential to emit 25 tons or more per year of NO_x or VOCs.

(ii) A modification to an existing facility with the potential to emit 25 tons or more per year of NO_x or VOC, or a new source at an existing facility resulting in an increase in the potential to emit either VOC or NO_x which, when aggregated with the other emissions increases determined in accordance with subsection (c)(1), results in an increase of 25 tons per year or 1,000 pounds per day or 100 pounds per hour of VOC or NO_x, or more, whichever is more restrictive.

(c) Special rules for modifications to VOC or NO_x facilities located in serious and severe nonattainment areas for ozone are as follows:

(1) The applicability requirements in § 127.211 apply except as provided by this subsection. A modification to an existing facility with the potential to emit 25 tons per year or more which results in an increase in the potential to emit VOC or NO_x may not be considered a de minimis increase. The requirements of this subchapter apply if the increase in potential to emit, when aggregated with the other net emission increases in potential to emit occurring over a consecutive 5-calendar-year period exceeds 25 tons per year or 1,000 pounds per day or 100 pounds per hour, whichever is more restrictive. The consecutive 5-calendar-year period for an increase that is not considered de minimis shall include the calendar year of the modification or addition which results in the emissions increase, and may not extend beyond either January 1, 1991, or the design year of the most recent attainment demonstration, whichever is later.

(2) For a facility with the potential to emit less than 100 tons per year of VOC or NO_x, when a modification results in an increase—other than a de minimis increase—in emissions of VOC or NO_x from a discrete operation, unit or other pollutant emitting activity at the facility, the increase shall be considered a modification unless the owner or operator elects to offset the increase by a greater reduction in emissions of VOC or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the

owner or operator does not elect to offset at the required ratio, the change shall be considered a modification, but in the case of the modification, the BACT requirement shall be substituted for LAER. The facility shall comply with the applicable EPA requirements and shall also satisfy the Best Available Technology (BAT) requirement.

(3) For a facility with the potential to emit 100 tons per year or more of VOC or NO_x, when a modification at the facility results in an increase—other than a de minimis increase in emissions of VOC or NO_x from a discrete operation, unit or other pollutant emitting activity at the facility, the increase shall be considered a modification unless the owner or operator elects to offset the increase

by a greater reduction in emissions of VOC or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator elects to offset at the required ratio, the LAER requirement does not apply. The facility shall comply with the applicable EPA requirements and shall also satisfy the BAT requirement.]

(a) This subchapter applies to the construction of a new major facility or modification at an existing major facility located in a nonattainment area or located in an attainment or unclassifiable area which impacts a nonattainment area in excess of the following significance levels:

<i>Pollutant</i>	<i>Annual</i>		<i>Averaging time</i>		
	<i>Annual</i>	<i>24 (hours)</i>	<i>8 (hours)</i>	<i>3 (hours)</i>	<i>1 (hours)</i>
SO ₂	1.0 µg/m ³	5 µg/m ³	-	25 µg/m ³	-
PM ₁₀	1.0 µg/m ³	5 µg/m ³	-	-	-
CO	-	-	0.5 mg/m ³	-	2 mg/m ³
Lead	-	0.1 µg/m ³	-	-	-

(b) The following provisions apply to an owner or operator of a facility located in Bucks, Chester, Delaware, Montgomery or Philadelphia counties or an area classified as a serious or severe ozone nonattainment area:

(1) The applicability requirements in § 127.203a (relating to applicability determination) apply except as provided by this subsection. The requirements of this subchapter apply if the aggregated emissions exceed 25 tpy or 1,000 pounds per day or 100 pounds per hour of NO_x or VOCs, whichever is more restrictive, as follows:

(i) The increase in emissions, when aggregated with the other increase in net emissions occurring over a consecutive 5 calendar-year period, which includes the calendar year of the modification or addition which results in the emissions increase.

(ii) The increases and decreases in emissions when aggregated with other increases and decreases since January 1, 1991, or 15 years prior to the date of submission of complete plan approval application, whichever is later.

(2) An increase in emissions of VOCs or NO_x, other than a de minimis emission increase, from a discrete operation, unit or other pollutant emitting activity at a facility with a potential to emit of less than 100 tpy of VOCs or NO_x is considered a modification unless the owner or operator elects to offset the increase by a greater reduction in emissions of VOCs or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not elect to offset at the required ratio, the increase is considered a modification and the BACT requirement is substituted for LAER. The owner or operator of the facility shall comply with all applicable requirements including the BAT requirement.

(3) An increase in emissions of VOCs or NO_x, other than a de minimis emission increase, from a discrete operation, unit or other pollutant emitting activity at a facility with a potential to emit of 100 tpy or more is considered a modification unless the

owner or operator elects to offset the increase by a greater reduction in emissions of VOCs or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator elects to offset at the required ratio, the LAER requirement does not apply. The owner or operator of the facility shall comply with the applicable requirements including the BAT requirement.

(c) The NSR requirements of this subchapter apply to an owner or operator of:

(1) A facility at which the net emissions increase as determined under this subchapter meets or exceeds the applicable emissions rate that is significant. A decrease in a facility's emissions will not qualify as a decrease for purposes of this subchapter unless the emission reduction credit provisions in § 127.207(1) and (3)—(7) (relating to ERC generation and creation) are met.

(2) A facility which was deactivated for a period in excess of 1 year and is not in compliance with the reactivation requirements of § 127.215 (relating to reactivation).

(d) The requirements of this subchapter which apply to VOC emissions from major facilities and major modifications apply to NO_x emissions from major facilities and major modifications in an ozone transport region or an ozone nonattainment area classified as marginal, basic, moderate, serious, severe or extreme, except in areas which the EPA has determined that additional reductions of NO_x will not produce net air quality benefits.

(e) The following provisions apply to an owner or operator of a major facility subject to this subchapter:

(1) Approval to construct or modify an air contamination source or facility does not relieve an owner or operator of the responsibility to comply fully with applicable provisions of the SIP and other requirements under local, State or Federal law.

(2) If a particular source or modification becomes a major facility or major modification solely by virtue of a relaxation in an enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant including a restriction on hours of operation, the requirements of this subchapter also apply to the source or modification as though construction had not yet commenced on the source or modification.

(f) The requirements of this subchapter which apply to PM-10 emissions from major facilities and major modifications also apply to PM-10 precursor emissions from major facilities and major modifications, except if the EPA has determined that these sources do not contribute significantly to PM-10 levels which exceed the PM-10 ambient standards in the area.

(g) The requirements of this subchapter which apply to PM-2.5 emissions from major facilities and major modifications also apply to PM-2.5 precursor emissions from major facilities and major modifications, except if the EPA or the Department has determined that these sources do not contribute significantly to PM-2.5 levels which exceed the PM-2.5 ambient standards in the area.

(h) The NSR requirements of this subchapter do not apply to an owner or operator of a major facility at which:

(1) A physical change or change in the method of operation still maintains its total facility-wide emissions below the PAL, meets the requirements in § 127.218 (relating to PALs) and complies with the PAL permit.

(2) A project results in a net emissions increase which does not meet or exceed the applicable emissions rate that is significant.

(3) A proposed de minimis increase results in a net emissions increase since January 1, 1991, or 15 years prior to the date of submission of a complete plan approval application, whichever is later, which does not meet or exceed the emissions rate that is significant.

(4) A construction of a new facility or a project at an existing major facility located in an attainment or unclassifiable area, which does not impact a nonattainment area for applicable pollutant in excess of the significance level specified § 127.203a. § 127.203a. Applicability determination.

(a) The Department will conduct an applicability determination during its review of a plan approval application for the construction of a new major facility or modification at an existing major facility under the following provisions:

(1) As part of the plan approval application, the owner or operator of the facility shall calculate in accordance with the provisions under paragraphs (2) and (3) whether a net emissions increase that is significant as defined in § 127.201a (relating to definitions) will occur. The procedures for calculating whether a net emissions increase that is significant will occur at the major facility are contained in paragraph (4). If the project causes a net emissions increase that is significant, the project is a major modification for the regulated NSR pollutant.

(2) A net emissions increase of a regulated NSR pollutant for projects that involve existing emissions units is the sum of the differences between the projected actual emissions and the baseline actual emissions, as specified in paragraphs (5) and (6), for each existing emissions unit.

(3) A net emissions increase of a regulated NSR pollutant for projects that involve construction of new emissions units is the sum of the potentials to emit from each new emissions unit.

(4) The following procedures apply in determining the net emissions increase:

(i) For a regulated NSR pollutant emitted by a major facility, the amount by which the sum of the following exceeds zero:

(A) The increase in emissions from a particular physical change or change in the method of operation at a major facility as calculated under paragraph (6).

(B) Other increases and decreases in emissions at the major facility that are contemporaneous with the project and are otherwise creditable. Baseline actual emissions for calculating increases and decreases are determined as specified under paragraph (5).

(ii) For a proposed increase which equals or exceeds the emissions rate that is significant, an increase or decrease in emissions is contemporaneous with the increase from the project only if it occurs between the date 5 years before construction on the project commences and the date that construction on the project is complete.

(iii) For a proposed de minimis increase, an increase or decrease in emissions is contemporaneous with the increase from the project only if it occurs after January 1, 1991, or 15 years prior to the date of the Department's receipt of a complete plan approval application, whichever is later.

(iv) For a proposed de minimis increase in which the net emissions increase since January 1, 1991, or 15 years prior to the date of the Department's receipt of a complete plan approval application meets or exceeds the emissions rate that is significant, the emissions offset requirements in § 127.205(3) (relating to special permit requirements) apply only to the net emissions increase.

(v) For PM-2.5 and PM-2.5 precursors, an increase or decrease in emissions is contemporaneous with the increase from the project only if it occurs after April 5, 2005.

(vi) An increase or decrease in emissions is creditable as related to the applicability determination only if the Department has not relied on it in issuing a permit for the facility under this subchapter, for which permit is in effect when the increase in emissions from the project occurs.

(vii) An increase in emissions is creditable to the extent that the new level of emissions exceeds the old level of emissions for the contemporaneous change.

(viii) A decrease in emissions is creditable if the following conditions are met:

(A) The emissions reduction credit provisions in § 127.207(1) and (3)—(7) (relating to ERC generation and creation) have been complied with, and the

decrease is Federally enforceable by the time construction begins on the project.

(B) The emissions decrease is such that when compared with the proposed emissions increase there is no significant change in the character of the emissions, including seasonal emission patterns, stack heights or hourly emission rates. A significant change in the character of the emissions means a change resulting in an increase in emissions equal to or greater than an emissions rate that is significant as specified under § 127.201a or an impact in excess of the significance levels as specified in § 127.203a.

(C) The emissions decrease represents approximately the same qualitative significance for public health and welfare as attributed to the proposed increase. This requirement is satisfied if the emissions rate that is significant is not exceeded.

(D) An emissions decrease or an ERC generated at the facility may be used as a creditable decrease in a net emissions increase. A portion of an ERC generated at another facility, acquired by trade and incorporated in a plan approval for use at the facility, is not creditable as an emissions decrease.

(5) The following procedures apply in determining the baseline actual emissions:

(i) For an existing emissions unit, the average rate, in tpy, at which the unit emitted the regulated NSR pollutant during the 2 consecutive calendar years immediately prior to the year a complete plan approval application is received by the Department. The Department may allow the use of a different consecutive 2-year period within the last 5 years upon a determination that it is more representative of normal operations.

(A) The average rate includes fugitive emissions to the extent quantifiable and authorized emissions associated with startups and shutdowns; the average rate does not include excess emissions including emissions associated with upsets or malfunctions.

(B) The average rate is adjusted downward to exclude noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 2-year period.

(C) The average rate is adjusted downward to exclude emissions that would have exceeded an emissions limitation with which the facility must currently comply, had the facility been required to comply with the limitations during the consecutive 2-year period. The baseline actual emissions is based on the emissions limitation in this subchapter or a permit limitation or other more stringent emissions limitation required by the Clean Air Act or the act, whichever is more restrictive.

(D) When a project involves multiple emissions units or multiple regulated NSR pollutants, or both, one consecutive 2-year period must be used to determine the baseline actual emissions for all pollutants and for all the emissions units affected by the project.

(E) The average rate is not based on a consecutive 2-year period for which there is inadequate information for:

(I) Determining annual emissions, in tpy.

(II) Adjusting this amount if required by clause (B) or clause (C).

(F) The average rate is not greater than the emissions previously reported in the required emissions statement and for which applicable emission fees have been paid.

(ii) For a new emissions unit, the baseline actual emissions equal zero.

(iii) The baseline actual emissions is determined by measurement, calculations or estimations in the order of the following preferences:

(A) Monitoring systems including:

(I) CEMS data interpolated to annual emissions using flow meters and conversion factors.

(II) PEMS approved, in writing, by the Department.

(B) Other measurements and calculations including:

(I) Stack measurement which generates emission estimates using stack test derived emission factors and throughput.

(II) A mass balance equation which includes the following elements:

(-a) The amount of materials used per unit of time, determined through measurements in the process.

(-b) The emissions per unit mass of material used, determined using mass balance techniques.

(-c) The annual emissions, calculated using emissions per unit mass of material and amount of material used per unit of time.

(C) Emission factors, including generally recognized and accepted emission factors by EPA, such as USEPA "Compilation of Air Pollutant Emission Factors" (AP-42) or other emission factors accepted by the Department.

(D) Other calculations and measurements as approved by the Department.

(6) The following procedures apply in determining the projected actual emissions of a regulated NSR pollutant for an emissions unit, before beginning actual construction on the project:

(i) The owner or operator of the major facility shall:

(A) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, and the company's filings with the State or Federal regulatory authorities.

(B) Include fugitive emissions to the extent quantifiable, and emissions associated with startups, and shutdowns.

(C) Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following completion of the project that existing units could have accommodated during the consecutive 2-year period used to establish the baseline actual emissions and that

is also unrelated to the particular project, including any increased utilization due to product demand growth.

(ii) In lieu of using the method set out in subparagraph (i), the owner or operator of the major facility may elect to use the emissions unit's potential to emit, in tpy.

(iii) If the projected actual emissions are in excess of the baseline actual emissions, they must be incorporated into the required plan approval or the operating permit as an emission limit. The emission limit shall be the sum of the following:

(A) Baseline actual emissions.

(B) The portion of the unit's emissions following completion of the project that existing units could have accommodated considering any process constraints in place during the consecutive 2-year period used to establish the baseline actual emissions and that is also unrelated to the particular project, including any increased utilization due to product demand growth.

(C) Any emissions increase that results from the particular project.

(7) The following procedures apply for demonstrating compliance with the emission limit established under paragraph (6)(i):

(i) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified for the project, and calculate and maintain a record of these annual emissions, in tpy on a calendar year basis, for 5 years following resumption of regular operations after the change, or for 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at the emissions unit.

(ii) The owner or operator shall record sufficient information to identify for all emission units in the approved project their total actual annual emissions and their actual annual emissions increase due to the project.

(iii) The owner or operator shall submit a report to the Department, within 60 days after the end of each calendar year, which contains the emissions data required by subparagraph (i) and (ii). This report must also contain a demonstration of how these emissions were determined if the determination was not by direct measurement with a Department-certified CEMS system.

(b) An owner or operator of a major facility with a PAL for a regulated NSR pollutant shall comply with the requirements under § 127.218 (relating to PALs).

§ 127.204. Emissions subject to this subchapter.

(a) In determining whether a facility exceeds the [emissions rates] emission rate that is significant or the significance levels specified in § 127.203 (relating to facilities subject to special permit requirements), the potential [emissions] to emit, actual emissions and actual emissions increase shall be determined by aggregating the emissions or emissions increases from the facilities on contiguous or adjacent properties under the common control of a person or entity. This includes

emissions resulting from the following: flue emissions, stack and additional fugitive emissions, material transfer, use of parking lots and paved and unpaved roads on the facility property, storage piles and other emission generating activities resulting from operation of the new or modified facility.

(b) Secondary emissions [need] must not be considered in determining whether a facility meets the requirements of [§ 127.203] this subchapter. If a facility is subject to [§ 127.203] this subchapter on the basis of the direct emissions from the facility, the conditions of § 127.205 (relating to special permit requirements) shall also be met for secondary emissions.

§ 127.205. Special permit requirements.

The Department will not issue a plan approval, or an operating permit, or allow continued operations under an existing permit or plan approval unless the applicant demonstrates that the following special requirements are met:

(1) A new or modified facility subject to this subchapter shall comply with LAER, except as provided in § 127.203a(a)(4)(ii)(B) (relating to applicability determination). [In cases where] When a facility is composed of several sources, only sources which are new or which are modified shall be required to implement LAER. In addition, LAER applies to the proposed modification which results in an increase in emissions and to subsequent or previous modifications which result in emissions increases that are directly related to and normally included in the project associated with the proposed modification and which occurred within the contemporaneous period of the proposed emissions increase.

* * * * *

(2) Each facility located within this Commonwealth which meets [or exceeds the threshold limits contained in § 127.203 (relating to facilities subject to special permit requirements)] the requirements of and is subject to this subchapter, which is owned or operated by the applicant, or by an entity controlling, controlled by or under common control with the applicant, and which is subject to emissions [limitation] limitations shall be in compliance, or on a schedule for compliance approved by the Department in a plan approval or permit, with the applicable emissions limitation and standards contained in this article. A responsible official of the applicant shall certify as to the facilities' compliance in writing on a form provided by the Department.

(3) Each modification to a facility which meets the requirements of and is subject to [§ 127.203] this subchapter shall offset, in accordance with §§ 127.203a and 127.210 [and 127.211] (relating to applicability determination; and offset ratios[; and applicability determination]), the total of the net increase [in potential to emit]. Emissions offsets shall be required for the entire net emissions increase which occurred over the contemporaneous period except to the extent that emissions offsets or other reductions were previously applied against emissions increases in an earlier applicability determination.

(4) Each new facility which meets the requirements of and is subject to [§ 127.203] this subchapter shall offset the potential to emit of that facility with ERCs in accordance with § 127.210.

(5) For a new or modified facility [with potential emissions exceeding significance levels or otherwise meeting the requirements of § 127.203] which meets the requirements of and is subject to this subchapter, an analysis shall be conducted of alternative sites, sizes, production processes and environmental control techniques for the proposed facility, which demonstrates that the benefits of the proposed facility significantly outweigh the environmental and social costs imposed within this Commonwealth as a result of its location, construction or modification.

* * * * *

§ 127.206. ERC general requirements.

(a) Emissions reductions or ERCs banked prior to January 1, 1991, may not be used as ERCs for emission offsets or netting purposes. [ERCs generated prior to January 1, 1991, which meet the requirements of this subchapter for ERCs and are approved by the Department may be used in applicability determinations conducted in accordance with § 127.211 (relating to applicability determination) for netting purposes, if the ERCs are treated as new source growth and offset at the applicable ratio specified in § 127.210 (relating to offset ratios).]

* * * * *

(d) The Department may issue a plan approval for the construction of a new or modified facility which satisfies the offset requirements specified in § 127.205(3) and (4) (relating to special permit requirements) under the following conditions:

* * * * *

(2) The owner or operator of the proposed new or modified facility may not commence operation or increase emissions until the required emissions reductions are certified and registered as ERCs by the Department.

(e) ERCs generated by the overcontrol of emissions by an existing facility will not expire for use as offsets. The use of these ERCs in applicability determinations for netting purposes is limited to the period specified in [§ 127.211] § 127.203a(a)(4) (relating to applicability determination).

(f) ERCs generated by the curtailment or shutdown of a facility which are not included in a plan approval and used as offsets will expire for use as offsets 10 years after the date the facility ceased emitting the ERC generating emissions. The use of these ERCs in applicability determinations for netting purposes is limited to the period specified in [§ 127.211] § 127.203a(a)(4).

* * * * *

(i) ERCs may not be used to achieve compliance with RACT, MACT, BAT, NSPS, BACT, LAER or other emissions limitations required by the Clean Air Act or the act.

(j) ERCs may not be entered into the ERC registry until the emissions reduction generating the ERCs has been certified by the Department in accordance with the criteria for ERC generation and creation contained in § 127.207 (relating to ERC generation and creation)[, with the following qualifications:]

[(i) ERCs may not be generated for emissions in excess of those previously identified in required emission statements and for which applicable emission fees have been paid.

(ii) Emissions reduction at a facility occurring after January 1, 1991, but prior to January 15, 1994 may be used to generate ERCs, if a complete ERC registry application is submitted to the Department by May 16, 1994.]

* * * * *

(l) ERCs may not be traded to facilities under different ownership until the emissions reduction generating the ERCs is made Federally enforceable. [A facility which is not subject to Title V permit requirements under the Clean Air Act will require EPA approval in the form of a SIP revision which incorporates the required permit modification reflecting the reduced emissions limitation of the generating facility.]

* * * * *

(n) ERCs transferred from one facility to another may not be transferred to a third party, [except as provided in subsection (h)] unless the transfer of the ERCs is processed by the Department through the ERC registry system.

* * * * *

(q) ERCs may not be generated for emissions in excess of those previously identified in required emission statements and for which applicable emission fees have been paid.

§ 127.207. ERC generation and creation.

ERC generation and creation may occur under the following conditions:

(1) ERCs [shall] must be surplus, permanent, quantified and Federally enforceable as follows:

(i) Surplus. ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emissions limitation or compliance plans. [Emission] Emissions reductions necessary to meet NSPS, LAER, RACT, [Best Available Technology (BAT)] BAT, BACT, allowance-based programs and permit or plan approval emissions limitations or [another] other emissions limitations required by the Clean Air Act or the act may not be used to generate ERCs.

* * * * *

(iv) Enforceable. ERCs shall be Federally enforceable emissions reductions, regulated by Federal or SIP emissions [limitation] limitations, such as a limit on potential to emit in the permit, and be generated from a plan approval, economic incentive program or permit limitation.

* * * * *

(5) Acceptable emissions reduction techniques, which an applicant may use to generate ERCs, are limited to the following:

* * * * *

(vi) For facilities or sources not subject to this subchapter, a MERC program or another Economic Incentive Program which meets the requirements of this subchapter and which is approved by the EPA as a SIP revision.

(A) The program [shall] must comply with the following requirements:

* * * * *

(IV) ERCs shall be surplus to **emissions reductions achieved under** other Federal and State regulations relied upon in an applicable attainment plan or demonstration or credited in an RFP or milestone demonstration.

* * * * *

(7) The reduced emissions limitation of the new or modified permit of the source or facility generating the ERC shall be continuously verified by Department, local air pollution control agency or other State approved compliance monitoring and reporting programs. Onsite inspections will be made to verify shutdowns. If equipment has not been dismantled or removed, the owner or operator shall on an annual basis certify **in writing** to the Department the continuance of the shutdown.

§ 127.208. ERC use and transfer requirements.

The use and transfer of ERCs shall meet the following conditions:

* * * * *

(2) The transferee shall secure approval to use the offsetting ERCs through a plan approval **or an operating permit**, which indicates the [**Department**] **Department's** approval of the ERC transfer and use. Upon the issuance of a plan approval **or an operating permit**, the ERCs are no longer subject to expiration under § 127.206(f) (relating to ERC general requirements) except as specified in § 127.206(g).

* * * * *

(9) [**For a VOC or NO_x facility, the use and transfer of ERCs shall comply with the following:**

(i)] For the purpose of emissions offset transfers at **VOC or NO_x facilities**, the areas included within an ozone transport region established under section 184 of the Clean Air Act (42 U.S.C.A. § 7511c), which are designated in 40 CFR 81.339 (**relating to Pennsylvania**) as attainment [**areas**], **nonattainment** or unclassifiable areas for ozone, shall be treated as a single nonattainment area.

[(ii) A] (10) An owner or operator of a facility shall acquire ERCs for use as offsets from an ERC generating facility located within the same nonattainment area.

[(iii) An exception to the requirement of subparagraph (ii) may be granted to allow the acquisition of ERCs from a facility located outside the nonattainment area, but within either 2 days transport upwind or within 200 kilometers of the using facility, if the ERCs are obtained from another nonattainment area with an equal or higher classification and if the emissions from the other nonattainment area contribute to an NAAQS violation in the nonattainment area of the proposed facility. The facility shall demonstrate to the Department's satisfaction that the ERC generating facilities located in the nonattainment area were investigated and no suitable ERCs were available, and that the ERCs meet the 2-day transport upwind requirement.]

§ 127.209. ERC registry system.

* * * * *

(e) Registry operations and procedures are as follows:

(1) The registry will list the ERCs, and the Department will publish **revisions** to the list of registered ERCs available for trading purposes in the *Pennsylvania Bulletin* on a quarterly basis.

* * * * *

(4) Upon issuance of a plan approval allowing the use of ERCs entered in the registry, the following registry transactions will occur:

* * * * *

(ii) The registry will indicate the effective date, the quantity of [**used**] ERCs **used**, the originating generator and the ERC creation date, which is the date of actual or anticipated emissions reduction by the ERC generating facility.

§ 127.210. Offset ratios.

The emission offset ratios for ERC transactions subject to the requirements of this subchapter [**shall**] **must** be in an amount equal to or greater than the ratios specified in the following table:

	<i>Flue Emissions</i>	<i>Fugitive Emissions</i>
[Particulate Matter] PM-2.5, PM-10 and SO _x	1.3:1	5:1
[Primary Nonattainment Areas	1.3:1	5:1]
[Secondary Nonattainment Areas	1.1:1	3:1]

* * * * *

§ 127.211. [Applicability determination] (Reserved).

[(a) An applicability determination will establish whether:

(1) A modification which results in an emissions rate increase or the emission of pollutants not previously emitted at an existing major facility for particulate matter, PM-10 precursors, PM-10, SO_x, CO or lead emissions, located in or impacting a nonattainment area for these criteria pollutants, is a major modification under § 127.203 (relating to facilities subject to special permit requirements) and is subject to the new source review requirements of this subchapter.

(2) A modification which results in an emissions rate increase or the emission of pollutants not previously emitted at an existing major facility of VOC or NO_x emissions, located in or impacting a moderate nonattainment area for ozone, or an area included within an ozone transport region and designated as either a marginal or incomplete data nonattainment area or as an unclassifiable/attainment area for ozone, is a major modification under § 127.203 and is subject to the new source review requirements of this subchapter.

(3) A modification which results in an emissions rate increase or the emission of pollutants not previously emitted at an existing major facility of VOC or NO_x emissions, located in or impacting a serious or severe nonattainment area for ozone is a major modification under § 127.203 and is subject

to the new source review requirements of this subchapter, except as modified by the requirements in § 127.203(c).

(b) The Department will conduct an applicability determination during its review of a plan approval application for a proposed modification which results in an increase in allowable emissions to determine the amount of the net increase in accordance with the following:

(1) For a proposed de minimis increase the proposed increase will be summed with those emission increases and decreases occurring after January 1, 1991.

(2) For a proposed increase which equals or exceeds an emissions rate threshold or significance level specified in § 127.203, the proposed increase will be summed with those emissions increases and decreases that occurred within the contemporaneous period which begins 5 years before commencement of construction of the proposed modification and ends with the date that the emission increase from the modification occurs. Notwithstanding the requirement to begin the contemporaneous period 5 years before construction, the period may not begin prior to January 1, 1991, or the design year of the most recent attainment demonstration, whichever is later.

(3) The following procedures will apply in determining the amount of emissions increases and decreases to be summed:

(i) If a facility's maximum allowable emissions rate has not been established, the rate will be calculated for purposes of the applicability determination.

(ii) The increase in potential to emit for each proposed modification or new source will be used to set an allowable emissions rate for the modified or new facility. The allowable rate increase will be treated as an increase in the maximum allowable emissions rate for the facility.

(iii) Other increases and decreases in allowable emission rates at a facility which occur within the applicable time period are creditable in accordance with the following:

(A) Increases in the allowable rates shall be factored into the facility maximum allowable emissions rate.

(B) A decrease in an allowable emissions rate is not creditable unless the following conditions are met:

(I) The emissions reduction credit provisions in § 127.207(1) and (3)—(7) (relating to ERC generation and creation) have been complied with, and the decrease is Federally enforceable by the time that actual construction begins on the modification. The plan approval for the modification will contain a provision specifying that the emissions decrease is Federally enforceable on or before the date of commencement of construction. The facility owner or operator shall certify in writing that the reductions were not relied on for a previous applicability determination or to generate ERCs.

(II) The emissions decrease is such that when compared with the proposed increase there is no significant change in the character of emissions,

including seasonal emission patterns, stack heights or hourly emission rates. A significant change in the character of emissions means a change resulting in an increase in emissions equal to or greater than an emissions rate threshold or an impact in excess of a significance level as specified in § 127.203. For VOC and NO_x during the ozone season, the portion of the annual emissions rate threshold specified in § 127.203 which as a percentage occurs during the ozone season may not be exceeded.

(III) The emission decrease represents approximately the same qualitative significance for public health and welfare as attributed to the proposed increase. This requirement is satisfied if the emission rate thresholds and significance levels contained in § 127.203 are not exceeded.

(C) An emissions reduction or an ERC generated at the facility may be used as a creditable decrease in an applicability determination. A portion of an ERC generated at another facility, acquired by trade and incorporated in a plan approval for use at the facility will not be credited as an emissions decrease in an applicability determination.

(D) ERCs which the facility has generated and registered are not creditable as reductions in an applicability determination unless the ERCs are withdrawn from the registry.

(E) A creditable emissions decrease which occurred prior to January 1, 1991, or the design year of the most recent attainment demonstration, whichever is later, and within the contemporaneous period of the proposed increase will be treated as new source growth and discounted in accordance with the applicable nonattainment area ratio in § 127.210 (relating to offset ratios).

(iv) An emissions increase that results from a physical change at a facility occurs when the unit on which construction occurred becomes operational and begins to emit a criteria pollutant. A replacement unit that is allowed a shakedown period becomes operational at the end of the approved shakedown period, which may not exceed 180 days.

(c) The new source review requirements of this subchapter apply to:

(1) A facility at which the proposed emissions increase and the net increase in the facility maximum allowable emissions rate as determined under subsection (b) meet or exceed the applicable threshold limits in § 127.203. A decrease in a facility maximum allowable emissions rate will not qualify as a decrease for purposes of this section when a facility petitions for a decrease in its maximum allowable emissions rate through a permit restriction unless the conditions of subsection (b)(3)(iii) are met.

(2) A facility which was deactivated for a period in excess of 1 year and is not in compliance with the reactivation requirements of § 127.215 (relating to reactivation).

(3) A source which has netted out of new source review by applying emissions reduction or ERCs generated by another source at the facility, if the emissions reduction or ERC generating source subsequently increases its allowable emissions unless

the facility generates sufficient additional emissions reductions or ERCs equal to the proposed increase at the ERC generating source.

(d) For a proposed emissions increase that is subject to the new source requirements under subsection (c), the requirements of § 127.205 (relating to special permit requirements) are applicable in the following manner:

(1) Emissions offsets shall be required for the entire net emissions increase which occurred over the contemporaneous period except to the extent that offsets or other reductions were previously applied against increases in an earlier applicability determination.

(2) LAER applies to the proposed modification which results in an increase in emissions, and to subsequent or previous modifications which result in emissions increases that are directly related to and normally included in the project associated with the proposed modification and which occurred within the contemporaneous period of the proposed emissions increase.

(e) For a proposed de minimis increase in which the net emissions increase since January 1, 1991, meets or exceeds the threshold limits in § 127.203, only the emissions offset requirements in § 127.205(3) apply to the net emissions increase.

(f) The new source review requirements of this subchapter do not apply to:

(1) A facility at which a proposed major modification results in a net increase in the maximum allowable emission rate as determined under subsection (b) which does not meet or exceed the applicable threshold limits in § 127.203.

(2) A facility at which a proposed de minimis increase results in a net emissions increase since January 1, 1991, which as determined under subsection (b) does not meet or exceed the applicable threshold limits in § 127.203.]

§ 127.212. Portable facilities.

(a) [A] An owner or operator of a portable SO_x, [particulate matter,] PM-10 [precursor] precursors, PM-10, PM-2.5 precursors, PM-2.5, lead or CO facility subject to this subchapter which will be relocated within 6 months of the commencement of operation to a location within an attainment area which does not have an impact on a nonattainment area at or above the significance levels contained in § 127.203 (relating to facilities subject to special permit requirements) shall be exempt from this subchapter. [A] An owner or operator of a facility which subsequently returns to a location where it is subject to this subchapter shall comply with this subchapter.

(b) [A] An owner or operator of a portable VOC or NO_x facility subject to this subchapter which will be relocated outside of this Commonwealth within 6 months of the commencement of operation shall be exempt from this subchapter. [A] An owner or operator of a facility which subsequently returns to a location in this Commonwealth where it is subject to this subchapter shall comply with this subchapter.

§ 127.213. Construction and demolition.

* * * * *

(b) Emissions from construction and demolition activities may not be considered under [§ 127.203 (relating to facilities subject to special permit requirements)] § 127.203a (relating to applicability determination).

§ 127.214. [Exemptions] (Reserved).

[The special permit requirements of this subchapter may be waived for modifications to an existing facility through a plan approval application which demonstrates to the satisfaction of the Department that:

(1) The capital expenditure is being made with the primary purpose of achieving compliance with a new, more stringent regulation than was previously applicable, and will bring the facility into compliance with the new regulation.

(2) The maximum allowable emissions from the facility itself or a discrete operation, unit or other pollutant emitting activity at the facility will not increase.]

§ 127.214a. Special provisions for advanced clean coal generation technology.

(a) This section applies to an owner or operator of a project that uses advanced clean coal generation technology in a new electric utility steam generating unit or to retrofit or repower an existing electric utility steam generation unit.

(b) As used in this section, the term “advanced clean coal generation technology” means an electric utility steam generating unit uses an advanced clean coal generation technology if the following conditions are met:

(1) The unit either:

(i) Uses integrated gasification combined cycle technology.

(ii) Has a design net heat rate of no more than 8530 Btu/KWH (at least 40% efficiency).

(2) The vendor warrants that the unit is designed, at a minimum, to meet the following performance requirements:

<i>Pollutants</i>	<i>Emission Rate</i>	<i>Averaging Period</i>
SO _x	99% removal	30-days rolling average
NO _x	0.5 lbs/MWH	30-days rolling average
CO	0.32 lbs/MWH	24-hour rolling average
PM-10	0.06 lbs/MWH	Average of three one-hour stack tests
VOC	0.01 lbs/MWH	Average of three one-hour stack tests
CO ₂	1.76 lbs/KWH	12-month rolling average
Hg	95% removal	12-month rolling average

(c) An owner or operator of a new, retrofitted or repowered electric utility steam generation unit that qualifies as advanced clean coal generation technology with a net emissions increase from the facility which meets or exceeds the applicable emissions rate that is significant shall be subject to this subchapter.

(d) The qualifying electric utility steam generation unit will be deemed to meet the LAER control technology requirements of § 127.205 (relating to special permit requirements) unless the Department determines that the performance requirements specified in subsection (b) are less stringent than LAER.

(e) The owner or operator of an electric utility steam generation unit meeting the requirements of this section shall offset the net emissions increase of a regulated NSR pollutant in accordance with the offset ratios specified in § 127.210 (relating to offset ratios).

(f) The Department will expedite the processing of a plan approval application for an electric steam generating unit that qualifies under this section.

§ 127.215. Reactivation.

(a) A facility which has been out of operation or production for 1 year or more during the term of its operating permit may be reactivated within the term of its operating permit and will not be considered a new facility subject to this subchapter if the following conditions are satisfied:

(1) The permittee shall within 1 year of the deactivation submit **in writing** to the Department and implement a maintenance plan which includes the measures to be taken, including maintenance, upkeep, repair or rehabilitation procedures, which will enable the facility to be reactivated in accordance with the terms of the permit.

(2) The permittee shall submit a reactivation plan at least 30 days prior to the proposed date of reactivation. The reactivation plan [**shall**] **must** include sufficient measures to ensure that the facility will be reactivated in compliance with the permit requirements. The permittee may submit a reactivation plan to the Department at any time during the term of its operating permit. The reactivation plan may also be submitted to and approved **in writing** by the Department as part of the plan approval or permit application process.

(3) The permittee shall [**submit a notice to**] **notify** the Department **in writing** within 1 year of deactivation requesting preservation of the emissions in the inventory and indicating the intent to reactivate the facility.

(4) The permittee shall comply with the terms and conditions of the [**maintenance**] **following**:

(i) **Maintenance** plan while the facility is deactivated [, and shall comply with the terms and conditions of the reactivation] .

(ii) **Reactivation** plan and the operating permit upon reactivation.

* * * * *

(b) The Department will approve or disapprove **in writing** the complete reactivation plan within 30 days of plan submission, unless additional time is required based on the size or complexity of the facility.

* * * * *

§ 127.217. Clean Air Act Titles III—V applicability.

Compliance with this subchapter does not relieve a source or facility from complying with Titles III—V of the Clean Air Act (42 U.S.C.A. §§ 7601—7627; 7641, 7642, 7651—7651o; and 7661—7661f), **applicable requirements of the act or regulations adopted under the act.**

§ 127.218. PALs.

(a) The following provisions govern an actual PAL for a major facility.

(1) The Department may approve the use of an actual PAL for any existing major facility if the PAL meets the requirements in this subsection through subsection (n).

(2) The Department will not permit an actual PAL for VOC or NO_x for a major facility located in an extreme ozone nonattainment area.

(3) A physical change in or change in the method of operation of a major facility that maintains its total facility-wide emissions below the PAL level, meets the requirements in this subsection through subsection (n) and complies with the PAL permit is not:

(i) A major modification for the PAL pollutant.

(ii) Subject to this subchapter.

(iii) Subject to § 127.203(e)(2) (relating to facilities subject to special permitting requirements).

(4) An owner or operator of a major facility shall continue to comply with applicable Federal or State requirements, emissions limitations and work practice requirements that were established prior to the PAL effective date.

(b) The owner or operator of a major facility shall submit the following information to the Department as part of the PAL application:

(1) A list of the emissions units at the facility designated as small, significant or major based on their potential to emit. The list must indicate which Federal or State applicable requirements, emissions limitations or work practices apply to each unit.

(2) Calculations and supporting documentation for the baseline actual emissions, which include emissions associated with operation of the unit, startups and shutdowns.

(3) The calculation procedures that the owner or operator of the major facility proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subsection (m)(1).

(c) The Department may establish a PAL if the following requirements are met:

(1) The PAL must impose an annual emissions limitation in tpy for the entire major facility. For each month during the PAL effective period after the first 12 months of establishing a PAL, the owner or operator of the major facility shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months, expressed as a 12-month rolling average, is less than the PAL. For each month during the first 11 months from the PAL effective date, the owner or operator of the major facility shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(2) The PAL must be established in a PAL permit that meets the public participation requirements in subsection (d).

(3) The PAL permit must contain all the requirements of subsection (g).

(4) The PAL must include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major facility.

(5) Each PAL must regulate emissions of only one pollutant.

(6) Each PAL must have a PAL effective period of 10 years.

(7) The owner or operator of a major facility issued a PAL permit shall comply with the monitoring, recordkeeping and reporting requirements provided in subsections (m)—(o) for each emissions unit under the PAL through the PAL effective period.

(d) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under this subchapter unless the level of the PAL is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the PAL.

(e) A PAL for an existing major facility must be established or modified in accordance with the public notice procedures set forth under §§ 127.44, 127.424 and 127.521 (relating to public notice; public notice; and additional public participation provisions).

(f) Setting the 10-year actual PAL level must comply with the following:

(1) The actual PAL level for a major facility must be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the facility plus an amount equal to the applicable emissions rate that is significant for the PAL pollutant or under the Clean Air Act, whichever is lower.

(2) When establishing the actual PAL level, for a PAL pollutant, one consecutive 2-year period must be used to determine the baseline actual emissions for all existing emissions units.

(3) Emissions associated with units that were permanently shut down after this 2-year period must be subtracted from the PAL level.

(4) Emissions from units on which actual construction began after the 2-year period must be added to the PAL level in an amount equal to the actual emissions of the units.

(5) The Department will specify a reduced PAL level in tpy in the PAL permit to become effective on the future compliance date of any applicable Federal or State regulatory requirement that the Department is aware of prior to issuance of the PAL permit.

(g) At a minimum, the PAL permit must contain the following information:

(1) The PAL pollutant and the applicable facility-wide emissions limitation in tpy.

(2) The effective date and the expiration date.

(3) A requirement that if the owner or operator of a major facility applies to renew a PAL in accord-

ance with subsection (i) before the end of the PAL effective period, the PAL permit does not expire at the end of the PAL effective period. The PAL permit remains in effect until the Department issues a revised PAL permit.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, upon expiration of the PAL permit, the owner or operator of a major facility is subject to the requirements of subsection (j).

(6) The calculation procedures that the owner or operator of a major facility shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subsection (n)(1).

(7) A requirement that the owner or operator of a major facility shall monitor all emissions units in accordance with subsection (m).

(8) A requirement that the owner or operator shall retain the records required under subsection (n) onsite.

(9) A requirement that the owner or operator shall submit the reports required under subsection (o) by the required deadlines.

(10) A requirement that the emissions from a new source must be the minimum attainable through the use of BAT.

(11) Other requirements the Department deems necessary to implement and enforce the PAL.

(h) The Department will specify a PAL effective period of 10 years.

(i) The following requirements apply to reopening of the PAL permit:

(1) During the PAL effective period, the Department will reopen the PAL permit to:

(i) Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

(ii) Reduce the PAL if the owner or operator of the major facility creates creditable emissions reductions for use as offsets under § 127.207 (relating to ERC generation or creation).

(iii) Revise the PAL to reflect an increase in the PAL as provided under subsection (l).

(2) The Department may reopen the PAL permit to reduce the PAL:

(i) To reflect newly applicable Federal requirements with compliance dates after the PAL effective date.

(ii) Consistent with a requirement that is enforceable as a practical matter and that the State may impose on the major facility consistent with all applicable requirements.

(iii) If the Department determines that a reduction is necessary to avoid causing or contributing to:

(A) A NAAQS or PSD increment violation.

(B) An adverse impact on an air quality related value that has been identified for a Federal Class I

area by a Federal land manager and for which information is available to the general public.

(3) Except for the permit reopening paragraph (1)(i) for the correction of typographical/calculation errors that do not increase the PAL level, other reopenings shall be carried out in accordance with the public participation requirements of subsection (e).

(j) A PAL permit which is not renewed in accordance with the procedures in subsection (k) expires at the end of the PAL effective period and the following requirements apply:

(1) The owner or operator of each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emissions limitation under a revised permit established according to the following procedures:

(i) Within the time frame specified for PAL permit renewals in subsection (k)(2), the owner or operator of the major facility shall submit a proposed allowable emissions limitation for each emissions unit, or each group of emissions units if this distribution is more appropriate as decided by the Department, by distributing the PAL allowable emissions for the major facility among each of the emissions units that existed under the PAL permit. If the PAL permit has not been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection (k)(5), this distribution is made as if the PAL permit has been adjusted.

(ii) The Department will decide whether and how to distribute the PAL allowable emissions and issue a revised permit incorporating allowable limits for each emissions unit or each group of emissions units.

(2) The owner or operator of each emissions unit or group of emissions units shall comply with the allowable emissions limitation on a 12-month rolling basis. The Department may approve the use of emissions monitoring systems other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emissions limitation.

(3) Until the Department issues the revised PAL permit incorporating the allowable limits for each emissions unit or group of emissions units required under paragraph (1)(i), the owner or operator of the facility shall continue to comply with a facility-wide, multi-unit emissions cap equivalent to the level of the PAL emissions limitation.

(4) A physical change or change in the method of operation at the major facility is subject to this subchapter if the change meets the definition of major modification.

(5) The owner or operator of the major facility shall continue to comply with any State or Federal applicable requirements including BAT, BACT, RACT or NSPS that may have applied either during the PAL effective period or prior to the PAL effective period except for those emissions limitations that had been established under § 127.203(e), but were eliminated by the PAL in accordance with the provisions in subsection (a)(3)(iii).

(k) The following requirements apply to renewal of a PAL:

(1) The Department will follow the procedures specified in subsection (e) in approving a request to renew a PAL permit for a major facility, and will provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment in accordance with the public notice requirements in § 127.44. During the public review, a person may propose a PAL level for the major facility for consideration by the Department.

(2) An owner or operator of a major facility shall submit a timely application to the Department to request renewal of a PAL permit. A timely application is one that is submitted at least 6 months, prior to, but not earlier than 18 months prior to the date of permit expiration. If the owner or operator of a major facility submits a complete application to renew the PAL permit within this time period, then the PAL continues to be effective until the revised permit with the renewed PAL is issued.

(3) The application to renew a PAL permit must contain the following information:

(i) The information required in subsection (b)(1)–(3).

(ii) A proposed PAL level.

(iii) The sum of the potentials to emit of the emissions units under the PAL.

(iv) Other information the owner or operator wishes the Department to consider in determining the appropriate level at which to renew the PAL.

(4) The Department will consider the options in subparagraphs (i) and (ii) in determining whether and how to adjust the PAL. In no case may the adjustment fail to comply with subparagraphs (iii) and (iv).

(i) If the emissions level calculated in accordance with subsection (f) is equal to or greater than 80% of the PAL level, the Department may renew the PAL at the same level without considering the factors set forth in subparagraph (ii).

(ii) The Department may set the PAL at a level that it determines to be more representative of the facility's baseline actual emissions or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the facility's voluntary emissions reductions or other factors specifically identified by the Department in its written rationale.

(iii) If the potential to emit of the major facility is less than the PAL, the Department will adjust the PAL to a level no greater than the potential to emit of the facility.

(iv) The Department will not approve a renewed PAL level higher than the current PAL unless the major facility has complied with subsection (l).

(5) If the compliance date for a State or Federal requirement that applies to the facility occurs during the PAL effective period and the Department has not already adjusted for this requirement, the PAL must be adjusted at the time of the PAL permit renewal or Title V permit renewal, whichever occurs first.

(l) The following requirements apply to increasing a PAL during the PAL effective period:

(1) The Department may increase a PAL emissions limitation during the PAL effective period if the owner or operator of the major facility complies with the following:

(i) The owner or operator of the major facility shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application must identify the emissions units contributing to the increase in emissions that cause the major facility's emissions to equal or exceed its PAL.

(ii) The owner or operator of the major facility shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit must be determined by conducting a new BACT analysis at the time the application is submitted unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In this case, the assumed control level for that emissions unit is equal to the level of BACT or LAER with which that emissions unit must currently comply.

(iii) The owner or operator of the major facility shall obtain a major NSR permit for all emissions units identified in subparagraph (i), regardless of the magnitude of the emissions increase resulting from them. The owner or operator of these emissions units shall comply with the applicable emissions requirements of this subchapter, even if the units are subject to a PAL or continue to be subject to a PAL.

(iv) The PAL permit must require that the increased PAL level be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(2) The Department will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls determined in accordance with paragraph (1)(ii), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit must be revised to reflect the increased PAL level under the public notice requirements of subsection (e).

(m) The following monitoring requirements apply to an owner or operator subject to a PAL:

(1) Each PAL permit must contain enforceable requirements for the monitoring system to accurately determine plantwide emissions of the PAL pollutant in terms of mass per unit of time.

(2) The PAL monitoring system must employ one or more of the four general monitoring approaches

meeting the minimum requirements in paragraph (5) and must be approved in writing by the Department.

(3) The owner or operator of the facility may also use an alternative monitoring approach that meets the requirements of paragraph (1), if approved in writing by the Department.

(4) Failure to use a monitoring system that meets the requirements of this section renders the PAL permit invalid.

(5) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in paragraphs (6)–(12):

(i) Mass balance calculations for activities using coatings or solvents.

(ii) CEMS.

(iii) CPMS or PEMS.

(iv) Emission factors.

(6) An owner or operator of a major facility using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(i) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit.

(ii) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process.

(iii) If the vendor of a material or fuel used in or at the emissions unit publishes a range of pollutant content from the material, the owner or operator shall use the highest value of the range to calculate the PAL pollutant emissions unless the Department determines, in writing, that there is site-specific data or a site-specific monitoring program to support another content within the range.

(7) An owner or operator of a major facility using a CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) The CEMS must comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B (relating to performance specifications).

(ii) The CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(8) An owner or operator of a major facility using a CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(i) The CPMS or PEMS must be calibrated based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit.

(ii) Each CPMS or PEMS must sample, analyze and record data at least every 15 minutes or other less frequent interval approved in writing by the Department, while the emissions unit is operating.

(9) An owner or operator of a major facility using emission factors to monitor PAL pollutant emissions shall:

(i) Adjust the emission factors to account for the degree of uncertainty or limitations in the development of the factors.

(ii) Operate the emissions unit within the designated range of use for the emission factor, if applicable.

(iii) Conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the Department determines, in writing, that testing is not required.

(10) An owner or operator of a facility shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during a period of time that there is no monitoring data, unless another method for determining emissions during these periods is specified in the PAL permit.

(11) If an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at the operating points of the emissions unit, the Department will, at the time of permit issuance, either:

(i) Establish default values for determining compliance with the PAL permit based on the highest potential emissions reasonably estimated at the operating points.

(ii) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL permit.

(12) Data used to establish the PAL must be revalidated through performance testing or other scientifically valid means approved in writing by the Department. This testing must occur at least once every 5 years after issuance of the PAL permit.

(n) The following requirements apply to recordkeeping:

(1) The PAL permit must require an owner or operator to retain a copy of all records necessary to determine compliance with a requirement of this section and of the PAL, including a determination of the 12-month rolling total emissions for each emissions unit, for 5 years.

(2) The PAL permit must require an owner or operator to retain a copy of the following records for the duration of the PAL effective period and 5 years after the PAL permit expires:

(i) A copy of the PAL permit application and applications for revisions to the PAL permit.

(ii) Each annual certification of compliance required under Title V of the Clean Air Act (42 U.S.C.A. §§ 7661–7661f) and regulations adopted under the act and the data relied on in certifying the compliance.

(o) The following requirements apply to reporting and notification:

(1) The owner or operator of a major facility shall submit semiannual monitoring reports and prompt

deviation reports to the Department in accordance with the Title V operating permit requirements of Chapter 127, Subchapters F and G (relating to operating permit requirements; and Title V operating permits).

(2) The semiannual reports must:

(i) Be submitted to the Department within 30 days of the end of each reporting period.

(ii) Contain the following information:

(A) The identification of the owner and operator and the permit number.

(B) Total annual emissions in tpy based on a 12-month rolling total for each month in the reporting period recorded in compliance with subsection (n)(1).

(C) Data relied upon, including the quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(D) A list of the emissions units modified or added to the major facility during the preceding 6-month period.

(E) The number, duration and cause of deviations or monitoring malfunctions, other than the time associated with zero and span calibration checks, and the corrective action taken.

(F) A notification of a shutdown of a monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by the method included in the permit under subsection (m)(10).

(G) A compliance certification signed by a responsible official of the company that owns or operates the facility. In addition to the certification requirements of this section, the certification must state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

(3) The reports of deviations and exceedances of the PAL requirements, including periods in which no monitoring is available, must:

(i) Be submitted to the Department promptly. A report submitted under Subchapter G (relating to Title V operation permits) satisfies this reporting requirement.

(ii) Contain the following information:

(A) The identification of the owner and operator and the permit number.

(B) The PAL requirement that experienced the deviation or that was exceeded.

(C) Emissions resulting from the deviation or the exceedance.

(D) A compliance certification signed by a responsible official of the company that owns or operates the facility. In addition to the certification requirements of this section, the certification must state that, based on information and belief formed

after reasonable inquiry, the statements and information in the document are true, accurate and complete.

(4) The owner or operator of a major facility shall submit to the Department the results of any revalidation test or method within 3 months after completion of the test or method.

(p) The Department may modify or supersede any PAL which was established prior to the date of approval of the PAL provisions by the EPA as a revision to the SIP.

[Pa.B. Doc. No. 06-701. Filed for public inspection April 28, 2006, 9:00 a.m.]

[25 PA. CODE CH. 245]

[Correction]

Administration of the Storage Tank and Spill Prevention Act

An error occurred in the preamble to the proposed rulemaking which appeared at 36 Pa.B. 1851, 1862 (April 22, 2006). A date was inadvertently omitted from the paragraph regarding the submission of electronic comments.

The correct version of the paragraph is as follows:

Electronic Comments—Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by June 29, 2006. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission. If an acknowledgment of electronic com-

ments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

[Pa.B. Doc. No. 06-06-656. Filed for public inspection April 21, 2006, 9:00 a.m.]

MILK MARKETING BOARD

[7 PA. CODE CH. 145]

Transactions Between Dealers and Customers

The Milk Marketing Board (Board) will conduct a public hearing on May 16, 2006, at 10 a.m. in Room 202 of the Agriculture Building, 2301 North Cameron Street, Harrisburg, PA.

The purpose of the hearing is to receive testimony and comments regarding proposed amendments to 7 Pa. Code Chapter 145 (relating to transactions between dealers and customers). See 35 Pa.B. 1772 (March 19, 2005). The proposed amendments deal with the sale and leasing of refrigeration equipment, milk dispensers and cream dispensers.

There is no requirement for prior notification or entry of appearance to be able to provide testimony or comments at the hearing. A draft of the proposed amendments may be obtained at the Board's website or by contacting the Board office.

KEITH BIERLY,
Secretary

[Pa.B. Doc. No. 06-702. Filed for public inspection April 28, 2006, 9:00 a.m.]

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

[4 PA. CODE CH. 114]

Volunteer Fire Company and Volunteer Ambulance Service Grant Program

The Pennsylvania Emergency Management Agency (Agency) has adopted a statement of policy regarding the Volunteer Fire Company and Volunteer Ambulance Service Grant Program (Grant Program) to read as set forth in Annex A. This Program provides grants to improve and enhance the capabilities of volunteer fire companies and ambulance services to provide either firefighting, ambulance or rescue services to the citizens of this Commonwealth under the Volunteer Fire Company and Volunteer Ambulance Service Act (Act 17 of 2003 as amended by Act 13 of 2006).

The guidelines are needed for the administration of the Grant Program. For this reason, the Agency announces the availability of grant funds and the following guidelines, schedules and application procedures that eligible applicants must follow to apply for those grant funds.

Fiscal Impact

Appropriation of \$25 million provided in Act 13 of 2006.

Paperwork Requirements

The guidelines will require applicants to complete the Volunteer Fire Company and Volunteer Ambulance Service Application, available on the Internet at the Office of the State Fire Commissioner Website or in paper form upon request, and a grant agreement.

Effective Date

The guidelines contained in this statement of policy shall take effect upon publication in the *Pennsylvania Bulletin*.

JAMES R. JOSEPH,
Director

(*Editor's Note:* Title 4 of the Pa. Code is amended by amending a statement of policy in §§ 114.1—114.8 to read as set forth in Annex A.)

Fiscal Note: 30-SOP-61. No fiscal impact; (8) recommends adoption. An appropriation of \$25 million dollars for this program was provided in Act 13 of 2006.

Annex A

TITLE 4. ADMINISTRATION

PART V. EMERGENCY MANAGEMENT AGENCY

CHAPTER 114. VOLUNTEER FIRE COMPANY AND VOLUNTEER AMBULANCE SERVICE GRANT PROGRAM—STATEMENT OF POLICY

§ 114.1. Introduction.

(a) The Grant Program provides grants to improve and enhance the capabilities of volunteer fire companies and volunteer ambulance services throughout this Commonwealth to provide firefighting, ambulance and rescue services. Grant Program funds may be used for projects that are in accordance with the act. Eligible projects are defined in § 114.3(a)(2) and (b)(2) (relating to eligibility).

(b) Assistance from the Grant Program is in the form of grants from the Commonwealth to eligible volunteer fire companies and volunteer ambulance services for projects which, in the judgment of the Agency, comply with the act and are in accordance with the Grant Program guidelines in this chapter and meet the Volunteer Fire Company-Volunteer Ambulance Service Grant Application criteria found in the application.

(c) Grants will be not less than \$2,500 and not more than \$15,000 per applicant volunteer fire company nor more than \$10,000 per applicant volunteer ambulance service, except as noted in § 114.3(a)(3).

(d) Applicants should be aware that the Grant Program expects to receive a large number of applications for the limited appropriation from the General Assembly. As such, it is possible that not every application can be fully funded, in which case grants will be awarded on a prorata basis.

(e) The Grant Program expenditures will be charged to the State fiscal year July 1, 2005 to June 30, 2006.

§ 114.2. Definitions.

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

Act—The Volunteer Fire Company and Volunteer Ambulance Service Act (35 P. S. §§ 6942.101—6942.902), as amended by Act 80 of 2004.

Advanced life support—The advanced prehospital and interhospital emergency medical care of serious illness or injury by appropriately trained health professionals and by certified EMT-paramedics.

Agency—The Pennsylvania Emergency Management Agency.

Application—The Volunteer Fire Company-Volunteer Ambulance Service Grant Program Application.

Basic life support services—Prehospital or interhospital emergency medical care and management of illness or injury performed by specially trained and certified or licensed personnel.

Certification—Any class of instruction or test that will provide certification at any level that is currently offered in this Commonwealth through the Voluntary Fire Fighter Certification program administered by the State Fire Academy.

Certified personnel—Any member of the fire or rescue company who is certified at a minimum level of Fire Fighter 1 on or before March 1, 2006, by the National Professional Qualifications Board or by the International Fire Service Accreditation Congress and verified by the Pennsylvania State Fire Academy.

Commissioner—The State Fire Commissioner.

Equipment—Any apparatus, equipment or tools ordinarily used by a fire, rescue or ambulance service in the performance of their duties.

Facility—

(i) A structure or portion thereof intended for the purpose of storage or protection of firefighting apparatus, ambulances or rescue vehicles and related equipment and

gear. The repair, renovation or construction of sleeping quarters (bunk rooms) is also included as an authorized expenditure.

(ii) The term does not include meeting halls, social halls, social rooms, lounges or any other facility not directly related to firefighting or the furnishing of ambulance or rescue services.

Final report—The report to be filed as provided in § 114.6 (relating to award reporting procedures) by the volunteer fire company or volunteer ambulance services detailing the expenditure of the funds granted.

Grant Program—The Volunteer Fire Company Grant Program and the Volunteer Ambulance Service Grant Program.

Invalid coach—A vehicle which is primarily maintained, operated and intended to be used for routine transport of persons who are convalescent or otherwise nonambulatory and do not ordinarily require emergency medical treatment while in transit. The vehicles will not be considered ambulance or emergency medical service vehicles.

OSFC—Office of the State Fire Commissioner.

Regional or joint project—A cooperative agreement wherein any combination of three or more separately chartered fire or rescue companies agree to use all, or any portion of their respective grant request to jointly complete any project that qualifies under the act.

Volunteer ambulance service—

(i) Any nonprofit chartered corporation, association or organization located in this Commonwealth, which is licensed by the Department of Health and is not associated or affiliated with any hospital and which is regularly engaged in the provision of emergency medical services, including basic life support or advanced life support services and the transportation of patients.

(ii) The term does not include any corporation, association or organization that is primarily engaged in the operation of invalid coaches which are intended for the routine transport of persons who are convalescent or otherwise nonambulatory and do not ordinarily require emergency medical treatment while in transit.

Volunteer fire company—A nonprofit chartered corporation, association or organization located in this Commonwealth which provides fire protection services and which may offer other voluntary emergency services within this Commonwealth. Voluntary emergency services provided by a volunteer fire company may include voluntary ambulance and voluntary rescue services.

Volunteer rescue company—A nonprofit chartered corporation, association or organization located in this Commonwealth that provides rescue services as part of the response to fires or vehicle accidents, or both, within this Commonwealth.

§ 114.3. Eligibility.

(a) *Volunteer Fire Company Grant.*

(1) *Eligible applicants.* A volunteer fire company as defined in § 114.2 (relating to definitions). To receive grant funds under this act a volunteer fire company shall have actively responded to one or more fire or rescue emergencies since July 1, 2005. The volunteer fire company shall also sign a written agreement to participate in and report information using the Pennsylvania Fire Information Reporting System.

(2) *Eligible projects.*

(i) Program funds may be used for projects that are consistent with the act. Eligible projects must improve and enhance the capabilities of the volunteer fire company to provide firefighting, ambulance or rescue services. Eligible projects include any of the following:

(A) Construction or renovation, or both, of the fire company's primary structure facility and purchase or repair of fixtures and furnishings necessary to maintain or improve the capability of the company to provide fire, ambulance and rescue services.

(B) Purchase of firefighting, ambulance or rescue equipment or repair thereof.

(C) Debt reduction associated with already completed projects eligible under this subparagraph and subparagraph (ii).

(D) Training and certification of members.

(ii) Projects initiated after July 1, 2005, and completed prior to disbursement of Grant Program funds may be considered as eligible projects for the current grant year.

(3) When two or more fire companies have consolidated their use of equipment, firefighters and services after July 1, 1998, the consolidated entity may be deemed eligible to receive a grant not to exceed the amount of the combined total for which the individual companies would have been eligible had they not consolidated.

(b) *Volunteer Ambulance Service Grant.*

(1) *Eligible applicants.* A volunteer ambulance service as defined in § 114.2.

(2) *Eligible projects.*

(i) Program funds may be used for projects that are consistent with the act. Eligible projects must improve and enhance the capability of the ambulance service to provide ambulance, emergency medical, basic life support or advanced life support services. Eligible projects include any of the following:

(A) Construction or renovation, or both, of the volunteer ambulance service's primary structure facility and purchase or repair of fixtures and furnishings necessary to maintain or improve the capability of the company to provide ambulance, emergency medical, basic life support and advanced life support services.

(B) Purchase of ambulance or rescue equipment or repair thereof.

(C) Debt reduction associated with already completed projects eligible under this subparagraph and subparagraph (ii).

(D) Training and certification of members.

(ii) Projects initiated after July 1, 2005, and completed prior to disbursement of Grant Program funds may be considered as eligible projects for the current grant year.

(3) When two or more ambulance services have consolidated their use of equipment, emergency medical technicians, paramedics and services after July 1, 1998, the consolidated entity may be deemed eligible to receive a grant not to exceed the amount of the combined total for which the individual services (companies) would have been eligible had they not consolidated.

§ 114.4. Program requirements and instructions.

(a) The following requirements apply to the Grant Program:

(1) Project applications for the grants shall be submitted using either the online web based application process or the paper forms provided by the Agency. The Agency will provide information about the application process for grants under this act to every volunteer fire company and every volunteer ambulance service in this Commonwealth. Applications will also be available from the OSFC and on the OSFC's website. Addresses and phone numbers are listed in § 114.5 (relating to application submission and approval procedure).

(2) The Agency reserves the right to:

(i) Request additional information regarding an organization's eligibility.

(ii) Request additional information regarding proposed use of funds.

(iii) Require explanation or revision of the applicant's project budget.

(iv) Require clarification of the applicant's project narrative.

(3) Incomplete applications will be rejected. An applicant shall carefully follow the instructions for completing either the online or the paper form of the application. Specific information is required as indicated on both the online application and the paper form. Applications not containing required information will be considered incomplete.

(4) The project narrative must provide a detailed and comprehensive description of the project and include:

(i) A description of the projects.

(ii) The benefits to be realized from the project.

(iii) The grant funds to be expended on the project.

§ 114.5. Application submission and approval procedure.

(a) The Agency will mail information detailing the grant application process to volunteer fire companies and volunteer ambulance services throughout this Commonwealth. The application will also be available by calling the OSFC at (800) 670-3473, or on the OSFC's website at www.osfc.state.pa.us. Applications shall be submitted to the OSFC, either online at www.osfc.state.pa.us or in the case of paper forms, at 2605 Interstate Drive, Harrisburg, PA 17110-9364.

(1) The application process involves gathering applicant information and verifying that applicant projects are eligible for grant funding. The agency will provide an online Web based process to gather the additional applicant information and verify project eligibility. The agency will provide written information to every volunteer fire company and ambulance service regarding the Grant Program guidelines and the availability of the online applicant information/project eligibility verification process.

(2) Paper submissions will be accepted. At the time the availability of the online grant application process is announced, the OSFC will provide information about how to obtain a paper form to submit the required applicant and project eligibility information. Information will also be available from the OSFC and on the OSFC's website.

(b) A volunteer fire company or a volunteer ambulance service seeking a grant under this Grant Program shall submit a completed online or paper form of the grant application to the OSFC.

(c) The Agency will begin the final application review process on June 9, 2006.

(d) The Agency will act to approve or disapprove the applications by June 30, 2006. Applications received by the Agency which have not been approved or disapproved by the Agency by June 30, 2006, will be deemed approved, subject to the act.

(e) Grant award determinations are as follows:

(1) *Volunteer Fire Company Grants.*

(i) A volunteer fire company as defined in § 114.2 (relating to definitions), that actively responded to one or more fire or rescue emergencies since July 1, 2003, and agrees to actively participate in the Pennsylvania Fire Information Reporting System will be eligible for a base award of the first \$7,000 of the applicant's grant request.

(ii) Additional grant funds not exceeding \$8,000 will be awarded to eligible applicants by applying an award factor to that portion of the applicant's grant request which exceeds \$7,000.

(A) The award factor is determined by dividing the applicant's bonus points by 15, the highest possible number of points.

(B) Award factor points are as follows:

(I) Five points will be awarded to an eligible fire or rescue service who uses the grant funding to perform a regional/joint project as found in the definitions.

(II) One point will be awarded for each person currently certified in accordance with the definitions in § 114.2, to a maximum of 10 points.

(iii) If necessary, the resultant additional award will be pro rated by a factor determined by dividing the total program funds remaining after the base awards have been determined by the total amount of funds requested in excess of the base awards so that all grant awards do not exceed the total grant funds available.

(iv) If funding is not fully distributed after this award factor calculation, the Agency reserves the right to adjust the award factor formula so that all grant funds available are distributed, subject to the act.

(v) Volunteer fire company grants to individual volunteer fire companies will not exceed \$15,000.

(2) *Volunteer Ambulance Service Grant.* A volunteer ambulance service as defined in § 114.2 will be eligible for a grant, not to exceed \$10,000, and pro rated by a factor determined by dividing the total funds available by the total amount of funds requested so that all grant awards do not exceed the total grant funds available.

§ 114.6. Grant award and reporting procedures.

(a) Grant award notifications will be made as follows:

(1) Applicants that apply for the grant using the online application process will be notified by e-mail.

(2) Applicants that apply for the grant using the paper form will be notified by letter.

(b) At the time grant recipients are notified of their award, and in the same manner, they will be presented with a grant agreement. This grant agreement will contain the details of the grant, including name of recipient, amount of award, project description and terms of the agreement. In the case of volunteer fire company grant recipients it will also include an agreement that they participate in PennFIRS. The grant agreement shall be signed by an officer of the organization authorized to

commit the recipient organization to the terms of the agreement and returned to the OSFC for execution by the Commonwealth before grant funds can be released.

(c) The applicant shall maintain full and accurate records with respect to the project. The Agency will have free access to these records, including invoices of material and services, and other relative data and records, as well as the right to inspect all project work. The applicant shall furnish upon request of the Agency all data, reports, contracts, documents and other information relevant to the project.

(d) The applicant shall, upon completion of the project, but no later than December 1, 2006, file a final report with the Agency in a manner and form prescribed by the OSFC. Any grant funds not expended by the applicant for the project shall be returned to the Agency prior to or with the filing of the final report. Failure to file a final report will be grounds for the Agency to seek the return of all grant funds awarded.

(e) Funds from this and successive Grant Programs, even though approved by the agency, will not be released to any recipient organization until that organization has fulfilled its obligation to submit a final report to the Agency documenting the expenditure of all grant funds previously received.

§ 114.7. Program limitations.

(a) This section identifies Grant Program limitations that may result from the misuse of the grant funds.

(b) An applicant may not make or authorize changes exceeding 10% of the total project cost to an approved project without first obtaining consent of the Agency in writing.

(c) The applicant agrees that noncompliance with the conditions of this grant shall be grounds for the recapture of funds provided to the applicant. If the applicant fails to refund the monies, the Commonwealth, in addition to any rights or remedies it may have at law or in equity, reserves the right to offset the amount due against any existing or future sums of money owed the applicant by any Commonwealth agency or department, including the Agency.

(d) The Agency, or its authorized representative, will have access to the records of the applicant for the purpose of auditing financial transactions, determination of compliance with grant terms and an evaluation of project performance.

(e) The applicant agrees to retain all cost supporting records and documentation for 3 years from the date that it receives its final grant payment from the Agency.

§ 114.8. Contact information.

All applicant inquires should be directed to:

Office of the State Fire Commissioner
2605 Interstate Drive
Harrisburg, PA 17110-9364
Toll free—(800) 670-3473
E-mail—ra-vfcvasgp@state.pa.us

[Pa.B. Doc. No. 06-703. Filed for public inspection April 28, 2006, 9:00 a.m.]

NOTICES

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

The Delaware River Basin Commission (Commission) will hold an informal conference followed by a public hearing on Wednesday, May 10, 2006. The hearing will be part of the Commission's regular business meeting. Both the conference session and business meeting are open to the public and will be held at the Commission's office building, located at 25 State Police Drive, West Trenton, NJ.

The conference among the Commissioners and staff will begin at 10:15 a.m. Topics of discussion will include presentations by guest speakers on the Philadelphia Tidal Delaware Initiative; proposed adoption of a records retention schedule developed with the assistance of the New Jersey Division of Archives and Records Management; a progress report on PCB TMDL development, including a report on meetings of the Commission's Toxics Advisory Committee and PCB Expert Panel in March of 2006; a report on a joint meeting of the DRBC Water Quality and Water Management Advisory committees to discuss updating the memoranda of agreement between DRBC and its member states governing project review in accordance with Section 3.8 of the *Delaware River Basin Compact*; and a presentation on a stormwater retrofit plan for the site of the Commission's office building.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed as follows:

1. *Maidencreek Township Authority D-91-58 CP-3*. An application for approval of a groundwater withdrawal project to supply up to 5.7 million gallons per 30 days (mg/30 days) of water to the applicant's public water supply distribution system from new Well No. 5 in the Allentown Formation, and to retain the existing withdrawal from all wells of 22.7 mg/30 days. Well No. 5 is proposed as a redundant source to provide flexibility and reliability in operation of the applicant's public water supply distribution system. The project is located in the Maiden Creek Watershed in Maidencreek Township, Berks County.

2. *Old York Country Club D-95-3-2*. An application for the renewal of a ground and surface water withdrawal project to continue withdrawal of up to 8 mg/30 days to supply the applicant's golf course irrigation system and potable water supply from existing Wells Nos. 1 and 2 in the Magothy Formation and two man-made storage reservoirs fed by a wet well and stormwater. The project is located in the Blacks Creek Watershed in Chesterfield Township, Burlington County, NJ.

3. *Bridgeport Disposal, LLC D-72-49-2*. An application for approval of a groundwater and surface water withdrawal project to supply up to 0.05 mg/30 days of water from a surface water intake on Raccoon Creek, up to 17.86 mg/30 days from 21 remediation wells in the Raritan-Magothy Formation and up to 17.91 mg/30 days from both combined sources. The requested allocation represents a decrease from the existing allocation of 1.44 mg/30 days for the surface water withdrawal and an increase from the existing allocation of 4.5 mg/30 days for

the groundwater withdrawal. The project is located in the Raccoon Creek Watershed in Logan Township, Gloucester County, NJ.

4. *Borough of Boyertown D-73-199 CP-2*. An application to modify the outfall location for the docket holder's existing wastewater treatment plant (WWTP). The outfall was moved from unnamed tributary 01337 (UNT) to Swamp Creek. The docket holder relocated the outfall in order to avert toxics monitoring on the impaired UNT. The construction of the relocated outfall was completed in November 2000. The WWTP discharges approximately 750,000 gallons per day (gpd) to Swamp Creek, a tributary of Perkiomen Creek, which is a tributary to the Schuylkill River. The facility is located in Douglass Township, Montgomery County.

5. *Fleetwood Borough Authority D-87-54 CP-2*. An application to expand a 0.5 million of gallons per day (mgd) WWTP to treat an average flow of 0.7 mgd, while continuing to provide secondary treatment. The WWTP is located off Walnuttown Road in Richmond Township, Berks County. The plant currently serves the predominantly residential area of Fleetwood Borough only. However, part of the proposed additional capacity is needed to serve a portion of Richmond Township. The WWTP will continue to discharge to Willow Creek, a tributary of Maiden Creek in the Schuylkill River Watershed.

6. *Giorgio Foods, Inc. D-88-43-2*. An application to modify the docket holder's existing food processing industrial wastewater treatment plant (IWTP) by the addition of a forced draft cooling tower along with temperature controller/recorders, cooling tower pumps and recirculation pumps. The modifications are being undertaken to meet new effluent temperature requirements. The IWTP discharges approximately 500,000 gpd to Willow Creek, a tributary of Maiden Creek, which is a tributary to the Schuylkill River. The facility is located in Maidencreek Township, Berks County.

7. *Gloucester County Utilities Authority D-90-74 CP-2*. An application for approval of a WWTP rerate project from 24.1 mgd to 27 mgd. The WWTP effluent will be discharged to the Delaware River in Water Quality Zone 4. The project is located in West Deptford Township, Gloucester County, NJ. The WWTP will continue to serve Clayton Borough, Deptford Township, Glassboro Borough, Mantua Township, Monroe Township, National Park Borough, Paulsboro Borough, Pitman Borough, Washington Township, Wenonah Borough, West Deptford Township, Westville Borough, Woodbury City and Woodbury Heights Borough, all in Gloucester County.

8. *Brodhead Creek Regional Authority D-91-1 CP-2*. An application for the renewal of a ground and surface water withdrawal project to add new Well No. 3 in the Butter-milk Falls Formation to the distribution system with an allocation not to exceed 28.94 mg/30 days and to limit the total withdrawal from new Well No. 3 and existing Wells PW-1 and PW-2 in the Marrellus Formation to 114.94 mg/30 days and to limit the existing surface water intakes in the Brodhead Creek and the Stokes Mill Spring to 126 mg/30 days to supply the applicant's public supply distribution system. The project is located in the Brodhead Creek Watershed in Stroud Township, Monroe County.

9. *Bernville Corp. D-92-27-2*. An application for the renewal of a groundwater withdrawal project and for an increase in allocation from 4.5 mg/30 days to 8.3 mg/30

days to supply the applicant's golf course from an existing intake in the Tulpehocken Creek. The project is located in the Tulpehocken Creek Watershed in Jefferson Township, North Heidelberg Township, Berks County.

10. *The Premcor Refining Group, Inc. D-93-4-4.* An application for the renewal of a groundwater withdrawal project to increase withdrawal from 180 mg/30 days to 192.96 mg/30 days to supply the applicant's refinery and electric generating station from existing Wells Nos. P-1A, P-3A, P-4A, P-5B, P-6A, P-9A, P-10A, R-15 and P-16A in the Upper, Middle and Lower Potomac formations and to increase the allocation for the Delaware River intake from the existing allocation of 13,560 mg/30 days to 13,570.6 mg/30 days, and to incorporate two existing pre-Compact surface water withdrawals in the Red Lion Creek and Dragon Run with allocations of 38.9 mg/30 days and 48.62 mg/30 days, respectively. The project is located in the C & D Canal East, Dragon Run Creek and Red Lion Creek watersheds in Delaware City, New Castle County, DE.

11. *New Castle County Department of Special Services D-93-6 CP-2.* An application to upgrade and expand a 1.7 mgd WWTP to treat 2.5 mgd by means of chemical addition and Sequential Batch Reactor processes. The project is located off Old Corbit Road just east of the Town of Odessa along the tidal Appoquinimink River in DRBC Water Quality Zone 5 and will continue to serve the Middletown-Odessa-Townsend area of southern New Castle County, DE. The WWTP will continue to discharge a portion of its effluent to a tributary of the Appoquinimink River and up to 1.08 mgd will continue to be discharged to adjacent spray application fields. The Appoquinimink River is a tributary of the Delaware River and is the subject of a United States Environmental Protection Agency and Delaware DNREC Total Maximum Daily Load study. The proposed upgrade of the WWTP is needed to produce a higher quality effluent to meet more stringent NPDES permit limits.

12. *Logan Township Municipal Utilities Authority D-95-7 CP-2.* An application to expand a 2 mgd sewage treatment plant (STP) to process 2.75 mgd, while continuing to provide secondary level treatment. The project is located in Logan Township, Gloucester County, NJ approximately 200 feet west of High Hills Road and just south of the railroad right-of-way through Maple Swamp. Due to high quality treatment processes, the applicant proposes to meet stringent NPDES permit limits regarding effluent loadings and concentrations. The project effluent will continue to discharge to the Delaware River in Water Quality Zone 4 by means of an existing outfall, which is shared with Ferro Corporation, formerly owned by Monsanto Chemical Company.

13. *Richland Township Water Authority D-96-44 CP-2.* An application for approval of a groundwater withdrawal project to supply up to 2.25 mg/30 days of water to the applicant's public water supply distribution system from Wells Nos. 2—4, recently purchased from Melody Lakes Properties, and to increase the total combined withdrawal from these wells and the existing Richland Township Water Authority wells to 31.55 mg/30 days. While this represents an increase in allocation to the Richland Township Water Authority, it does not represent an increase in withdrawals from the watershed since both the Melody Lakes project allocation and the existing Richland Township Water Authority allocation are located in the Tohickon Creek Watershed. The project is located in the Brunswick Formation in Richland Township, Bucks County, and is located in the Southeastern Pennsylvania Ground Water Protected Area.

14. *Sanofi Pasteur, Inc. D-99-71-2.* An application to expand the applicant's existing IWTP from 0.35 mgd to 0.95 mgd and to increase the discharge to Swiftwater Creek from 0.35 mgd to 0.55 mgd. Beginning in 2007, wastewater will be treated by means of Sanofi Pasteur's (Sanofi's) existing IWTP, rerouted to process 0.45 mgd, and disposed through a combination of landscape irrigation (up to 0.045 mgd), discharge to Swiftwater Creek (0.45 mgd) and wastewater reuse. Beginning in 2008, wastewater will be treated via Sanofi's upgraded IWTP and disposed through a combination of land application (up to 0.245 mgd), discharge to Swiftwater Creek (up to 0.55 mgd) and wastewater reuse. Beginning in 2010, wastewater will be treated by means of Sanofi's upgraded IWTP and disposed through a combination of land application (up to 0.245 mgd), discharge to Swiftwater Creek (up to 0.55 mgd), use of the proposed Pocono Township Wastewater Treatment Plant (up to 0.35 mgd) and wastewater reuse. The application is for a discharge of 0.55 mgd to Swiftwater Creek, a tributary to the Brodhead Creek. The facility is located in Pocono Township, Monroe County.

15. *Artesian Water Company, Inc. D-2003-22 CP-2.* An application for approval of a groundwater withdrawal project to supply up to 4.32 mg/30 days of water to the applicant's public water supply distribution system from replacement Well No. 1R in the Upper Mt. Laurel Formation in the Bayview Wellfield and to retain the existing withdrawal of 150 mg/30 days from the applicant's nine wellfields supplying the Southern New Castle County distribution system. The project is located in the C & D Canal East Watershed in New Castle County, DE.

16. *Alcoa Extrusions, Inc. D-2005-1-2.* An application to increase the average and maximum discharge concentration of total dissolved solids from 1,000 milligrams per liter (mg/l) to 2,000 mg/l and 4,000 milligrams per liter, respectively. The discharge will be made via an existing outfall to the West Branch Schuylkill River. In support of the requested modification, the docket holder has submitted an analysis concluding that the increased solids concentrations will cause no adverse effect on the downstream aquatic community, nor will they threaten potable water supply intakes located over 65 river miles downstream of the confluence of the West Branch Schuylkill River with the main stem Schuylkill River. No expansion of the treatment facility is proposed. The proposed modifications are attributable to installation of a new reverse osmosis treatment system that will reduce water consumption at the facility but will generate a concentrated waste stream during operation. The treatment facility is located in Cressona Borough, Schuylkill County.

17. *Pierson-Gaskill Golf Properties, Inc. D-2000-49.* An application for approval of a groundwater withdrawal project to supply up to 4.24 mg/30 days of water to the applicant's Town & Country Golf Links golf course irrigation system from new Wells Nos. 1 and 2 in the Mt. Laurel/Wenonah Aquifer and up to 8 mg/30 days from one intake in an irrigation pond and to limit the withdrawal from all sources to 8 mg/30 days. The project is located in Pilesgrove Township, Salem County, NJ.

18. *New Egypt Speedway D-2006-1-1.* An application for approval of a ground and surface water withdrawal and importation project to supply less than 3.1 mg/30 days of water to the applicant's automobile racing track from the Pond Well, Office Well and Pond Intake. The Pond Well and Pond Intake are located in the Atlantic Basin. The Office Well is located in the Mt. Laurel-Wenonah Formation in the Crosswicks Creek Watershed in Plumsted Township, Ocean County, NJ.

19. *Schering Corporation D-2006-2-1*. An application for approval of a groundwater withdrawal project to supply up to 4.0 mg/30 days of water to the applicant's pharmaceutical research facility from existing Wells Nos. 1—7 and new Wells Nos. 9—12. The project is located in the Kittatinny Aquifer in the Paulins Kill River Watershed in Lafayette Township, Sussex County, NJ.

20. *Surfside Products, LLC D-2006-3-1*. An application for approval of an existing 50,000 gpd discharge of treated industrial wastewater generated by clam processing. The IWTP discharges approximately 50,000 gpd to the Maurice River, tributary to Delaware Bay. The facility is located in Commercial Township, Cumberland County, NJ.

21. *Sussex County Municipal Utilities Authority D-2006-6 CP-1*. An application for the approval of an existing 50,000 gpd discharge from the Hampton Commons wastewater treatment facility. The wastewater treatment facility discharges to Marsh's Farm Creek, a tributary to the Paulins Kill River. The facility is located in Hampton Township, Sussex County, NJ.

In addition to the public hearing on the dockets listed, the Commission's 1:30 p.m. business meeting will include a public hearing on a proposed resolution establishing a Pollutant Minimization Plan Peer Review Advisory Committee; a resolution establishing a DRBC Finance Advisory Committee to be composed of representatives of each of the signatory parties for the purpose of developing recommendations for maintaining the financial stability of the Commission; a resolution authorizing the Executive Director to contract for fish tissue analysis; a resolution for the minutes authorizing the Executive Director to enter into a professional services contract for evaluation of the mechanical and electrical systems of the Commis-

sion's office building to identify and evaluate opportunities for improving efficiency and reducing cost; a resolution for the minutes amending the *Administrative Manual: Bylaws, Management and Personnel* to provide for greater flexibility in establishing vacation credits awarded to new hires for senior management positions; and a resolution providing for election of the Commission Chair, Vice Chair and Second Vice Chair for the year 2006-2007, commencing July 1, 2006.

The meeting will also include: adoption of the minutes of the March 1, 2006, business meeting; announcements; a report on basin hydrologic conditions; a report by the Executive Director; a report by the Commission's general counsel; and an opportunity for public dialogue. Draft dockets and the resolutions scheduled for public hearing on May 10, 2006, will be posted on the Commission's website, www.drbc.net, where they can be accessed through the Notice of Commission Meeting and Public Hearing. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Contact William Muszynski at (609) 883-9500, Ext. 221, with any docket-related questions.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the Commission Secretary directly at (609) 883-9500, Ext. 203 or through the Telecommunications Relay Services at 711, to discuss how the Commission can accommodate their needs.

PAMELA M. BUSH,
Secretary

[Pa.B. Doc. No. 06-704. Filed for public inspection April 28, 2006, 9:00 a.m.]

DEPARTMENT OF BANKING

Action on Applications

The Department of Banking (Department), 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 April 18, 2006.

BANKING INSTITUTIONS

Interim Charter Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
4-13-06	Berkshire Interim Bank Wyomissing Berks County	Wyomissing	Approved

Interim bank being incorporated solely to facilitate the reorganization of Berkshire Bank, Wyomissing, into a holding company form of business.

Bank Holding Company Reorganizations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
4-18-06	Enterprise Bank, Allison Park and Enterprise Interim Bank, Allison Park Surviving Institution— Enterprise Bank, Allison Park	Allison Park	Effective

The merger is being effected solely to facilitate the acquisition of Enterprise Bank, Allison Park, by Enterprises Financial Services Group Inc., Allison Park, a newly-formed bank holding company.

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NOTICES

Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
4-10-06	Nesquehoning Savings Bank Nesquehoning Carbon County	100 East Phillips Street Coaldale Schuylkill County	Opened
4-12-06	New Century Bank Phoenixville Chester County	Lincoln Court Shopping Center Route 30 Malvern East Whiteland Township Chester County	Approved
4-13-06	Bucks County Bank Doylestown Bucks County	200 South Main Street Doylestown Bucks County	Approved
4-13-06	PeoplesBank, a Codorus Valley Company York York County	Shrewsbury Lutheran Retirement Village 800 Bollinger Drive Shrewsbury Shrewsbury Township York County (Limited Service Facility)	Filed

Branch Relocations/Consolidations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
4-13-06	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>Into:</i> 3835 Peach Street Erie Erie County <i>From:</i> 1520 West 26th Street Erie Erie County	Approved
4-13-06	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>Into:</i> 815 East 38th Street Erie Erie County <i>From:</i> 1702 East 38th Street Erie Erie County	Approved
4-18-06	Irwin Bank & Trust Company Irwin Westmoreland County	<i>Into:</i> 9350 Lincoln Highway Irwin Westmoreland County <i>From:</i> 8775 Norwin Avenue North Huntingdon Westmoreland County	Approved

SAVINGS INSTITUTIONS**Branch Applications**

<i>Date</i>	<i>Name of Association</i>	<i>Location</i>	<i>Action</i>
3-13-06	Slovenian Savings and Loan Association of Franklin-Conemaugh Conemaugh Cambria County	585 Goucher Street Johnstown Upper Yoder Township Cambria County	Opened

CREDIT UNIONS

No activity.

The Department's website at www.banking.state.pa.us includes public notices for more recently filed applications.A. WILLIAM SCHENCK, III,
Secretary

[Pa.B. Doc. No. 06-705. Filed for public inspection April 28, 2006, 9:00 a.m.]

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

Allegheny River Conservation Plan

The Department of Conservation and Natural Resources (Department), Bureau of Recreation and Conservation has approved the Allegheny River Conservation Plan (Plan) and is placing a segment of the Allegheny River covered in the Plan in Allegheny, Armstrong, Butler, Clarion, Venango and Westmoreland Counties, on the Pennsylvania Rivers Conservation Registry (Registry).

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

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

1. A segment of the Allegheny River, from the Emlenton northern municipal border in Venango County, to Lock and Dam 3 at Harmar Township in Allegheny County—75 linear river miles.

2. All municipalities adjacent to this river segment.

This action becomes effective April 29, 2006. Projects identified in the Plan become eligible for implementation, development or acquisition grant funding through the Program.

A copy of the Final Plan is available for review at the Pennsylvania Environmental Council, Western Pennsylvania Office, 22 Terminal Way, Pittsburgh, PA 15219, (412) 481-9400, www.pecwest.org; and the Department of Conservation and Natural Resources, Rachel Carson State Office Building, 400 Market Street, 6th Floor, Harrisburg, PA 17101, (717) 787-7672.

Maps and supporting data are available by contacting the Council.

MICHAEL F. DIBERARDINIS,
Secretary

[Pa.B. Doc. No. 06-706. Filed for public inspection April 28, 2006, 9:00 a.m.]

Crum Creek Watershed Conservation Plan

The Department of Conservation and Natural Resources (Department), Bureau of Recreation and Conservation has approved the Crum Creek Watershed Conservation Plan (Plan) and is placing the Crum Creek Watershed and all tributaries covered in the Plan in Chester and Delaware Counties, on the Pennsylvania Rivers Conservation Registry (Registry).

The Chester Ridley Crum Watersheds Association (Association) submitted the Plan and other required information to gain Registry status.

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

1. The watershed area of Crum Creek (Chester and Delaware Counties) from the headwaters to its confluence with the Delaware River—38.3 square miles.

2. All tributary streams within the Crum Creek Watershed.

This action becomes effective April 29, 2006. Projects identified in the Plan become eligible for implementation, development or acquisition grant funding through the Program.

A copy of the Final Plan is available for review at the Chester Ridley Crum Watersheds Association, Ridley Creek State Park, 1023 Sycamore Mills Road, Media, PA 19063, (610) 892-8731, www.crcwatersheds.org; and the Department of Conservation and Natural Resources, Rachel Carson State Office Building, 400 Market Street, 6th Floor, Harrisburg, PA 17101, (717) 787-7672.

Maps and supporting data are available by contacting the Association.

MICHAEL F. DIBERARDINIS,
Secretary

[Pa.B. Doc. No. 06-707. Filed for public inspection April 28, 2006, 9:00 a.m.]

Paunacussing Creek Watershed Conservation Plan

The Department of Conservation and Natural Resources (Department), Bureau of Recreation and Conservation has approved the Paunacussing Creek Watershed Conservation Plan (Plan) and is placing the Paunacussing Creek Watershed, Hickory Run Watershed and all tributaries covered in the Plan in Chester and Delaware Counties, on the Pennsylvania Rivers Conservation Registry (Registry).

The Paunacussing Watershed Association (Association) submitted the Plan and other required information to gain Registry status.

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

1. The watershed area of Paunacussing Creek (Bucks County) from the headwaters to its confluence with the Delaware River—8.9 square miles.

2. All tributary streams within the Paunacussing Creek Watershed.

3. The watershed area of Hickory Run Creek (Bucks County) from the headwaters to its confluence with the Delaware River—1.5 square miles.

This action becomes effective April 29, 2006. Projects identified in the Plan become eligible for implementation, development or acquisition grant funding through the Program.

A copy of the Final Plan is available for review at the Paunacussing Watershed Association, Box 81, Carversville, PA 18913, (215) 297-5800; and the Department of Conservation and Natural Resources, Rachel Carson State Office Building, 400 Market Street, 6th Floor, Harrisburg, PA 17101, (717) 787-7672.

Maps and supporting data are available by contacting the Association.

MICHAEL F. DIBERARDINIS,
Secretary

[Pa.B. Doc. No. 06-708. Filed for public inspection April 28, 2006, 9:00 a.m.]

Maps and supporting data are available by contacting the Pike County Office of Community Planning.

MICHAEL F. DIBERARDINIS,
Secretary

[Pa.B. Doc. No. 06-709. Filed for public inspection April 28, 2006, 9:00 a.m.]

The Sawkill and Vandermark Creek Watersheds: A Rivers Conservation Plan

The Department of Conservation and Natural Resources (Department), Bureau of Recreation and Conservation has approved The Sawkill and Vandermark Creek Watersheds Rivers Conservation Plan (Plan) and is placing the Sawkill Creek and Vandermark Creek Watersheds and all tributaries covered in the Plan in Pike County, on the Pennsylvania Rivers Conservation Registry (Registry).

The Pike County Office of Community Planning, on behalf of Pike County and the municipal planning partners of Shohola Township, Westfall Township, Milford Township, Dingman Township and Milford Borough submitted the Plan and other required information to gain Registry status.

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

1. The watershed area of Sawkill Creek (Pike County) from the headwaters to its confluence with the Delaware River—24.7 square miles.
2. All tributary streams within the Sawkill Creek Watershed.
3. The watershed area of Vandermark Creek (Pike County) from the headwaters to its confluence with the Delaware River—5.22 square miles.
4. All tributary streams within the Vandermark Creek Watershed.

This action becomes effective April 29, 2006. Projects identified in the Plan become eligible for implementation, development or acquisition grant funding through the Program.

A copy of the Final Plan is available for review at the Pike County Office of Community Planning, HC8 Box 6772, Route 402, Blooming Grove, Hawley, PA 18428, (570) 226-6293, www.pikepa.org; and the Department of Conservation and Natural Resources, Rachel Carson State Office Building, 400 Market Street, 6th Floor, Harrisburg, PA 17101, (717) 787-7672.

Shenango River Watershed Conservation Plan

The Department of Conservation and Natural Resources (Department), Bureau of Recreation and Conservation has approved the Shenango River Watershed Conservation Plan (Plan) and is placing the Shenango River Watershed and all tributaries covered in the Plan in Crawford, Mercer and Lawrence Counties, on the Pennsylvania Rivers Conservation Registry (Registry).

The Western Pennsylvania Conservancy (Conservancy) submitted the Plan and other required information to gain Registry status.

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

1. The watershed area of the Shenango River (Crawford, Mercer and Lawrence Counties) from the headwaters in Crawford County to the mouth where it forms the Beaver River in New Castle, PA—787.65 square miles.
2. All tributary streams within the Shenango River Watershed.

This action becomes effective April 29, 2006. Projects identified in the Plan become eligible for implementation, development or acquisition grant funding through the Program.

A copy of the Final Plan is available for review at the Western Pennsylvania Conservancy, Freshwater Conservation Program, 246 South Walnut Street, Blairsville, PA 15717, (724) 459-0953, www.paconserve.org; and the Department of Conservation and Natural Resources, Rachel Carson State Office Building, 400 Market Street, 6th Floor, Harrisburg, PA 17101, (717) 787-7672.

Maps and supporting data are available by contacting the Conservancy's Freshwater Conservation Program.

MICHAEL F. DIBERARDINIS,
Secretary

[Pa.B. Doc. No. 06-710. Filed for public inspection April 28, 2006, 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>
PA0060623	Silver Lake Township Municipal Authority P. O. Box 1975 Brackney, PA 18812	Silver Lake Township Susquehanna County	Little Rhiney Creek CWF Watershed 4E	Y

In accordance with the Chesapeake Bay Tributary Nutrient Reduction Strategy nutrient monitoring for Ammonia-N, Kjeldahl-N, Nitrite/Nitrate-N, Total Phosphorus and Total Nitrogen were added to Outfall 001 of this permit.

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>
PA0083992 (Sewage)	Delores J. Carrigan 112 Pondview Lane Clearville, PA 15535	Bedford County Southampton Township	UNT Sweet Root Creek HQ/13-A	Y
PA0083917 (Industrial Waste)	Edge Rubber Gary Smith 811 Progress Avenue Chambersburg, PA 17201-3257	Franklin County Chambersburg Borough	Conococheague Creek 13-C	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>
PA0088251 (Sewage)	Upper Bern Township 25 North 5th Street P. O. Box 185 Shartlesville, PA 19554	Berks County Upper Bern Township	Wolf Creek 3-C	Y
PA0039551 (Sewage)	Lebanon Valley Mobile Home Community 1 Lebanon Valley Court Lebanon, PA 17042	Lebanon County Bethel Township	UNT Little Swatara Creek 7-D	Y
PA0046221 (Sewage)	Newville Borough Water & Sewer Authority 99 Cove Alley Newville, PA 17241	Cumberland County Newville Borough	Big Spring Creek 7-B	Y
PA0084581 (Industrial Waste)	New Holland Borough Authority 436 East Main Street New Holland, PA 17557	Lancaster County East Earl Township	UNT Mill Creek 7-J	Y
PA0070050 (Industrial Waste)	Reading Alloys, Inc. P. O. Box 53 Robesonia, PA 19551-0053	Berks County Heidelberg and South Heidelberg Townships	Spring Creek 3-C	Y

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

<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>
PA0007455 IW	Lycoming Engines 652 Oliver Street Williamsport, PA 17701-6441	Lycoming County Williamsport City	Lycoming Creek 10A	Y
PA0114898 SP	Madison Township Municipal Authority P. O. Box 620 Millville, PA 17846-0620	Columbia County Madison Township	Mud Creek 10D	Y
PA0060305 IW	Department of Conservation and Natural Resources Bureau of State Parks Mt. Pisgah State Park R. R. 3 Box 362 Troy, PA 16947-9948	Bradford County West Burlington Township	UNT to Mill Creek 4C	Y

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

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

PA0010944, Industrial Waste, **Glenn Springs Holdings, Inc.** Mailing address: 2480 Fortune Drive, Suite 300, Lexington, KY 40509. This facility is located at the former Occidental Chemical Corporation Pottstown PVC site at 375 Armand Hammer Boulevard, Lower Pottsgrove Township, **Montgomery County**.

Description of Proposed Activity: This application is for modification/amendment of an NPDES Permit to include discharge of treated groundwater to an intermittent swale prior to discharging to the Schuylkill River. The previous NPDES permit for this site included stormwater, oil/water separator and fire water reservoir discharges. These discharges will remain the same.

Schuylkill River is in State Water Plan Watershed 3D—Manatawny and is classified for WWF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for Pennsylvania American Water Company is located on Schuylkill River and is approximately 6 miles below the point of discharge.

The proposed effluent limits for Outfall 005 are based on a pumping rate of 0.5 mgd:

<i>Parameters</i>	<i>Concentration (ug/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
Tetrachloroethene (PCE)	Nondetect		Nondetect
Trans-1,2-Dichloroethene	Nondetect		Nondetect
Vinyl Chloride	Nondetect		Nondetect
Cis-1,2-Dichloroethene	Nondetect		Nondetect
Chloroform	Nondetect		Nondetect
Trichloroethene (TCE)	Nondetect		Nondetect

<i>Parameters</i>	<i>Concentration (ug/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
Ethylbenzene	Nondetect		Nondetect
Styrene	Nondetect		Nondetect
Phenols, Total	Monitor and Report		Monitor and Report
pH (STD Unit)	6.0 (min)		9.0 (max)

The proposed effluent limits for Monitoring Point 103 are for fire water reservoir overflow:

<i>Parameters</i>	<i>Concentration (ug/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	0.5		
Total Residual Chlorine			1.0

The proposed stormwater monitoring requirements are for Outfalls 003, 004, 005* and 006:

<i>Parameters</i>	<i>Concentration (ug/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
Chemical Oxygen Demand			Monitor and Report
Oil and Grease			Monitor and Report
pH			Monitor and Report
Total Suspended Solids			Monitor and Report
Total Phosphorus			Monitor and Report
Iron (Dissolved)			Monitor and Report
Total Zinc			Monitor and Report
Total Kjeldahl Nitrogen			Monitor and Report
Water Priority Chemicals			Monitor and Report

*Outfall 005 contains two discharge points—stormwater and groundwater effluent.

The proposed monitoring requirements for the oil/water separator discharging to Outfall Monitoring Point 303:

<i>Parameters</i>	<i>Concentration (ug/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow			
Total Suspended Solids	30	60	75
Total Dissolved Solids	1,000	2,000	2,500
Oil and Grease	15		30
pH	6.0 (Minimum)		9.0
Temperature			110°F
Total Zinc	Monitor and Report	Monitor and Report	

In addition to the effluent limits, the permit contains the following major special conditions:

1. Discharge must not cause nuisance or health hazard.
2. Stormwater outfall monitoring twice per year.
3. Applicable test methods.
4. No discharge of stripper tower cleaning wastewaters to waters of this Commonwealth.

PA0025976, Sewage, SIC 4952, **Upper Moreland Hatboro Joint Sewer Authority**, 2875 Terwood Road, P. O. Box 535, Willow Grove, PA 19090-0535. This proposed facility is located in Upper Moreland Township, **Montgomery County**.

Description of Proposed Activity: renewal of the NPDES permit to discharge treated sewage at an average annual rate of 7.173 mgd and a maximum monthly flow of 9.08 mgd to Pennypack Creek.

The receiving stream, Pennypack Creek is in the State Water Plan watershed 3J and is classified for TS and MF. There is no nearest downstream public water supply intake.

The proposed effluent limits for Outfall 001 are based on a design flow of 7.173 mgd.

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
	CBOD ₅			
(5-1 to 10-31)	15	23		30
(11-1 to 4-30)	25	40		50
Suspended Solids	30	45		60
NH ₃ -N				
(5-1 to 10-31)	2.0			4.0
(11-1 to 4-30)	6.0			12.0

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Fecal Coliform	200 Col. Per 100 ml			
Dissolved Oxygen	6.0 minimum			
pH (STD)	6.0 minimum			9.0
Copper, Total	Monitor		Monitor	Monitor
Zinc, Total	0.19		0.37	0.47

In addition to the effluent limits, the permit contains the following major special conditions:

1. NH₃-N instantaneous maximum during the month of May is allowed at 5.0 mg/l.
2. Implementation of Infiltration/Inflow Abatement Program.
3. Implementation of High Flow Maintenance Plan.
4. Blending during influent flow exceeding 17 mgd.
5. Emergency discharge through a separate Outfall during influent flow exceeding 23 mgd.
6. Pretreatment Program.
7. Sludge Disposal.
8. Stormwater Outfalls.
9. Operations and Maintenance Plan.
10. Laboratory Certification.
11. The changes are made to the notice published at 21 Pa.B. 1153 (March 23, 2001).

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

PA0023469, Sewage, **Honesdale Borough**, 985 Main Street, Honesdale, PA 18431. This proposed facility is located in Honesdale Borough, **Wayne County**.

Description of Proposed Activity: Renewal of NPDES Permit.

The receiving stream, Lackawaxen River, is in the State Water Plan watershed 01B and is classified for HQ-CWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 based on a design flow of 1.19 mgd.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅			
(5-1 to 10-31)	20	30	40
(11-1 to 4-30)	25	40	50
Total Suspended Solids	30	45	60
NH ₃ -N			
(5-1 to 10-31)	12		24
(11-1 to 4-30)	20		
Phosphorus as "P"	a minimum of 6.0 mg/l at all times		
Dissolved Oxygen	a minimum of 6.0 mg/l at all times		
Fecal Coliform	a minimum of 6.0 mg/l at all times		
(5-1 to 9-30)	200/100 ml as a geometric mean		
(10-1 to 4-30)	2,000/100 ml as a geometric mean		
pH	6.0 to 9.0 standard units at all times		
Total Residual Chlorine	1.0		2.0

In addition to the effluent limits, the permit contains the following major special conditions: special conditions for combined sewer overflows.

The proposed effluent limits for Outfall 001 based on a design flow of 2.2 mgd.

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD ₅	15.4	23.1	30.8
Total Suspended Solids	21	31.5	42
NH ₃ -N	6.5		13
NO ₃ -NO ₂ -N	9.5		19
Phosphorus as "P"	2.7		5.4
Dissolved Oxygen	a minimum of 7.0 mg/l at all times.		
Fecal Coliform	a minimum of 7.0 mg/l at all times.		
(5-1 to 9-30)	200/100 ml as a geometric mean		
(10-1 to 4-30)	2,000/100 ml as a geometric mean		
pH	6.0 to 9.0 standard units at all times.		
Total Residual Chlorine	0.5		1.0

In addition to the effluent limits, the permit contains the following major special conditions: special conditions for combined sewer overflows.

Southwest Regional Office: Regional Manager, Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.

PA0204030, Industrial Waste, SIC, 4226 and 3999, **Calgon Carbon Corporation**, 4301 Grand Avenue, Pittsburgh, PA 15225. This application is for renewal of an NPDES permit to discharge hydrostatic water, carbon system flow test water and stormwater from Neville West Island Plant facility located in Neville Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, Back Channel of the Ohio River, classified as a WWF with existing and/or potential uses for aquatic life, water supply, and recreation. The first existing/proposed downstream potable water supply is Midland Borough W.A., located at approximately 28 miles below the discharge point.

Outfall 001: existing discharge, design flow of 0.0144 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow	Monitor and Report				
TSS			30		60
Oil and Grease			15		30
pH	Between 6.0 and 9.0 at all times				

The EPA waiver is in effect.

PA0218278, Industrial Waste, SIC, 3567, **Westinghouse Plasma Center**, P. O. Box 410, Madison, PA 15663-0410. This application is for renewal of an NPDES permit to discharge untreated cooling water from the Westinghouse Plasma Center in Sewickley Township, **Westmoreland County**.

The following effluent limitations are proposed for discharge to the receiving waters, UNT to Calleys Run and Calleys Run, classified as WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is Midland Borough, located at Midland, Beaver County, 25.3 miles below the discharge point.

Outfall 001: existing discharge, design flow of 0.0012 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow	Monitor and Report				
Temperature					110°F
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

PA0095745, Sewage, **Deer Lakes Mobile Home Park**, 19 Moretti Drive, Tarentum, PA 15084. This application is for renewal of an NPDES permit to discharge treated sewage from Deer Lakes Mobile Home Park STP in West Deer Township, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as UNT of Little Deer Creek, which are classified as a TSF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Oakmont Borough Municipal Authority on the Allegheny River.

Outfall 001: existing discharge, design flow of 0.025 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum	
CBOD ₅	25			50	
Suspended Solids	30			60	
Ammonia Nitrogen					
(5-1 to 10-31)	1.9			3.8	
(11-1 to 4-30)	2.8			5.6	
Fecal Coliform					
(5-1 to 9-30)	200/100 ml as a geometric mean				
(10-1 to 4-30)	2,000/100 ml as a geometric mean				
Total Residual Chlorine	0.02				0.04
Dissolved Oxygen	not less than 6.0 mg/l				
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

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

PA0239771, Sewage, **Green Meadows Mobile Home Park**, 189 Thomas Circle, Enon Valley, PA 16120. This proposed facility will be located in New Beaver Borough, **Lawrence County**.

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

For the purpose of evaluating effluent requirements for TDS, NO₂-NO₃, fluoride, phenolics, sulfate and chloride, the existing/proposed downstream potable water supply, considered during the evaluation is the Beaver Falls Municipal Authority of Eastvale located on the Beaver River and is approximately 9.6 miles below point of discharge.

The receiving stream, the UNT to Jenkins Run, is in watershed 20-B and classified for WWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0064 mgd.

Parameters	Loadings			Concentrations	
	Average Monthly (lb/day)	Average Weekly (lb/day)	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Flow (mgd)	XX				
CBOD ₅			25		50
Total Suspended Solids			30		60
NH ₃ -N					
(5-1 to 10-31)			2.5		5
(11-1 to 4-30)			7.5		15
Fecal Coliform					
(5-1 to 9-30)				200/100 ml as a geometric average	
(10-1 to 4-30)				2,000/100 ml as a geometric average	
Total Residual Chlorine			0.4		0.94
Dissolved Oxygen		Min. 3 mg/l			
pH		6.0 to 9.0 standard units at all times			

XX—Monitor and report on monthly DMRs.

The EPA waiver is in effect.

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

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

WQM Permit No. 1506401, Sewerage, **Blackburn Realty Associates, Inc.**, 1595 Paoli Pike, Suite 201, P. O. Box 1906, West Chester, PA 19380-6167. This proposed facility is located in East Marlborough Township, **Chester County**.

Description of Action/Activity: Construction and operation of a existing automatic lift pump station with larger pumps to serve and existing and new domestic wastewater projects.

WQM Permit No. 1506402, Sewerage, **Northwestern Chester County Municipal Authority**, P. O. Box 308, 37 Dampman Road, Honey Brook, PA 19344. This proposed facility is located in Honey Brook Township, **Chester County**.

Description of Action/Activity: Construction and operation of a Lagoon Treatment Plant.

WQM Permit No. 1506403, Sewerage, **Pennsylvania American Water Company**, 4 Wellington Boulevard, Wyomissing, PA 19610. This proposed facility is located in Coatesville City, **Chester County**.

Description of Action/Activity: Construction and operation of a 12" PVC pipe and two new manholes to properly increase flow to new development.

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

WQM Permit No. WQG02010601, Sewerage, **Berwick Township**, 85 Municipal Road, Hanover, PA 17331. This proposed facility is located in Berwick Township, **Adams County**.

Description of Proposed Action/Activity: Seeking approval for the construction/operation of a sewage pumping station to provide public sewer service to the Cambraïn Hills subdivision.

WQM Permit No. 0706401, Sewerage, **Freedom Township Water & Sewer Authority**, P. O. Box 156, East Freedom, PA 16637. This proposed facility is located in Blair Township, **Blair County**.

Description of Proposed Action/Activity: Replacement/Operation of the Newry Pump Station.

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

WQM Permit No. 1106201, Industrial Waste, **Great Lakes Energy Partners, LLC**, P. O. Box 235, Route 85 and Northern Avenue, Yatesboro, PA 16263. This proposed facility is located in Allegheny Township, **Cambria County**.

Description of Proposed Action/Activity: Application for the construction and operation of a water treatment facility for ground water produced from coal seams, consisting of retention ponds and stream outfall.

WQM Permit No. 6506202, Industrial Waste, **Great Lakes Energy Partners, LLC**, P. O. Box 235, Route 85 and Northern Avenue, Yatesboro, PA 16263. This proposed facility is located in St. Clair Township, **Westmoreland County**.

Description of Proposed Action/Activity: Application for the construction and operation of a water treatment facility for ground water produced from coal seams, consisting of retention ponds and stream outfall.

WQM Permit No. 1106402, Sewage, **Windber County Club**, 1392 Forest Hills Drive, Salix, PA 15952. This proposed facility is located in Adams Township, **Cambria County**.

Description of Proposed Action/Activity: Application for the construction and operation of a sewage treatment plant.

WQM Permit No. 2606402, Sewage, **North Union Township Municipal Services Authority**, 6 South Evans Station Road, Lemont Furnace, PA 15456. This proposed facility is located in North Union Township, **Fayette County**.

Description of Proposed Action/Activity: Application for the construction and operation of a new pump station to serve the Fayette County Industrial Park.

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

WQM Permit No. 2506404, Sewerage, **Mark Herrmann**, 9915 Jones Avenue, Erie, PA 16510. This proposed facility is located in Greene Township, **Erie County**.

Description of Proposed Action/Activity: A Single Residence Sewage Treatment Plant.

WQM Permit No. 2506406, Sewerage, **Charles Callahan**, 6767 Station Road, Erie, PA 16510. This proposed facility is located in Harborcreek Township, **Erie County**.

Description of Proposed Action/Activity: A Single Residence Sewage Treatment Plant.

WQM Permit No. 2506405, Sewerage, **Rory Hamilton**, 2147 Hare Road, Waterford, PA 16441. This proposed facility is located in Waterford Township, **Erie County**.

Description of Proposed Action/Activity: A Single Residence Sewage Treatment Plant.

IV. NPDES Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

V. Applications for NPDES Waiver Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

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

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011506028	Anna Francis Thistlewood Subdivision 557 Street Road Cochranville, PA 19330	Chester	Londonderry Township	Big Elk Creek (HQ-TSF-MF)
PAI011506029	Brian Campbell Fair Hill Estates Subdivision 401 Bayard Road Kennett Square, PA 19348	Chester	Elk Township	Little Elk Creek (HQ-TSF-MF)

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

Monroe County Conservation District: 8050 Running Valley Rd., Stroudsburg, PA 18360, (570) 629-3060

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024506010	Bruce and Karen Ecke R. R. 4 Box 4054 Saylorburg, PA 18353	Monroe	Hamilton Township	Tributary to Lake Creek HQ-CWF
PAI024503009-1	Arcadia Properties, LLC 100 Gateway Drive Suite 310 Bethlehem, PA 18017	Monroe	Coolbaugh Township	Hawkey Run HQ-CWF

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024506011	Venezia Enterprises, Inc. 86 Airport Road P. O. Box 909 Royersford, PA 19468 and Locust Ridge Quarry HC 88, Box 282 Pocono Lake, PA 18347	Monroe	Tobyhanna Township	Indian Run HQ-CWF

Schuylkill County Conservation District: 1206 Ag. Center Drive, R. R. 5, Box 5810, Pottsville, PA 17901, (570) 622-3742.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI025406002	Penske Truck Leasing 801 Katie Court Harrisburg, PA 17109	Schuylkill	Cass Township	Dyer Run CWF

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>
PAI024806009	DP Industrial, LLC Attn: Stephen Bailey 200 N. Third St. Suite 1402 Harrisburg, PA 17101	Northampton	Lower Nazareth Township	Monocacy Creek HQ-CWF
PAI024806010	3 Twins Realty Partner, Inc. 287 Park Ave. Bangor, PA 18013	Northampton	Plainfield Township	Bushkill Creek HQ-CWF
PAI024806011	James Carty 619 East Lawn Road Nazareth, PA 18064	Northampton	Bushkill Township	Bushkill Creek HQ-CWF
PAI024806012	Lafayette College Plant Operations Easton, PA 18042-1768	Northampton	City of Easton	Bushkill Creek HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI030606002	Forino Co., LP 555 Mountain Home Road Sinking Spring, PA 19608	Berks	Spring Township	Wyomissing Creek HQ-CWF
PAI033606003	Silvano Giannini 332 Snyder Hollow Road New Providence, PA 17560	Lancaster	Providence Township	Trout Run HQ

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

Lawrence Conservation District: Lawrence County Government't Center, 430 Court Street, New Castle, PA 16101, (724) 652-4512.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI063705002(1)	Turnpike Commission 700 S. Eisenhower Road Middletown, PA 17057-5529 and Joseph B. Fay Company P. O. Box 66 Russellton, PA 15084	Lawrence	Little Beaver and North Beaver Townships	North Fork Little Beaver Creek HQ

Erie Conservation District: 1927 Wager Road Erie, PA 16509, (814) 825-6403.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI062506001	John Strauss, President, SB3, LLC and Brad Davis, Lake Erie Biofuels, LLC 1540 East Lake Road Erie, PA 16511 Former International Paper Erie Mill North Parcel	Erie	Erie City	Lake Erie WWF
PAI062506001	John Strauss, President SB3, LLC and Brad Davis Lake Erie Biofuels, LLC 1540 East Lake Road Erie, PA 16511 Former International Paper Erie Mill North Parcel	Erie	Erie City	Lake Erie WWF

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

Centre County Conservation District: 414 Holmes Avenue, Suite 4, Bellefonte, PA 16823, (814) 355-6817.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041406002	Samuel E. King 131 Back Road Robersburg, PA 16872	Centre	Miles Township	Elk-Creek HQ-CWF
PAI041406006	Poe Valley State Park c/o Reeds Gap State Park Alan Lichtenwalner 1405 New Lancaster Valley Road Milroy, PA 17063	Centre	Penn Township	Poe Creek HQ-CWF
PAI041406008	S & A Custom Built Homes Keith Sunderman 2121 Old Gatesburg Road Suite 200 State College, PA 16803 DeerHaven Subdivision	Centre	Walker Township	UNT to Nittany Creek CWF UNT to Little Fishing Creek HQ-CWF

Clinton County Conservation District: 45 Cooperation Lane, Mill Hall, PA 17751 (570) 726-3798.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041806002	Penn Dutch Farms, LP	Clinton	Beech Creek Township	Twin Run CWF Monument Run HQ

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

PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

PUBLIC WATER SUPPLY (PWS) PERMIT

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

Persons wishing to comment on a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice.

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

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

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

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

WATER ALLOCATIONS

Applications received under the act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the Acquisition of Rights to Divert Waters of the Commonwealth

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

WA48-191B, Water Allocations. **Pennsylvania American Water Company (PAWC)**, 100 N. Pennsylvania Avenue, Wilkes-Barre, PA 18701, Bangor Water Supply System, Upper Mount Bethel Township, **Northampton County**. The PAWC has made application to renew an existing withdrawal of 1.75 mgd, peak day, from springs and rivulets leading to the Lower Handlelong Reservoir.

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

WA11-779B, Water Allocations. **Jackson Township Water Authority**, 2949 William Penn Avenue, Johnstown, PA 15909, **Cambria County**. The applicant is requesting the right to purchase 319,000 gpd of water, as a peak, 30-day average, from the Nanty Glo Water Authority and for a service area expansion into Jackson Township, Cambria County.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 1

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

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

Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a Site-Specific Standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a Site-Specific Standard or as a special industrial area, the municipality within which the site is located may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office before which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Harrelson Res., New Garden Township, **Chester County**. Richard D. Trimpi, Trimpi Assoc., Inc. 1635 Old Plains Road, Pennsburg, PA 18703 on behalf of John Harrelson, 28 Chambers Rock Road, Landenberg, PA 19340 has submitted a Notice of Intent to Remediate. Soil at the site was impacted with No. 2 fuel oil spill in the basement. The property will be used as a residence in the future. A summary of the Notice of Intent to Remediate was reported to have been published in the *Daily Local News* on February 26, 2006.

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

Cumberland Technology Park Site, Hampden Township, **Cumberland County**. BL Companies, Inc., 213 Market Street, 6th Floor, Harrisburg, PA 17101, on behalf of John and Kathryn Harbilas, 33 North Second Street, Harrisburg, PA 17011 and Deimler Sr. Trust, c/o Eugene R. Deimler, Wertzville Road, Enola, PA 17025, submitted a Notice of Intent to Remediate groundwater contaminated with VOCs. The intended future use of the property is nonresidential (commercial/industrial) activities. The applicant intends to remediate to the Site-Specific Standard.

General Electric Parcel B, Lebanon City, Lebanon County. Groundwater Environmental Services, Inc., 410 Eagleview Boulevard, Suite 110, Exton, PA 19341, on behalf of General Electric Environmental Services, Inc., One River Road, Building 43, 2nd Floor, Room 243, Schenectady, NY, 12345, submitted a Notice of Intent to Remediate site soils contaminated with PCBs and lead. The intended future use of the property is commercial activities. The applicant intends to remediate to the Statewide Health Standard.

Huck Fasteners Facility, Altoona City, Blair County. L. Robert Kimball & Associates, Inc., 516 Highland Avenue, Ebensburg, PA 15931, on behalf of Robert Lynn, LLC, 207 Ridge Avenue, Altoona, PA 16602, submitted a Notice of Intent to Remediate site soils contaminated with VOCs and lead and groundwater contaminated with chromium. The intended future use of the property is commercial activities. The applicant intends to remediate to the Statewide Health Standard.

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

Catawissa Lumber Paxinos Property, Ralpho Township, Northumberland County. Converse Consultants, 2738 W. College Ave., State College, PA 16801 on behalf of Catawissa Lumber & Specialty Co., Inc., Route 487, Paxinos, PA 17960 has submitted a Notice of Intent to Remediate soil contaminated with VOCs that include styrene, toluene, xylenes, trimethylbenzenes and trichloroethene. The applicant proposes to remediate the site to meet the Statewide Health Standard. A summary of the Notice of Intent to Remediate was reported to have been published in the *Shamokin News Item*.

Pennsylvania Air National Guard Station (former), College Township, Centre County. CH2M HILL, 1700 Market Street, Suite 1600, Philadelphia, PA 19103 on behalf of United States Air National Guard, 3500 Fetchet Ave., Andrews Air Force Base, MD 20762-5157 has submitted a Notice of Intent to Remediate groundwater contaminated with trichloroethene. The applicant proposes to remediate the site to meet the 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. 101477. BFI Transfer Sys of PA, LLC, 2209 S. 58th St, Philadelphia PA 19143, City of Philadelphia. This application was received for the reissuance of the waste permit for the Transcyclery Transfer Station. The application was received by the Southeast Regional Office on April 13, 2006.

Permit modification application Under the Solid Waste Management Act (35 P. S. §§ 6018.101–6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101–4000.1904) and Regulations to Operate Solid Waste Processing or Disposal Area or Site.

Northcentral Region: Regional Solid Waste Manager, 208 West Third Street, Williamsport, PA 17701.

Permit No. 301315. PP&L Electric Utilities Corporation, 18 McMichael Road, Washingtonville, PA 17884, located in Derry Township, **Montour County.** The permit modification application for a groundwater abatement plan was received by the Williamsport office on April 13, 2006.

Comments concerning the application should be directed to David Garg, P. E., Facilities Manager, Williamsport Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Persons interested in obtaining more information about the general permit application may contact the Williamsport Regional Office, (570) 327-3653. TDD users may contact the Department of Environmental Protection through the Pennsylvania Relay Service, (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to, and approval or denial of the application.

AIR QUALITY

PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

NEW SOURCES AND MODIFICATIONS

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of 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.

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

39-399-058: Service Tire Truck Center, Inc. (2255 Avenue A, Bethlehem, PA 18017) for a tire retread manufacturing process and associated air cleaning device in Bethlehem, **Lehigh County**.

54-308-023: ALCOA Extrusions LLC (53 Pottsville Street, Cressona, PA 17929) for replacement of a billet furnace in Cressona Borough, **Schuylkill County**.

40-318-057: Four Daughters LLC (1 Korn Street, Kingston, PA 18704) for construction of a paint spray operation and associated air cleaning devices in Kingston Borough, **Luzerne County**.

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

36-05086C: Donsco, Inc. (P. O. Box 2001, Wrightsville, PA 17368) for installation of two 3-ton electric furnaces to replace an existing furnace at the ferrous foundry in Mount Joy Borough, **Lancaster County**.

21-05011A: Frog Switch and Manufacturing Co. (600 East High Street, Carlisle, PA 17013) for replacement of a natural gas fired heat treat furnace in the Carlisle Borough, **Cumberland County**.

36-03162A: Ivy Creek Custom Cabinetry, Inc. (449 Running Pump Road, Suite 113, Lancaster, PA 17601) for construction of a custom cabinet facility, including two surface coating booths. These sources will be controlled by the use dry panel filters. The facility is located in East Hempfield Township, **Lancaster County**.

36-05067J: C and D Technologies, Inc. (82 East Main Street, Leola, PA 17540) to modify the existing lead-acid battery manufacturing plant. The modifications include installation of two lead melting pots and additional battery assembly stations in Upper Leacock Township, **Lancaster County**.

50-03004A: Tuscarora Hardwoods, Inc. (2240 Shermans Valley Road, Elliptsburg, PA 17024) for installation of a 27.4 mmBtu/hr wood fired boiler in Spring Township, **Perry County**.

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

59-00021A: Phoenix Resources, Inc. (782, Antrim Road, Wellsboro, PA 16901) for modification of a construction and demolition waste landfill by expansion of the landfill and by increasing the average daily waste volume

from 1,250 tons per day to 1,500 tons per day at the Phoenix Resources Landfill in Duncan Township, **Tioga County**.

14-00002H: Graymont—PA, Inc. (4411 Old Berwick Road, Bloomsburg, PA 17815) for construction of a semiwet scrubbing system to control SO_x emissions from kiln No. 7 at the Pleasant Gap facility in Spring Township, **Centre County**.

19-00026C: Haddon Craftsmen, Inc. (4411 Old Berwick Road, Bloomsburg, PA 17815) for construction of a heatset web offset lithographic printing press, to be exhausted to an existing air cleaning device (regenerative thermal oxidizer), in South Centre Township, **Columbia County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.

42-111D: Ethan Allen Mfg. Corp.—Eldred Division (3289 Route 446, Eldred, PA 16731), for converting the current surface coating system (Booths 5–7, and Ovens E and F) from a two-pass system to a new one-pass system which will include new Booths 1–4 and Ovens A–C in Eldred Township, **McKean County**. This is a State-only facility.

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

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

39-399-058: Service Tire Truck Center, Inc. (2255 Avenue A, Bethlehem, PA 18017) for construction and operation of a truck tire retreading process and associated air cleaning device (fabric collector) in the City of Bethlehem, **Lehigh County**. The facility is a non-Title V facility. The operation of the tire retreading process will result in 6.6 tons per year of particulate emissions based on the best available technology standard of 0.02 grain/dscf and 22.7 tpy of VOCs. The plan approval will include emission restrictions, monitoring, reporting and work practice requirements designed to keep the sources operating within all applicable air quality requirements.

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

67-05005E: PPL Brunner Island, LLC (2 North 9th Street, Allentown, PA 18101) for construction of a limestone and gypsum handling operation at the Brunner Island Steam Electric Station in East Manchester Township, **York County**. This modification is expected to increase the facility's annual emissions of PM and PM₁₀ by 21.57 tpy and 5.88 tpy, respectively. The plan approval will include emission limits, monitoring, work practice standards, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

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

19-00026C: Haddon Craftsmen, Inc. (4411 Old Berwick Road, Bloomsburg, PA 17815) for construction of a heatset web offset lithographic printing press equipped

with two dryers (Source ID P118) in South Centre Township, **Columbia County**. The air contaminant emissions from the printing press will be controlled by an existing regenerative thermal oxidizer, permitted under Plan Approval 19-00026A. The facility will remain as a synthetic minor facility.

The printing press will utilize inks, fountain solutions, and cleaning solvents that contain VOCs and HAPs. The VOC and HAP emissions from the proposed press will be restricted to 4.37 tons and 0.73 ton in any 12-consecutive month period (CMP), respectively. The facility as a whole is restricted to emit less than 50 tons of VOCs in any 12 CMP to be considered as a synthetic minor facility.

The Department of Environmental Protection's (Department) review of the information provided by Haddon Craftsmen, Inc. indicates that the new source will comply with all air quality requirements, including the best available technology (BAT) requirements of 25 Pa. Code §§ 127.1 and 127.12, pertaining to air contamination sources and the emission of air contaminants. Based on this finding, the Department intends to issue a plan approval for the construction and operation of a heatset web offset lithographic printing press. Additionally, if the Department determines that the source and the air cleaning device are operating in compliance with the plan approval conditions, the conditions established in the plan approval will be incorporated into the operating permit via an administrative amendment under 25 Pa. Code § 127.450. The following is a summary of the conditions that the Department proposes to place in the plan approval to ensure compliance with all applicable regulatory requirements.

1. Conditions contained in existing Plan Approval 19-00026A and existing Operating Permit 19-320-001E remain in effect unless superseded or amended by conditions contained in this plan approval (19-00026C). If there is a conflict between a condition contained in this plan approval and a condition contained in existing Plan Approval 19-00026A or existing Operating Permit 19-320-001E, the permittee shall comply with the condition contained in this plan approval.

2. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the total combined emission of VOCs from existing printing press HCM-015 shall not exceed 8.2 tons in any 12 CMP. This condition supersedes Section C, Condition No. 006 of Plan Approval 19-00026A.

3. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the emission of VOCs from all sources at the facility shall not equal or exceed 50 tons in any 12 CMP.

4. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the total combined emission of VOCs from printing presses HCM-016—HCM-018 that are captured and destroyed in the regenerative thermal oxidizer (RTO) shall not exceed 2.29 tons in any 12 CMP. This condition supersedes Section D, Source ID P116, Condition No. 006 of Plan Approval 19-00026A.

5. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the RTO shall destroy the VOC/HAP emissions ducted to it from printing presses HCM-016—HCM-018 at a destruction efficiency of no less than 97% (by weight) or the VOC/HAP concentration in the exhaust of the RTO is no greater than 20 parts per million, by volume, dry basis (ppmvd), expressed as methane. This condition supersedes Section D, Source ID P116, Condition No. 010 of Plan Approval 19-00026A.

6. Within 120 days of the initial startup of printing press HCM-018, the permittee shall perform stack testing upon the inlet and outlet of the RTO while the RTO is being used to control emissions from printing presses HCM-016—HCM-018 to determine the amount of VOCs and HAPs present and the VOC/HAP destruction efficiency of the RTO. If the stack testing demonstrates compliance with the destruction efficiency and VOC emissions limitation for the RTO, then the permittee shall perform additional stack testing within 5 years. The stack testing shall be conducted while printing presses HCM-016—HCM-018 are simultaneously operating at representative operating conditions. Additionally, the test shall verify compliance with a VOC/HAP destruction efficiency of 97% for the RTO and a VOC/HAP concentration of no greater than 20 ppmvd from the outlet of the RTO. Testing is to be performed while operating the combustion chamber of the RTO as close to 1,500°F as can reasonably be achieved (but not less than 1,500°F). Additionally, the pressure drop of the bed media of the RTO shall be monitored and recorded during testing. This condition supersedes Section D, Source ID P116, Condition No. 011 of Plan Approval 19-00026A.

7. The permittee shall keep up-to-date records of Certified Product Data Sheets that identify the VOC content and HAP content of each VOC and/or HAP containing material used at the facility. This condition supersedes Section C, Condition No. 009 of Plan Approval 19-00026A.

8. The permittee shall keep records of the supporting calculations for VOC emissions from printing press HCM-015 and the exhaust of the RTO associated with printing presses HCM-016—HCM-018 on a monthly basis and shall verify compliance with the VOC emission limitations in any 12 CMP. These records shall be retained for a minimum of 5 years and shall be made available to the Department upon request.

9. The permittee shall submit reports to the Department on a semiannual basis that include the supporting calculations used to verify compliance with the VOC emission limitations for printing press HCM-015 and the exhaust of the RTO associated with printing presses HCM-016—HCM-018 in any 12 CMP. The semiannual reports shall be submitted to the Department no later than March 1 (for January 1 through December 31 of the previous year) and September 1 (for July 1 of the previous year through June 30 of the current year).

10. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the total combined emission of VOCs from printing press HCM-018, including the RTO, shall not exceed 4.37 tons in any 12 CMP.

11. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the emission of total combined HAPs from printing press HCM-018 shall not exceed 0.73 ton in any 12 CMP. Additionally, the materials used in printing press HCM-018 shall not contain HAPs in any quantity, except for 1,4-dioxane, acetaldehyde, acrylamide, benzene, cumene, ethyl benzene, ethylene dichloride, ethylene glycol, ethylene oxide, formaldehyde, glycol ethers, hexane, hydrogen fluoride, hydroquinone, methanol, methyl isobutyl ketone, methylene chloride, naphthalene, propylene oxide, toluene, vinyl acetate and xylenes. Additional HAPs may be used in printing press HCM-018 as long as the permittee requests, in writing, and the Department approves, in writing, the new HAP prior to its use.

12. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the inks used in printing press

HCM-018 shall not contain more than 37% VOCs (by weight), as applied, on a weighted average basis, calculated monthly.

13. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the fountain solutions used in printing press HCM-018 shall not contain more than 1.0% VOCs (by weight), as applied.

14. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the permittee shall only use natural gas or propane as fuel for each press dryer of printing press HCM-018.

15. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the VOC emissions from ink oil used in printing press HCM-018 that are not retained in the substrate shall be captured with an efficiency of 100% and exhausted to the RTO. The VOC emissions from fountain solution used in printing press HCM-018 shall be captured with an efficiency of 70% and exhausted to the RTO.

16. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, printing press HCM-018 shall be equipped with a pressure measuring device to monitor the differential pressure of each press dryer of printing press HCM-018 with respect to the ambient pressure of the pressroom at all times printing press HCM-018 is in operation.

17. The permittee shall keep records of the identity and amount of each VOC-containing and/or HAP-containing material used each month in printing press HCM-018. Additionally, the permittee shall keep records of the supporting calculations for VOC and HAPs emissions from printing press HCM-018, including the RTO, and shall verify compliance with total combined VOC and total combined HAPs emission limitations in any 12 CMP. These records shall be retained for a minimum of 5 years and shall be made available to the Department upon request.

18. The permittee shall submit reports to the Department on a semiannual basis that include the records of the identity and amount of each VOC-containing material used each month in printing press HCM-018. Additionally, the permittee shall submit reports to the Department on a semiannual basis that include the supporting calculations used to verify compliance with the total combined VOC emission limitation for printing press HCM-018, including the RTO and the total combined HAPs emission limitation for printing press HCM-018 in any 12 CMP. The semiannual reports shall be submitted to the Department no later than March 1 (for January 1 through December 31 of the previous year) and September 1 (for July 1 of the previous year through June 30 of the current year).

19. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the VOC-containing materials used for cleanup purposes in printing press HCM-018 shall not have a vapor pressure greater than 6.1 millimeters of mercury at 68°F. A material with a higher vapor pressure may be used in any printing press at the facility as long as the permittee requests, in writing, and the Department approves, in writing, the new material prior to its use.

20. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, printing press HCM-018 shall not be operated without the simultaneous operation of the RTO.

21. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, each press dryer of printing press

HCM-018 shall be operated at a negative differential pressure with respect to the ambient pressure of the pressroom at all times the printing press is in operation. Each press dryer of printing press HCM-018 shall be equipped with an interlocking device that prevents the printing press from operating if the differential pressure with respect to the ambient pressure of the pressroom is not negative.

22. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the permittee shall keep all containers of cleanup solvent associated with printing press HCM-018 closed when not in actual use and store all solvent-wet rags, and the like in closed containers when not in actual use. Under no circumstances shall the permittee dispose of waste solvent associated with printing press HCM-018 via evaporation or treat or pretreat solvent-wet rags, and the like prior to disposal or reuse by subjecting them to air drying or any other means of solvent removal that would unnecessarily cause solvent to be evaporated into the air.

23. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, VOC-containing material added to the fountain solution used in printing press HCM-018 shall not have a vapor pressure greater than 3.0 mm Hg at 68°F.

24. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, upon each occurrence of operation of printing press HCM-018, the combustion chamber of the RTO shall achieve a temperature of at least 1,500°F prior to the commencement of printing and the combustion chamber temperature shall thereafter be maintained at no less than 1,500°F at all times during operation of printing press HCM-018. The RTO shall be equipped with an interlock that prevents printing press HCM-018 from operating if the combustion chamber temperature of the RTO is below 1,500°F.

A copy of the plan approval application and the Department's review is available for public review between 8 a.m. and 4 p.m. at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review may be made by calling the Department at (570) 327-3693. Written comments or requests for a public hearing should be directed to Muhammad Q. Zaman, Chief, Facilities Permitting Section, Department of Environmental Protection, Air Quality Program, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-0512.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.

33-132A: Matson Lumber Co. (132 Main Street, Brookville, PA 15825) for construction of a wood-fired boiler rated at 18.9 mmBu/hr with two cyclones in Union Township, **Jefferson County**. This source is subject to NSPS requirements 40 CFR 60, Subpart Dc. This is a State-only facility. The public notice is required for sources required to obtain a Plan Approval in accordance with 25 Pa. Code § 127.44. This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into the State-only Operating Permit through an administrative amendment at a later date. The source shall comply with the following conditions, which will satisfy the requirements of 25 Pa. Code § 127.12b (pertaining to plan approval terms and conditions) and will demonstrate Best Available Technology for the source:

- The source shall comply with 25 Pa. Code §§ 123.1, 123.31 and 123.41 for fugitive matter, odor and visible emissions.
- Source is subject to 25 Pa. Code § 123.22 for sulfur emissions.
- PM emissions shall not exceed 3.8 #/hr or 16.6 tpy based on 12-month rolling total.
- CO emissions shall not exceed 11.4 #/hr or 49.8 tpy based on 12-month rolling total.
- NOx emissions shall not exceed 4.2 #/hr or 18.3 tpy based on 12-month rolling total.
- Source shall stack test to show compliance with the above emission limitations.
- Permittee shall operate the cyclones at all times that the source is in operation.
- Source is subject to 40 CFR 60.48c with regards to recordkeeping/reporting requirements.
- The permittee shall maintain and operate the source in accordance with the manufacturer specifications and in accordance with good air pollution control practices.

OPERATING PERMITS

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

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

15-00045: Sealed Air Corporation (22 Meredith Court, Modena, PA 19358) for renewal of their Title V Operating Permit in Modena Borough, **Chester County**. The initial permit was issued on June 1, 2001. The facility is primarily used for recycling corrugated scrap paper to rolls of crepe paper. A 46 million Btu/hr boiler provides the steam that is necessary for the process. As a result of potential emissions of NOx, the facility is a major stationary source as defined in Title 1, Part D of the Clean Air Act Amendments, and is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. The proposed Title V Operating Renewal does not adopt any new regulations and does not reflect any change in air emissions from the facility. The facility is not subject to Compliance Assurance Monitoring under 40 CFR Part 64. The renewal contains all applicable requirements including monitoring, recordkeeping and reporting.

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

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

20-00135: Clear Lake Lumber Inc.—Spartansburg Plant (409 Main Street, Spartansburg, PA 16434-0129) to operate a wood fired boiler with a multicloner in Spartansburg Borough, **Crawford County**.

61-00185: Heath Oil, Inc. (5609 SR, Route 8, R. D. No. 1, Harrisville, PA 16038) for operation of retail trade-fuel oil dealers. The facility included sources floating and fixed roof tanks, fugitives from facility, oil heaters large and small, miscellaneous loading racks, two portable transmix refineries, tank wagon loading rack in Barkeyville Borough, **Venango County**.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-9476.

506-001: The Wistar Institute (3601 Spruce Street, Philadelphia, PA 19104) for operation of a biomedical research facility in the City of Philadelphia, **Philadelphia County**. The facility's air emission source includes three 448 Hp boilers and four emergency generators.

The operating permit will be issued under the 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener at (215) 685-9426.

Persons wishing to file protest or comments on the above operating permit must submit the protest or comments within 30 days from the date of this notice. Any protests or comments filed with AMS must include a concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based. Based upon the information received during the public comment period, AMS may modify the operating permit or schedule a public hearing. The hearing notice will be published in the *Pennsylvania Bulletin* and a local newspaper at least thirty days before the hearing.

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 num-

ber; 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 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.

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

30841316 and NPDES Permit No. PA0213535, Consol Pennsylvania Coal Company, (P. O. Box J, 1525 Pleasant Grove Road), to revise the permit for the Bailey Mine and Prep Plant in Richhill Township, **Greene County** to add acreage for development mining. Underground Acres Proposed 487.5, SCP Acres Proposed 487.5. No additional discharges. Application received March 10, 2006.

32061302 and NPDES Permit No. NA, Western Allegheny Energy, LLC, (301 Market Street, Kittanning, PA 16201-9642), to operate the Knob Creek Mine in Young Township, **Indiana County** a new underground mine and related NPDES permit. Surface acres proposed 31.2, underground acres proposed 1,514.0, SCP Acres Proposed 1,384.0. Receiving stream: Marshall Run, classified for the following use: CWF. Application received March 10, 2006.

32713707 and NPDES Permit No. PA0009890, RNS Services, Inc., (P. O. Box 38, Blossburg, PA 16912), to revise the permit for the No. 24 Refuse Site in Pine Township, **Indiana County** to add pyritic rock to existing site, change postmining land use and modify discharge monitoring. No additional discharges. Application received February 10, 2006.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.

43850105 and NPDES Permit No. PA0208758, Grove City Materials, LP (R. R. 6, Box 344, New Castle, PA 16101). Renewal of an existing bituminous surface strip operation in Pine and Mercer Townships,

Mercer and Butler Counties affecting 103.0 acres. Receiving streams: two UNTs to Swamp Run, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received: April 10, 2006.

33820149 and NPDES Permit No. PA0605557, Strishock Coal Company (220 Hillcrest Drive, DuBois, PA 15801). Transfer of an existing bituminous surface strip and limestone removal operation in Washington Township, **Jefferson County** affecting 54.0 acres. Receiving streams: one UNT to Mill Creek, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Transfer from Rosio Coal Company. Application received April 10, 2006.

33950106 and NPDES Permit No. PA0227081, Falls Creek Energy Co., Inc. (R. R. 6, Box 231, Kittanning, PA 16201). Renewal of an existing bituminous surface strip operation in Perry Township, **Jefferson County** affecting 148.4 acres. Receiving streams: UNT to Mahoning Creek, UNT to Sawmill Run and UNT to Rose Run, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application for reclamation only. Application received: April 4, 2006.

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

40900203R3, Northampton Fuel Supply Co., Inc. (1 Horwith Drive, Northampton, PA 18067), renewal of an existing anthracite coal refuse reprocessing operation in Newport Township, **Luzerne County** affecting 49.5 acres, receiving stream: none. Application received April 6, 2006.

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			
pH 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.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.

16060303 and NPDES Permit No. PA0258130. Star Mining Corporation (8100 Ohio River Boulevard, Emsworth, PA 15202). Commencement, operation and restoration of a sand and gravel operation in Perry Township, **Clarion County** affecting 8.7 acres. Receiving streams: one UNT to the Allegheny River and the Allegheny River, classified for the following use: WWF. There are no potable surface water supply intakes within 10 miles downstream. Application received March 29, 2006.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

08060807. Clinton Crawford (R. R. 1, Box 57, Sugar Run, PA 18846), commencement, operation and restoration of a small, noncoal (flagstone) surface mine with blasting in Wilmot Township, **Bradford County**, affecting 5.0 acres. Receiving stream: UNT to Panther Lick Creek, classified for the following use: CWF. Application received April 3, 2006.

08060806. NatureStone—Wood Products, LLC (P. O. Box 243, Wyalusing, PA 18853), commencement and restoration of a small, noncoal (bluestone, other stone), surface mine in Terry Township, **Bradford County**, affecting 5.0 acres. Receiving stream: UNT to Susquehanna River. Application received April 5, 2006.

08060808. John Preston (R. R. 1, Box 20, Wyalusing, PA 18853), commencement, operation and restoration of a small, noncoal (flag/bluestone) surface mine with blasting in Wyalusing Township, **Bradford County**, affecting 2.0 acres. Receiving stream: UNT to Susquehanna River. Application received April 7, 2006.

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

7373SM3C5 and NPDES Permit No. PA0593306. Lehigh Asphalt Paving & Construction Co. Inc., (P. O. Box 59, Tamaqua, PA 18252), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in East Penn Township, **Carbon County**, receiving stream: Lizard Creek, classified for the following use: TSF. Application received April 5, 2006.

8274SM1T and NPDES Permit No. PA05957050. ICM of Pennsylvania, Inc. (638 Lancaster Avenue, Malvern, PA 19355), transfer of an existing quarry operation and NPDES Permit for discharge of treated mine drainage from a quarry operation from DM Stoltzfus & Son, Inc. in Upper Leacock and Manheim Townships, **Lancaster County** affecting 78.1 acres. Receiving stream: Conestoga River. Application received April 7, 2006.

8274SM5T and NPDES Permit No. PA0123480. ICM of Pennsylvania, Inc. (638 Lancaster Avenue, Malvern, PA 19355), transfer of an existing quarry operation and NPDES Permit for discharge of treated mine drainage from a quarry operation from DM Stoltzfus & Son, Inc. in Fulton Township, **Lancaster County** affecting 318.5 acres. Receiving stream: Octoraro Creek. Application received April 7, 2006.

FEDERAL WATER POLLUTION CONTROL ACT, SECTION 401

The following permit applications, requests for Environmental Assessment approval and requests for 401 Water Quality Certification have been received by the Department of Environmental Protection (Department). Section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341) requires the State to certify that the involved projects will not violate the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) as well as relevant State requirements. Persons objecting to approval of a request for certification under section 401 of the FWPCA or to the issuance of a Dam Permit, Water Obstruction and Encroachment Permit or the approval of an Environmental Assessment must submit comments, suggestions or objections within 30 days of the date of this notice, as well as questions, to the regional office noted before the application. Comments should contain the name, address and telephone number of the person commenting, identification of the certification request to which the comments or objections are addressed and a concise statement of comments, objections or suggestions including the relevant facts upon which they are based.

The Department may conduct a fact-finding hearing or an informal conference in response to comments if deemed necessary. Individuals will be notified, in writing, of the time and place of a scheduled hearing or conference concerning the certification request to which the comment, objection or suggestion relates. Maps, drawings and other data pertinent to the certification request are available for inspection between 8 a.m. and 4 p.m. on each working day at the regional office noted before the application.

Persons with a disability who wish to attend a hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings should contact the specified program. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Applications received under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27) and section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and requests for certification under section 401(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.

E48-370. Todd H. Dreisbach, 4315 Fox Drive, Walnutport, PA 18104, in Lehigh Township, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To authorize the deepening and expansion of the reservoir of a nonjurisdictional dam having a surface area of approximately 0.3 acre located across a tributary to Bertsch Creek (CWF) and to maintain a dry fire hydrant and a 90 ft² pile supported private recreational dock in the reservoir area. This work was conducted during the repair and restoration of the dam embankment that was damaged by flood waters. The project is located west of the intersection of Deer Path Drive and Fox Drive (Palmerton, PA Quadrangle N: 7.2 inches; W: 7.9 inches).

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

E36-808: Penn Township, 97 North Penryn Road, Manheim, PA 17545 in Penn Township, **Lancaster County**, ACOE Baltimore District.

To impact approximately 7,150 square feet (0.164 acre) of emergent wetlands for the widening of White Oak Road to improve access to a new middle school (Manheim, PA Quadrangle; Latitude: 40° 10' 27", Longitude: 76° 23' 20"; N: 9.0 inches; W: 1.95 inches), and to extend an existing 2' by 4' box culvert by 10 feet at the intersection of White Oak Road and Steigel Valley Road (Manheim, PA Quadrangle; Latitude: 40° 10' 17", Longitude: 76° 23' 18"; N: 8.4 inches; W: 1.9 inches). The applicant is proposing to provide for future wetland mitigation in an adjacent municipality.

E05-339: Bedford Township Municipal Authority, P. O. Box 371, Bedford, PA 15522, Bedford Township, **Bedford County**, ACOE Baltimore District.

To conduct various activities associated with a sanitary sewer and water line improvement/construction project of the Bedford Township Municipal Authority located in Bedford Springs Village, Bedford Township, Bedford County including:

1. The construction and maintenance of 12 manholes and a 10-inch diameter, 2,553-foot long sanitary sewer line along the floodway and floodplain of Shober's Run (HQ-CWF), in a PSS wetland resulting in 0.16 acre of temporary wetland impacts (Everett West, PA Quadrangle N: 0.4 inch, W: 17.4 inches; Latitude: 40° 00' 08", Longitude: 78° 29' 57", in a PEM wetland resulting in 0.07 acre of temporary wetland impacts (Rainsburg, PA Quadrangle N: 22.6 inches, W: 0.4 inch; Latitude: 39° 59' 08", Longitude: 78° 30' 09"), and under 98 linear feet of the streambed of Shober's Run (Rainsburg, PA Quadrangle N: 22.4 inches, W: 0.55 inch; Latitude: 39° 59' 54", Longitude: 78° 30' 14") all starting at point about 1,600 feet south of the Elks Country Club (Everett West, PA Quadrangle N: 0.2 inch; W: 17.45 inches; Latitude: 40° 00' 08"; longitude: 78 °29' 59") and continuing to a point about 520 feet northeast of the existing Bedford Springs Hotel (Rainsburg, PA Quadrangle N: 22.4 inches; W: 0.63 inch; Latitude: 39° 59' 54"; Longitude: 78° 30' 16").

2. The construction and maintenance of three manholes, a 10-inch diameter, 130-foot long sanitary sewer line and an 8-inch diameter, 130-foot long water line in the floodway and floodplain and under 20 linear feet of the streambed of Shober's Run (HQ-CWF) located immediately downstream of T-408 bridge (Rainsburg, PA Quadrangle N: 21.64 inches; W: 1.24 inches; Latitude: 39° 59' 39"; Longitude: 78° 30' 32").

3. The construction and maintenance of a 10-inch diameter, 10-foot long sanitary sewer line, an 8-inch diameter, 10-foot long water line and a fire hydrant in the floodway and under an existing 18-inch CMP carrying a UNT to Shober's Run (HQ-CWF) (Rainsburg, PA Quadrangle N: 20.6 inches; W: 2.2 inches; Latitude: 39° 59' 44"; Longitude: 78° 30' 55").

4. The construction and maintenance of a 10-inch diameter, 10-foot long sanitary sewer line, an 8-inch diameter, 10-foot long water line and a fire hydrant in the floodway and under an existing 24-inch RCP carrying a UNT to Shober's Run (HQ-CWF) (Rainsburg, PA Quadrangle N: 20.63 inches; W: 2.3 inches; Latitude: 39° 59' 19"; Longitude: 78° 30' 59").

5. The construction and maintenance of a 10-inch diameter, 10-foot long sanitary sewer line, an 8-inch diameter, 10-foot long water line and a fire hydrant in the floodway and under an existing 24-inch RCP carrying a UNT to Shober's Run (HQ-CWF) (Rainsburg, PA Quadrangle N: 19.93 inches; W: 2.61 inches; Latitude: 39° 59' 05"; Longitude: 78° 31' 07").

6. The construction and maintenance of a 10-inch diameter, 10-foot long sanitary sewer line and an 8-inch diameter, 10-foot long water line under an existing 24-inch RCP carrying a UNT to Shober's Run (HQ-CWF) (Rainsburg, PA Quadrangle N: 21.89 inches; W: 1.36 inches; Latitude: 39° 59' 44"; Longitude: 78° 30' 35").

7. The construction and maintenance of a 10-inch diameter, 22-foot long sanitary sewer line and an 8-inch diameter, 22-foot long water line in a PEM wetland resulting in 0.01 acre of temporary wetland impacts (Rainsburg, PA Quadrangle N: 21.89 inches; W: 1.56 inches; Latitude: 39° 59' 44"; Longitude: 78° 30' 35").

8. The construction and maintenance of an 8-inch diameter, 53-foot long sanitary sewer line and a 6-inch diameter, 53-foot long water line in a PEM wetland resulting in 0.03 acre of temporary wetland impacts (Rainsburg, PA Quadrangle N: 22.55 inches; W: 0.51 inch; Latitude: 39° 59' 57"; Longitude: 78° 30' 13").

9. The construction and maintenance of a temporary road crossing consisting of four 24-inch diameter, 20-foot long CMP culverts in Shober's Run located at a point about 1,000 feet northeast of the existing Bedford Springs Hotel (Rainsburg, PA Quadrangle N: 22.5 inches; W: 0.54 inch; Latitude: 39° 59' 56"; Longitude: 78° 30' 14").

The project will result in temporary impacts to a total of 145 linear feet of stream channel and 0.27 acre of wetlands.

E60-178. William A. Moore, 110 S. Second Street, Lewisburg, PA 17837. Paris Meadow Estates, in East Buffalo Township, **Union County**, ACOE Baltimore District (Lewisburg, PA Quadrangle N: 14.0 inches; W: 6.9 inches).

To: 1) relocate, maintain and operate 1,450 linear feet of UNT of Limestone Run with the associated turf reinforcement mat before filling in 1,450 linear feet of the existing intermittent stream channel, construct, maintain and operate; 2) two separate sets of three 28 foot long, 13 inch by 17 inch CSP-Arch multiculvert driveway crossings of the tributary and the associated R-3 riprap armoring of the clean approach fill and culvert aprons for two separate proposed residential lots No. 28 and No. 29; 3) an out-of-scope dam for a stormwater detention basin immediately to the right of the realigned channel near the corner of Ridge Road and Fairfield Drive; 4) an outfall of a 6-inch perforated HDPE underdrain pipe at Station

16+00 of the realigned channel near the stormwater basin emergency spillway; 5) a 93 square yard R-6 riprap apron for a 36-inch perforated HDPE-SB detention basin drain pipe at Station 17+50 of the realigned channel near the corner of Ridge Road and Fairview Drive; 6) 130 cubic yards of excavation and 250 cubic yards of fill within the 100-year floodway of the existing channel and the proposed lots Nos. 28 and 29, all of which is being done to create a 29-lot residential subdivision between Fairfield Road and Fairview Drive in East Buffalo Township, Union County, Lewisburg, PA Quadrangle N: 14.0 inches; W: 6.9 inches. This permit was issued under Section 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

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

E02-1315. Millvale Borough Marina (Amendment), 501 Lincoln Avenue, Millvale, PA 15209. To construct a pedestrian bridge in Millvale Borough, **Allegheny County**, Pittsburgh ACOE District. (Pittsburgh East, PA Quadrangle N: 17.02 inches; W: 13.89 inches and Latitude: 40° 28' 07.39"—Longitude: 79° 58' 29.54"). The applicant proposes to construct and maintain a pedestrian bridge across the Allegheny River back channel between the Borough of Millvale and Washington's Landing in the City of Pittsburgh. This bridge will be part of the riverfront trail system. The bridge span will be approximately 220 feet. Approximately 30 feet of stream bank will be impacted.

E63-584. 84 Lumber Company (Pierce Hardy LP), 1019 Route 519, Building 5, Eighty Four, PA 15330. To relocate 450 LF of a UNT to Chartiers Creek and place fill in wetlands in North Strabane Township, **Washington County**, Pittsburgh ACOE District. (Washington East, PA Quadrangle N: 11.25 inches; W: 1.5 inches and Latitude: 40° 11' 37"—Longitude: 80° 07' 84"). The applicant proposes to relocate and maintain approximately 450 linear feet of a UNT to Little Chartiers Creek (HQ-WWF) (UNT No. 1) and approximately 0.011 acre of associated wetlands (PEM). To place and maintain fill in approximately 830 linear feet of a UNT to Little Chartiers Creek (HQ-WWF) (UNT No. 2) and approximately 0.113 acre of associated PEM wetlands and to place and maintain fill in approximately 258 linear feet of a UNT to Little Chartiers Creek (HQ-WWF) (UNT No. 3) and approximately 0.010 acre of associated PEM wetlands for the purpose of expanding the existing 84 Lumber Company headquarters. The project is located on the east side of Thomas Road (SR 519) just southeast from the intersection of Thomas Road (SR 519) and Christy Road.

E65-894. St. Vincent College, St. Vincent Archabbey, Latrobe, PA 15650. To construct a twin box culvert in Monastery Run in Unity Township, **Westmoreland County**, Pittsburgh ACOE District. (Latrobe, PA Quadrangle N: 7.4 inches; W: 3.4 inches and Latitude: 40° 17' 27"—Longitude: 79° 23' 53"). The applicant proposes to construct and maintain an 86 LF long, twin box culvert with two 16 ft. wide by 10 ft. clearance cells depressed 1 ft. in Monastery Run (WWF), with a drainage area of 2.97 square miles; construct and maintain stormwater outfalls; and fill and maintain a total of 0.33 acre of adjacent PEM/PSS wetlands. One culvert cell will have an additional 1 ft. of streambed material placed to foster normal stream flows to be conveyed by the other cell. The applicant also proposes to construct and maintain a 120 ft. long, 53 inch wide by 34 inch high elliptical culvert; a 120 ft. of stream relocation in adjoining drainage areas of

less than 100 acres. Construction and maintenance of a total of 2.89 acres of PEM and PFO replacement wetlands will be part of the permit associated with the nearby road improvement and SR 1045, St. Vincent Drive relocation projects. This project is located on the St. Vincent College campus in Unity Township, Westmoreland County. Total proposed impacts are approximately 316 ft. of stream channel and 0.33 acre of wetland.

E65-895. Westmoreland County Commissioners, 601 Courthouse Square, Greensburg, PA 15601. To construct a culvert in Monastery Run and impact wetlands in Unity Township, **Westmoreland County**, Pittsburgh ACOE District. (Latrobe, PA Quadrangle N: 8.3 inches; W: 3.1 inches and Latitude: 40° 17' 44"—Longitude: 79° 23' 51"). The applicant proposes to construct and maintain a 75 LF long, 30.0 ft span, 11 ft. vertical clearance Beatty Road concrete arch culvert in Monastery Run (WWF) with a drainage area of 2.97 square miles; and fill and maintain a total of 0.71 acre of adjacent PEM wetlands. Construction and maintenance of a total of 2.89 acres of PEM and PFO replacement wetlands will be a part of the permit associated with the nearby road improvement and SR 1045, St. Vincent Drive relocation projects. The applicant also proposes to demolish the adjoining and existing Beatty Road metal plate arch culvert that has a span of 28 ft., rise of 8 ft. and length of 36 ft. and construct and maintain storm water outfalls. This project is located adjacent to St. Vincent College. The total proposed impacts are approximately 100 ft. of stream channel and 0.71 acre of wetland.

E65-896. Department of Transportation, Engineering District 12-0, 825 North Gallatin Avenue Extension, Uniontown, PA 15401. To construct a stream enclosure in Monastery Run in Unity Township, **Westmoreland County**, Pittsburgh ACOE District. (Latrobe, PA Quadrangle N: 7.4 inches; W: 3.2 inches and Latitude: 40° 17' 17"—Longitude: 79° 24' 00"). The applicant proposes to construct and maintain a 200 LF long, twin box culvert with two 16 ft. wide by 10 ft. clearance cells depressed 1 ft. in Monastery Run (WWF) with a drainage area of 2.97 square miles; construct and maintain stormwater outfalls; and fill and maintain a total of 1.0 acre of adjacent PEM/PSS wetlands. One culvert cell will have an additional 1 ft. of streambed material placed to foster normal stream flows to be conveyed by the other cell. The applicant also proposes to construct and maintain a 230 ft. long, 53 inch wide by 34 inch high elliptical culvert; a 240 ft. long, 54 inch diameter culvert; a 240 ft. long 40 inch diameter culvert; a 80 ft. long 48 inch diameter culvert replacement; and 310 ft. of stream relocation in adjoining and nearby UNTs to Monastery Run with drainage areas of less than 100 acres. Construction and maintenance of a total of 2.89 acres of PEM and PFO replacement wetlands will also be part of this permit to mitigate impacts associated with this project and the nearby coordinated Department of Transportation, Westmoreland County and St. Vincent College Road improvement and relocation projects. This project is associated with the 0.75 mile long relocation of SR 1045 also known as St. Vincent Drive (from approximately Latitude: 40° 17' 08"—Longitude: 79° 24' 15" to Latitude: 40° 17' 44" and Longitude: 79° 23' 51") located substantially on the St. Vincent College campus. Total proposed impacts are approximately 1,450 ft. of stream channel and 1.0 acre of wetland.

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

E20-545. James Family Trust, 351 Morrison Drive, Pittsburgh, PA 15216. James Family Trust Dock, in

Sadsbury Township, **Crawford County**, ACOE Pittsburgh District (Harmonsburg, PA Quadrangle N: 21.7 inches; W: 6.7 inches).

The applicant proposes the following in and adjacent to Conneaut Lake approximately 1.0 mile NW of the intersection of SR 18 and SR 322 in Sadsbury Township, Crawford County involving: 1) to remove the existing concrete end section, steel sheet pile and existing wooden platforms; 2) to install and maintain fiberglass sheet pile; 3) to lower and maintain the existing 70-foot long earthen dock; 4) to install and maintain two floating docks at the lakeward end of the earthen dock; and 5) to maintain the existing approximately 100-foot long by 5-foot high sea wall. Conneaut Lake is body of water classified as a HQ-WWF.

E25-603A, Commodore Perry Yacht Club, Bayfront Highway, P. O. Box 3455, Erie, PA 16507-2318. Yacht Club Wave Protection, in City of Erie, **Erie County**, ACOE Pittsburgh District (Erie North, PA Quadrangle N: 1.1 inches; W: 14.1 inches).

The applicant proposes to install wave protection and other improvements at the Commodore Perry Yacht Club, located at 664 West Bayfront Highway, near the north end of Poplar Street, involving and including: 1) to operate and maintain the Commodore Perry Yacht Club; 2) to construct and maintain rubble fill wave protection having a length of approximately 570 feet, and a width of approximately 15 feet, along the north side of the north breakwall, extending east from the end of the existing western breakwall; 3) to construct and maintain a rubble mound breakwater having a length of approximately 75 feet, and a width of approximately 32 feet, extending west from the eastern marina wall, approximately 75 feet south of the end of the existing eastern marina wall; 4) to construct and maintain rubble fill wave protection having a length of approximately 1,048 feet, and width varying from 9 to 12 feet, along the north side of the southern wall of the yacht club; and 5) to install and maintain three floating docks, having lengths of 437.5 feet, 223 feet and 437.5 feet, respectively, within the confines of the yacht club. Presque Isle Bay is a body of water classified as a WWF. This project proposes to fill 0.47 acre of Presque Isle Bay.

E25-666, Technica Development Corporation for Presque Isle Downs, Inc., 4800 Tramarlac Lane, Erie, PA 16505-1360. Presque Isle Downs Horseracing Facility, in Summit Township, **Erie County**, ACOE Pittsburgh District (Erie South, PA Quadrangle N: 42°, 04', 20"; W: 80°, 01', 48").

On March 24, 2006, the Department received a request from Presque Isle Downs, Inc. to extend the time limit on Water Obstruction and encroachment Permit No. E25-666 originally issued on July 18, 2003, and having an expiration date of December 31, 2006. The request is for a 2-year extension to December 31, 2008, to allow for completion of construction. The permit, as amended, authorizes the following activities associated with construction of the Presque Isle Downs horseracing facility south of I-90 east of SR 97:

1. To fill a total of 8.61 acres of 24 nonexceptional value wetland areas. Project includes the creation of a total of 10.56 acres of replacement wetlands at five areas within the project site.

2. To construct and maintain a prefabricated steel truss bridge having three 116.67-foot spans and a maximum underclearance of 23 feet across Walnut Creek (WWF-MF) approximately 3,000 feet upstream of SR 97.

3. To construct and maintain a prefabricated steel truss bridge having two 125-foot spans and a maximum underclearance of 15 feet across Walnut Creek approximately 4,800 feet upstream of SR 97.

4. To impact a total of approximately 11,808 feet of tributaries to Walnut Creek and elimination of approximately 12.1 acres of floodplain storage as a result of grading and fills associated with site construction, stormwater detention and wetland replacement. Approximately 1,576 feet of new open channel will be created near the north end of the site as part of the relocation of a tributary to Walnut Creek, restoration of approximately 1.79 acres of previously impacted floodplain of Walnut Creek, excavation to provide 11.8 acres of additional floodplain storage and construction of stream bank enhancement at 9 locations along Walnut Creek.

5. To construct and maintain a 352.9-foot long Con Span concrete arch stream enclosure having a single span of 20 feet and a rise of 6 feet in the relocated tributary to Walnut Creek approximately 780 feet upstream of its mouth.

6. To construct and maintain a 248.6-foot long Con Span concrete arch stream enclosure having a single span of 20 feet and a rise of 6 feet in the relocated tributary to Walnut Creek approximately 175 feet downstream of the existing railroad line.

7. To modify and maintain the existing 50-foot long, 60-inch diameter steel culvert in a tributary to Walnut Creek on Footemill Road approximately 750 feet north of Robison Road.

8. To construct and maintain five stormwater outfalls to Walnut Creek and adjoining wetlands.

9. To fill an approximately 0.58 acre manmade pond at the northern end of the site.

10. To install and maintain sanitary sewer and water lines across Walnut Creek attached to the northern bridge.

To install and maintain a sanitary sewer line across a tributary to Walnut Creek on the southern end of the site.

E37-171, Lawrence County Economic Development Corporation, 100 East Reynolds Street, New Castle, PA 16101. Millennium Technology Park, Phase I, in Neshannock Township, **Lawrence County**, ACOE Pittsburgh District (Edinburg, PA Quadrangle N: 41°, 02', 10"; W: 80°, 23', 45").

To conduct the following activities associated with construction of Millennium Technology Park, Phase I, a "ready-to-build" industrial park to attract future industrial/manufacturing users and tenants located south of Kings Chapel Road between SR 60 and the Shenango River on the former Lawrence County Sportsmen's Club property:

1. Fill a total of 0.51 acre of five wetland areas.

2. Fill a 7.5-acre lake under a plan for remediation of lead contamination caused by the former shooting range activities.

3. Impact approximately 871 feet of a tributary to Shenango River having a contributory drainage area of less than 100 acres. The tributary flows into the 7.5-acre lake.

4. To remove and restore approximately 700 feet of the existing Kings Chapel Road from the 100-year floodway of the Shenango River as part of the realignment of Kings Chapel Road.

The project proposes the creation of 1.08 acres of replacement wetland onsite.

E62-408, KCS Energy, Inc., P. O. Box 187, Warren, PA 16365. Warren County SGL 29, in Watson Township, Warren County, ACOE Pittsburgh District (Warren, PA Quadrangle N: 0.1 inch; W: 14.0 inches).

The applicant proposes to install 14,930 feet of 4-inch diameter plastic natural gas pipeline to transport natural gas from well locations to a collection and transport facility in State Game Lands No. 29 approximately 2.7 miles SE of the intersection of SR 3005 and Lenhart

Road involving the crossing of Wildcat Run (Warren, PA Quadrangle N: 0.1 inch; W: 14.0 inches), Slater Run (Warren, PA Quadrangle N: 2.4 inches; W: 14.3 inches) and PEM wetlands on the right and left of the Wildcat Run crossing for a length of approximately 125 feet and 80 feet respectively. Wildcat Run and Slater Run are perennial streams classified as Exceptional Value. The wetlands adjacent to Wildcat Run are classified as Exceptional Value. The project proposes to directly impact approximately 40 linear feet of stream and to temporarily impact 0.05 acre of PEM wetlands.

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>
PA0061263	Wheelabrator Frackville Energy Company, Inc. 475 Morea Road Frackville, PA 17931	Schuylkill County Mahanoy Township	Mill Creek CWF 3A	Y

Mass Limits for Chromium and Zinc were added to this final permit as published on December 10, 2005.

<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>
PA0033553 (Sewage)	Melvin Weaver Gehman's Mennonite School 650 Gehman School Road Denver, PA 17517-8921	Lancaster County Brecknock Township	Muddy Run 7-J	Y
PA0087131 (Sewage)	Northern Lancaster County Authority Gehman School Road Pump Station 983 Beam Road Denver, PA 17517	Lancaster County Brecknock Township	Little Muddy Creek 7-J	Y
PA0081523 (Sewage)	Mohammad Dowlut Blair Chalet R. R. 1 Box 379 Hollidaysburg PA 16648-9516	Blair County Blair Township	Frankstown Branch 11-A	Y
PA0014621 (Industrial Waste)	Art Saunders United Water Pennsylvania 4211 East Park Drive Harrisburg, PA 17111-0151	Dauphin County Susquehanna Township	Susquehanna River 7-C	Y
PA0082651 (Sewage)	Scott Foster Landisburg Municipal Authority 202 East Main Street P. O. Box 213 Landisburg, PA 17040	Perry County Tyrone Township	Mountour Creek 7-A	Y
PA0088323 (Industrial Waste)	Robert Chip Haley Ontelaunee Power Operating Company, LLC 5115 Pottsville Pike Reading, PA 19605	Berks County Ontelaunee Township	Schuylkill River 3-C	Y
PA0088536 (Sewage)	Camp Hebron Harlan A. Millette 957 Camp Hebron Road Halifax, PA 17032-9520	Dauphin County Halifax Township	Powell Creek 6-C	Y
PA0080501 (Sewage)	Tuscarora School District Thomas Stapleford 118 East Seminary Street Mercersburg, PA 17236	Franklin County Montgomery Township	UNT West Branch Conococheague Creek 13-C	Y
PA0086215 (Sewage)	Peifer Brothers Jay Peifer P. O. Box 550 Elizabethtown, PA 17022	York County Lower Windsor Township	UNT Cabin Creek 7-F	Y
PA0083712 (Industrial Waste)	Bear Valley Franklin County Pennsylvania Joint Authority P. O. Box 308 St. Thomas, PA 17252-0308	Franklin County St. Thomas Township	Broad Run 13-C	Y
PAR10M215-R	Green Valley Estates Preston Bellows Creekridge II, LLC 2082 Lincoln Way East Chambersburg, PA 17201	Franklin County Greene Township	Conococheague Creek CWF	Y

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

<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>
PA0113433	Lanny Fetterman Residence Small Flow Treatment Facility 2074 Old Reading Road Catawissa, PA 17820	Columbia County Roaring Creek Township	UNT to Roaring Creek (SWP 5E)	Y

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

<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>
PA0004685 Industrial Waste	Penna Flame Industries 1856 Route 588 Zelienople, PA 16063-9724	Beaver County Franklin Township	Tributary of Connoquenessing Creek	Y
PA0217077 Industrial Waste	Almac Machine Company, Inc. 205 Morgan Place Johnstown, PA 15907	City of Johnstown Cambria County	Little Conemaugh River	Y

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>
PA0032727	Department of Transportation P. O. Box 3060 Harrisburg, PA 17105-3060	Irwin Township Venango County	UNT to East Branch of Wolf Creek 20-C	Y
PA0032778	Department of Transportation P. O. Box 3060 Harrisburg, PA 17105-3060	Irwin Township Venango County	UNT to Scrubgrass Creek 16-G	Y

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

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

NPDES Permit No. PA00563651, Industrial Waste, **Johnson Matthey Inc.** 1401 King Road, West Chester, PA 19380-1467. This proposed facility is located in West Whiteland Township, **Chester County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge from a groundwater remediation system (Outfall 001) and stormwater (Outfall 002) into the East Branch Brandywine Creek in Watershed 3H.

NPDES Permit No. PA0053970, Sewage, **Martins Community, LP**, 25 Randy Lane, Cochranville, PA 19330. This proposed facility is located in West Nottingham Township, **Chester County**.

Description of Proposed Action/Activity: Approval for the renewal and transfer to discharge treated sewage from Martins Mobile Home Village STP into a UNT to Northeast Creek.

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

NPDES Permit No. PA0247961, Industrial Waste, Anthony Madison, **HPE Extrusion Solutions**, 20 North Front Street, Bally, PA 19503. This proposed facility is located in Bally Borough, **Berks County**.

Description of Proposed Action/Activity: Authorization to discharge to UNT West Branch Perkiomen Creek in Watershed 3-E.

NPDES Permit No. PA0248002, CAFO, John Hess, **Jobo Holstein Farms, LLC**, 200 Tall Oaks Road, Gettysburg, PA 17325. This proposed facility is located in Mt. Pleasant Township, **Lancaster County**.

Description of Size and Scope of Proposed Operation/Activity: Authorization to operate a 1,548-AEU dairy operation.

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

PA0040312, Sewage, **Mount Pleasant Township Municipal Authority**, Box 158, Poker Road, Mammoth, PA 15664. This proposed facility is located in Mt. Pleasant Township, **Westmoreland County**.

Description of Proposed Action/Activity: Proposed new sewage treatment rated at 0.33 mgd for discharge to receiving waters known as Sewickley Creek.

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

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

WQM Permit No. 4605409, Sewerage, **Upper Moreland-Hatboro Joint Sewer Authority**, P. O. Box 535, 2875 Terwood Road, Willow Grove, PA 19090. This proposed facility is located in Upper Moreland Township, **Montgomery County**.

Description of Action/Activity: Construction and operation of a 20" ductile iron sewer pipe and modifications or installation of three manholes to existing sewer interceptor.

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

WQM Permit No. 3806402, Sewerage, Barry Batz, **Northern Lebanon County Authority**, P. O. Box 434, Jonestown, PA 17038. This proposed facility is located in Swatara Township, **Lebanon County**.

Description of Proposed Action/Activity: Approval of the construction/operation of sewage facilities consisting of an 80-gallon per minute (0.1152 mgd) duplex suction lift pump and approximately 2,340 linear feet of 4-inch diameter epoxy lined ductile iron force main, Blatt Subdivision Pump Station.

WQM Permit No. 2105406, Sewerage, Steve Campbell, **Hampden Township Sewer Authority**, 230 South Sporting Hill Road, Mechanicsburg, PA 17055. This proposed facility is located in Hampden Township, **Cumberland County**.

Description of Proposed Action/Activity: Approval of the construction/operation of sewerage facilities consisting of improvements and expansion of Pump Stations Nos. 11, 12 and 15.

WQM Permit No. 0506401, Sewerage, **Jay and Heather Kauffman**, 2395 Dunkard Hollow Road, Alum Bank, PA 15521. This proposed facility is located in West St. Clair Township, **Bedford County**.

Description of Proposed Action/Activity: Approval of the construction/operation of a small flow sewage treatment system to serve their single family residence.

WQM Permit No. 3105401, Sewerage, **Hopewell Township**, R. D. 1, Box 95, James Creek, PA 16657. This proposed facility is located in Hopewell Township, **Huntingdon County**.

Description of Proposed Action/Activity: Approval of the construction/operation of sewerage facilities consisting of conventional gravity collection system, related appurtenances and a pumping station in Puttstown area of the township to serve 59 EDUs. Wastewater will be conveyed through the existing collection system to Liberty Township, Bedford County to the Saxton Borough treatment plant.

WQM Permit No. WQG02360602, Sewerage, **Leola Sewer Authority**, 115 Newport Road, Leola, PA 17540. This proposed facility is located in Upper Leacock Township, **Lancaster County**.

Description of Proposed Action/Activity: Approval of the construction/operation of sewage facilities consisting of a 0.0112 mgd low pressure pump station equipped with dual submersible centrifugal grinder pumps and 2-inch force main.

WQM Permit No. 0705401, Sewerage, **Northern Blair County Regional Sewer Authority**, R. R. 4, Box 236-A, Tyrone, PA 16686. This proposed facility is located in Antis Township, **Blair County**.

Description of Proposed Action/Activity: Approval of the construction/operation of sewerage facilities consisting of the Pinecroft Interchange Pump Station.

WQM Permit No. 0106201, CAFO, John Hess, **Jobo Holstein Farms, LLC**, 200 Tall Oak Road, Gettysburg, PA 17325. This proposed facility is located in Mount Pleasant Township, **Adams County**.

Description of Proposed Action/Activity: Approval of the construction/operation of manure storage facility consisting of one new HDPE-lines manure storage facility with top dimensions of 310 feet long by 310 feet wide and a maximum depth of 14 feet. The impoundment will have approximately 7.9 million gallons of total storage capacity and 6.85 million gallons of storage capacity with 2 feet of freeboard.

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

WQM Permit No. 1705409, Sewerage, **Burnside Borough Council**, P. O. Box 208, Burnside, PA 15721. This proposed facility is located in Burnside Borough, **Clearfield County**.

Description of Proposed Action/Activity: The permit issuance covers the construction and operation of a collection system and an extended aeration treatment facility. The collection system will serve 120 EDUs and be comprised of 13,000 linear feet of gravity sewer main, 6,000 linear feet of pressure sewer, 3,000 linear feet of force main and a wastewater pump station. The 0.040 mgd wastewater treatment facility will include a sewage grinder in the headworks with a bypass barscreen, a surge tank, extended aeration tanks, clarifiers, ultraviolet disinfection and post-aeration.

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

WQM Permit No. WQG016120, Sewerage, **Benjamin and Brandi Morrison**, P. O. Box 96, Champion, PA 15622. This proposed facility is located in Saltlick Township, **Fayette County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of a single residence sewage treatment plant.

WQM Permit No. WQG026103, Sewerage, **Burrell Township Sewer Authority**, 4345 Park Drive, Black Lick, PA 15716. This proposed facility is located in Burrell Township, **Indiana County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of a pump station and force main to municipal sewers to service student housing.

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

WQM Permit No. WQG018455, Sewerage, **Donald E. Petak**, 110 Avalon Drive, Bedford, OH 44146. This proposed facility is located in Conneaut Township, **Crawford 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****VI. NPDES Discharges of Stormwater Associated with Construction Activities Individual Permit Actions**

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI011506009	Education Carousel, Inc. The Malvern School 20 Creek Road Glen Mills, PA 19342	Chester	Willistown Township	Crum Creek (HQ)
PAI012304006	Sposata-Rayer Builders, Inc. Old Forge Road Subdivision 114 Black Bass Lane-West Media, PA 19063	Delaware	Middletown Township	Rocky Run (HQ-CWF-MF)

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI032105012	Classic Communities 2151 Linglestown Road, Suite 300 Harrisburg, PA 17110	Cumberland	Hampden Township	Trindle Spring Run HQ-CWF

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

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

List of NPDES and/or Other General Permit Types

PAG-1	General Permit for Discharges from Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated with Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater from Industrial Activities
PAG-4	General Permit for Discharges from Single Residence Sewage Treatment Plants
PAG-5	General Permit for Discharges from Gasoline Contaminated Ground Water Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges from Combined Sewer Systems
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application
PAG-8	General Permit for Beneficial Use of Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	CAFOs
PAG-13	Stormwater Discharges from MS4

General Permit Type—PAG-02

<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>
Sadsbury Township Chester County	PAG2001505096	JYF Partners Lafayette Square Development P. O. Box 10 Sadsburyville, PA 19369	Buck Run (TSF, MF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

<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>
City of Philadelphia Philadelphia County	PAG2015105050	Wigard Development, LLC Valley Green Mews Development P. O. Box 315 Plymouth Meeting, PA 19462	Wissahickon Creek (TSF)	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lansford Borough Carbon County	PAG2001306003	Borough of Lansford 26 E. Patterson Street P. O. Box 126 Lansford, PA 18232	Panther Creek CWF	Carbon County Cons. Dist. (610) 377-4894
South Abington Township Lackawanna County	PAG2003504011	Michael Noto P. O. Box 716 Waverly, PA 18471	Summit Lake Creek TSF	Lackawanna County Cons. Dist. (570) 281-9495
West Brunswick Township Schuylkill County	PAG2005405004	Forino Company, LP 555 Mountain Home Road Sinking Spring, PA 19608	Mahannon Creek CWF and Pine Creek CWF	Schuylkill County Cons. Dist. (570) 622-3742
Olyphant Borough Lackawanna County	PAG2003506003	Robert Naegele 1610 Forest Acre Drive Clarks Summit, PA 18411	Lackawanna River CWF	Lackawanna County Cons. Dist. (570) 281-9495
Lower Mt. Bethel Township Northampton County	PAG2004806006	PPL Interstate Co. 214 Shoemaker Rd. Pottstown, PA 19464	Delaware River WWF, MF	Northampton County Cons. Dist. (610) 746-1971
Near McCoysville Tuscarora Township Juniata County	PAG2003406002	Brian K. Ford R. R. 1 Box 420 Honey Grove, PA 17035	UNT to McKinley Run CWF	Juniata County Conservation District R. R. 5 Box 35 Stoney Creek Road Mifflintown, PA 17059 (717) 436-8953
Saint Thomas Township Franklin County	PAG20028030511	Random Oaks Phase 2 Harry Fox 600 Cold Springs Road Dillsburg PA 17109	Back Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Greene Township Franklin County	PAG2002805088	Longview Subdivision Ray Rachuba Rachuba Land LLC 946-a Manmich Court Eldersburg MD 21784	Conococheague Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Washington Township Franklin County	PAG2002806015	K & M DriLoy Masonry David Kirkpatrick 13590 Scott Road Waynesboro PA 17268	West Branch Antietam CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Chambersburg Borough Franklin County	PAG2002806015	Brian Soyka 5700 Sixth Ave. Altoona PA 16002	Conococheague Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5

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<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>
Antrim Township Franklin County	PAG2002806018	Patricia Valentine 3010 Buchanan Trail West Greencastle PA 17225	UNT to Conococheague Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Montgomery Township Franklin County	PAG2002806010	Milton Stamper Milton Stamper Builders 313 East Wilson Blvd. Suite 1 Hagerstown MD 21740	West Branch of Conococheague Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Quincy Township Franklin County	PAG2002806028	Mong Subdivision Richard O. Mong, Jr. 9944 Five Forks Road Waynesboro PA 17244	UNT to Five Forks Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Huntington Township Adams County	PAG2000105018	Dr. William Shoemaker Bermudian Springs School District 7335 Carlisle Pike York Springs, PA 17372	Mud Run WWF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 (717) 334-0636
Gettysburg Borough Adams County	PAG2000106001	Paul K. Hoover Kennie's Market, Inc. 217 W. Middle St. Gettysburg, PA 17325	Stevens Run to Rock Creek WWF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 (717) 334-0636
Reading Township Adams County	PAG2000105024	Lavere A. Stump 1396 Fish and Game Road East Berlin, PA 17316	Tributaries to Red Run WWF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 (717) 334-0636
Oxford Township Adams County	PAG2000105028	Reuben Ness 180 Brickyard Road New Oxford, PA 17350	Tributary to Pine Run WWF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 (717) 334-0636
East Providence Township Bedford County	PAG2030506004	Carl E. Dallmeyer 4775 N. Sherman St. Extended, Unit 1 Mount Wolf, PA 17347-9713	UNT to Shaffer Creek WWF	Bedford County Conservation District 702 W. Pitt St. Suite 4 Bedford, PA 15522 (814) 623-7900
Allegheny County Leetsdale Borough	PAR10A032 R	Chapman Properties 100 Leetsdale Industrial Drive Leetsdale, PA 15056	Ohio River WWF	Allegheny County CD (412) 241-7645
Allegheny County Marshall Township	PAG2000206001	Wilmar Group 451 Browns Lane Pittsburgh, PA 15237	Brush Creek WWF	Allegheny County CD (412) 241-7645
Allegheny County Elizabeth Township	PAG2000206002	REM Development 1625 Lincoln Way White Oak, PA 15131	Youghiogheny River WWF	Allegheny County CD (412) 241-7645

<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>
Allegheny County Bethel Park	PAG2000206003	Hillcrest Christian Academy 2500 Bethel Church Road Bethel Park, PA 15102	Saw Mill Run WWF	Allegheny County CD (412) 241-7645
Allegheny County Penn Hills Boro	PAG2000206007	Municipality of Penn Hills 12245 Frankstown Road Pittsburgh, PA 15235	Thompson Run WWF	Allegheny County CD (412) 241-7645
Allegheny County Duquesne	PAG2000206009	City of Duquesne 12 South Second Street Duquesne, PA 15110	Monongahela River WWF	Allegheny County CD (412) 241-7645
Allegheny County Bethel Park	PAG2000206013	Oakbrooke Muse, LP P. O. Box 10360 300 Weyman plaza Pittsburgh, PA 15234	Piney Fork WWF	Allegheny County CD (412) 241-7645
Allegheny County Franklin Park	PAG2000206036	New Heights Church of God 2580 Wexford Bayne Road Sewickley, PA 15143	Kilbuck Run WWF	Allegheny County CD (412) 241-7645
Allegheny County North Fayette Township	PAG2000206037	George J. Wagner, Jr. P. O. Box 419 Sturgeon, PA 15082	Robinson Run WWF	Allegheny County CD (412) 241-7645
Greene County Franklin Township	PAG2003006002	County of Greene 93 East High Street Waynesburg, PA 15370-1839	Laurel Run WWF	Greene County CD (724) 852-5278
Greene County Cumberland Township	PAG2003006005	Wellington Dev., WVDT, LLC 1620 Locust Avenue Fairmont, WV 26554	Monongahela River and Peg's Run WWF	Greene County CD (724) 852-5278
Indiana County Indiana Borough	PAG2003206005	Donna Putt Indiana University of Pennsylvania Sutton Hall Room 103 1011 South Drive Indiana, PA 15705	Stoney Run CWF	Indiana County CD (724) 463-8547
Washington County South Strabane Township	PAG2006306010	Ryan Cronk The Foundry at South Strabane, LLC 5252 East 82nd Street Suite 300 Indianapolis, IN 46250	Tributary of Chartiers Creek WWF	Washington County CD (724) 228-6774
Crawford County Conneautville Borough	PAG2002006003	Conneautville Borough P. O. Box 288 Conneautville, PA 16406	Conneaut Creek and UNT WWF-MF	Crawford Conservation District (814) 763-5269
Erie County Millcreek Township	PAG2002506005	Tom Montagna 1132 West 54th Street Erie, PA 16509	Walnut Creek CWF, MF	Erie Conservation District (814) 825-6403
McKean County Bradford Township	PAG2064206002	Bradford City Water Authority 28 Kennedy Street Bradford, PA 16701-2006	Marilla Brook CWF	Dept. of Environmental Protection 230 Chestnut Street Meadville, PA 16335
Mercer County City of Hermitage	PAG2004306002	Marcia Hirschmann City of Hermitage 800 N. Hermitage Road Hermitage, PA 16148	UNT Golden Run WWF	Mercer Conservation District (724) 662-2242

*General Permit Type—PAG-3**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>
Horsham Township Montgomery County	PAR800068	United Parcel Service Inc. 700 Blair Mill Road Horsham, PA 19044	Pennypack Creek 3J Watershed	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5970
Lansdale Borough Montgomery County	PAR600063	Mattero Brothers d/b/a Joe Mattero Recycling 316 W. 7th Street Philadelphia, PA 19446	West Branch of Neshaminy Creek 2F Watershed	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5970
Bristol Township Bucks County	PAR900003	Exelon Generation Co., LLC 955 River Road Bristol, PA 19201	Delaware River 2E Watershed	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5970
West Goshen Township Chester County	PAR800065	United Parcel Service, Inc. 1200 Ward Ave. West Chester, PA 19380	UNT to Chester Creek 3G Watershed	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5970
New Garden Township Chester County	PAR600068	Blittersdorf Inc. 1019 Newark Road Toughkenamon, PA 19374	UNT to White Clay Creek 3I Watershed	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5970
Venango Township Erie County	PAR148302	International Paper Uniflow Center Room D 1525 East Lake Road Erie, PA 16511	UNT to French Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-4**Facility Location*

<i>County & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Fayette County Saltlick Township	PAG046317	Benjamin and Brandi Morrison P. O. Box 96 Champion, PA 15622	Wash Run	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Conneaut Township Crawford County	PAG049244	Donald E. Petak 110 Avalon Drive Bedford, OH 44146	UNT to Linesville Creek 20-A	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
East Mead Crawford County	PAG048416	Paul M. Mercier 26143 North Frenchtown Road Guys Mills, PA 16327-1131	UNT to Little Sugar Creek 16-D	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-8 (SSN)**Facility Location:
Municipality &
County**Permit No.**Applicant Name &
Address**Site Name &
Location**Contact Office &
Phone No.*Adams County
Reading TownshipPAG080002
PAG080003
PAG080004
PAG080006
PAG080008
PAG082201
PAG082203
PAG083501
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PAG083825
PAG089903
PAG089904
PAG089905Synagro Mid Atlantic
P. O. Box B
1605 Dooley Road
Whiteford, MD 21160

Ed Carson Farm

DEP—SCRO
909 Elmerton Avenue
Harrisburg, PA
17110-8200
(717) 705-4707Franklin County
Quincy Township

PAG083590

Mont Alto Municipal
Authority
3 North Main Street
Mont Alto, PA 17237Mont Alto Municipal
Authority FarmDEP—SCRO
909 Elmerton Avenue
Harrisburg, PA
17110-8200
(717) 705-4707Berks County
Heidelberg and
Lower Heidelberg
TownshipsPAG080002
PAG080003
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PAG082201
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PAG083825
PAG089903
PAG089904
PAG089905SYNAGRO
1605 Dooley Road
P. O. Box B
Whiteford, MD 21160

Larry Gelsinger Farm

DEP—SCRO
909 Elmerton Avenue
Harrisburg, PA
17110-8200
(717) 705-4707

General Permit Type—PAG-9

<i>Facility Location & County/Municipality Permit No.</i>	<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>
Derry Township Westmoreland County PAG096117	John S. Pavlik 900 Livermore Road Blairsville, PA 15717	John S. Pavlik Sanitation	Southwest Regional Office: Water Management Program Manager 400 Waterfront Drive Pittsburgh PA 15222-4745 (412) 442-4000

General Permit Type—PAG-9 (SSN)

<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Site Name & Location</i>	<i>Contact Office & Phone No.</i>
Fulton County Ayr Township	PAG093547	Jim Chestnut 327 Chestnut Farm Lane McConnellsburg, PA 17233	Chestnut Farm	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110-8200 (717) 705-4707

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.

Operations Permit issued to the **Borough of Sellersville**, 140 East Church Street, Sellersville, PA

18960, (PWS ID 1090062) West Rockhill Township, **Bucks County** on April 12, 2006, for the operation of facilities approved under construction Permit No 0905502, for the Filtration Plant Renovation.

Operations Permit issued to the Sellersville Borough Municipal Authority, 140 East Church Street, Sellersville, PA 18960, (PWS ID 1090062) West Rockhill Township, **Bucks County** on April 12, 2006, for the operation of facilities approved under construction Permit No. 0905510, for installation of a sodium hypochlorite disinfection system on Well No. 1.

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

Permit No. 3480015, Public Water Supply.

Applicant	Hickory Hills Mobil Home Court Moore Township Northampton County
Responsible Official	Donald Evans, Community Manager Hickory Hills Mobil Home Court 121 Hickory Hills Drive Bath, PA 18014
Type of Facility	Community Water System
Permit Issuance Date	April 17, 2006
Description of Action	PWS permit issued for operation of backup treatment facilities constructed under permit No. 4899502, issued February 17, 2000.

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

Permit No. 3805501 MA, Minor Amendment, Public Water Supply.

Applicant	West Lebanon Township
Municipality	West Lebanon Township
County	Lebanon

Type of Facility Construction of a new 300,000 gallon storage tank to replace the existing inground tank, Improvements to wellhouse No. 2 and relocation of the interconnection with the City of Lebanon. The UER was submitted on 3-28-2006 and approved.

Consulting Engineer Angelo A. Tesoriero, P. E.
GeoSource Engineers
7 Winter Drive
Dillsburg, PA 17019-9550

Permit to Construct Issued: 3/31/2006

Permit No. 0605526MA, Minor Amendment, Public Water Supply.

Applicant **Wissahickon Spring Water**

Municipality Hamburg Borough

County **Berks**

Type of Facility Move bottling plant from Kutztown to Hamburg.

Consulting Engineer Gary Kribbs
AEON Geoscience, Inc.
2120 Bellemead Ave.
Havertown, PA 19083

Permit to Construct Issued: 4/14/2006

Operations Permit issued to the **North Middleton Authority**, 7210049, North Middleton Township, **Cumberland County** on 4/10/2006 for the operation of facilities approved under Construction Permit No. 2105509 MA.

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

Operations Permit issued to the Ohiopyle Borough, P. O. Box 83, Ohiopyle, PA 15470, (PWS ID 5260015), Ohiopyle Borough, **Fayette County** on April 17, 2006, for the operation of facilities approved under Construction Permit No. 465W009-A2.

Operations Permit issued to the **Southwestern Pennsylvania Water Authority**, P. O. Box 187, 1442 Jefferson Road, Jefferson, PA 15344, (PWS ID 5300017), German and Washington Townships, **Fayette and Greene Counties** on April 17, 2006, for the operation of facilities approved under Construction Permit No. 3002501.

Operations Permit issued to the **Southwestern Pennsylvania Water Authority**, P. O. Box 187, 1442 Jefferson Road, Jefferson, PA 15344, (PWS ID 5300017), Washington Township, **Greene County** on April 17, 2006, for the operation of facilities approved under Construction Permit No. 3004501.

Permit No. 0406501MA, Minor Amendment. Public Water Supply.

Applicant **Municipal Authority of the Township of North Sewickley**

Borough or Township North Sewickley Township

County **Beaver**

Type of Facility Wisers Grove water storage tank

Consulting Engineer US Engineering, LLC
75 Jardin Circle
Highland, IL 62249

Permit to Construct Issued: March 7, 2006

WATER ALLOCATIONS

Applications received under the act of June 24, 1939 (P. L. 842, No. 365) (35 P. S. §§ 631—641) relating to the Acquisition of Rights to Divert Waters of the Commonwealth

Southcentral Region: Water Supply Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

WA 21-419B, Water Allocations. Newville Borough Water & Sewer Authority, Cumberland County. Withdrawal a maximum of 500,000 gpd from either Big Spring Creek or Cool Spring, or a combination of the two sources. Consulting Engineer: Janet R McNally, P. E., William F. Hill & Assoc., Inc.. Permit Issued: 4/3/2006.

SEWAGE FACILITIES ACT PLAN APPROVAL

Plan Approvals Granted under the Pennsylvania Sewage Facilities Act (35 P. S. §§ 750.1—750.20a)

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

Plan Location: The Estates At Coldwater Crossings, Phase II

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Upper Macungie Township	Upper Macungie Township Municipal Building Thomas C. Gorr Township Secretary 8330 Schantz Road Breinigsville, PA 18031	Lehigh

Plan Description: The approved plan provides for a 124 lot single-family residential subdivision on 126 acres of a 154.8 acre tract with proposed sewage flows of 45,650 gpd. A proposed pump station and force main will serve the 124 lots of Phase II and has been sized to accommodate sewage flows from 42 offsite homes from another proposed subdivision. This Planning Approval pertains only to the 124 lots of The Estates At Coldwater Crossings, Phase II. Separate Planning Approval will be required for the offsite homes. The Phase II force main will connect to Manhole CWC-26 located in the Phase I Section of Coldwater Crossings. The 8" PVC Gravity Sewer in Phase I connects into the Lehigh County Authority Western Lehigh Interceptor at Manhole U-41. The City of Allentown will provide wastewater treatment facilities for the project. A General Permit has been obtained from the Department of Environmental Protection to allow the work in the wetlands associated with the sanitary sewer connection to the Lehigh County Interceptor. Lehigh County Authority will provide public water to the project. The proposed development is located on Brookdale Road, Upper Macungie Township, Lehigh County. Required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

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

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
North Middleton Township.	2051 Spring Road Carlisle, PA 17013	Cumberland

Plan Description: The approved plan provides for a Small Flow Treatment Facility (SFTF) of 500 gpd to serve the proposed new residence on the existing A. C. Kuhn property at Lot 1—Kendor Summit. The proposed SFTF will discharge to the Conodoguinet Creek. The SFTF is the interim method of sewage disposal until public sewers are available. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
East Cocalico Township	100 Hill Road Denver, PA 17517	Lancaster County

Plan Description: The approved plan provides for extension of sewer service to the Woodcrest Retreat Camp. A total of 10,514 gpd of sewage will be tributary to a private collection system and pump station owned by Woodcrest Retreat Assn. and then to the East Cocalico Township sewage collection system. Sewage will be treated at the Ephrata Borough wastewater treatment plant. The DEP code number for this plan is A3-36924-197-3 and the APS number is 552233. 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 WQM Permits must be obtained in the name of the Woodcrest Retreat Association as appropriate.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Antrim Township	P. O. Box 130 10655 Antrim Church Road Greencastle, PA 17225	Franklin County

Plan Description: The approved plan, in the name of Rochester Place, provides for 270 townhouse units using ATMA sewer with sewage flows of 108,000 gpd. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Required NPDES Permits or WQM Permits must be obtained in the name of the Authority.

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Antrim Township	P. O. Box 130 10655 Antrim Church Road Greencastle, PA 17225	Franklin County

Plan Description: The approved plan, in the name of Heritage Estates West, provides for 209 single family residential dwellings, 73 duplex units and 162 townhouse units using ATMA sewer with sewage flows of 177,600 gpd. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Required NPDES Permits or WQM Permits must be obtained in the name of the Authority.

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

Plan Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Galeton Borough	P. O. Box 222 Galeton, PA 16922	Potter

Plan Description: The approved plan provides for constructing new sanitary and storm sewers in the North Sewer Shed portion of Galeton Borough. Additionally a new pump station will be installed to divert flow to the new sewers and the existing CSO will be upgraded to facilitate solids removal. This construction will significantly reduce CSO discharges and I and I flow in the Borough's sewage facilities. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

HAZARDOUS SITES CLEAN-UP UNDER THE ACT OF OCTOBER 18, 1988

NOTICE OF PROMPT INTERIM RESPONSE

Intercourse TCE Site

Leacock Township, Lancaster County, PA

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (HSCA) (35 P.S. §§ 6020.101—6020.1305) has initiated a prompt interim response at the Intercourse TCE Site (Site). The prompt interim response has been initiated under sections 501(a) and 505(b) of the HSCA (35 P.S. §§ 6020.501(a) and 6020.505(b)).

The site is located in Leacock Township, Lancaster County. Groundwater serving a number of residential wells in the area of Intercourse is contaminated with trichloroethylene (TCE), a VOC. This residential area is located about 8 to 10 miles east of Lancaster City which is the nearest public water supply.

Department considered three alternatives:

1. *Institutional Controls:* The Department would use institutional controls to limit the use of groundwater. Individuals would be notified of the health risks for continued use of contaminated private water supplies. Institutional controls such as deed notices or deed restrictions would be placed on record that would alert new property owners, during property transactions, of the contaminated groundwater. Deed notices are attached to the deed to inform prospective property purchasers of the contamination present at the property. Deed restrictions placed on property deeds would restrict or limit future site activities to prevent human contact with contaminated groundwater, and place limitations on the use of groundwater without adequate treatment. This alternative would not remove the actual exposure of the residents to the hazardous substances in the groundwater and would not be protective of human health and the environment unless the individual property owners initiated measures to limit their exposure. This alternative would not comply with applicable or relevant and appropriate requirements (ARARs) for the site. The annual analytical cost for the groundwater monitoring in this alternative is \$4,000.

2. *Bottled Water:* This alternative provides for the Department to furnish commercial bottled water to the

impacted residences. Bottled water would be delivered regularly to each residence that has a water supply contaminated in excess of the MCL for TCE. This would effectively remove the risk posed by ingestion, but would not remove the risk posed by inhalation and dermal contact. This alternative would reduce the negative health impact of using the contaminated groundwater for private water supplies and thus provide an increase in protection of human health and the environment. The present cost of this alternative for the known 38 residential supplies that exceed the MCL for TCE, and do not have a treatment system, is approximately \$10,000 per year.

3. *Point-Of Use Water Treatment Units*: This alternative provides for the Department to install carbon treatment systems on the supply line of private wells that are contaminated. The Department will provide continuing laboratory monitoring of these systems and provide maintenance of these units until a final remedial decision for the site. This is not a permanent solution and would require continued actions by the Department to monitor and operate the units. The remedy would need to be continued until the Department completes an investigation of the area to determine the possible source of contamination and final remediation alternatives. The carbon treatment systems would effectively remove the risk posed by ingestion, inhalation and dermal contact. This alternative will be protective of human health and the environment. Initial installation of a carbon treatment system is estimated to cost \$3,670 per unit, currently 4 units. Annual carbon change out and UV light replacement is estimated at \$1,415. Sampling and analytical monitoring costs are estimated at \$1,040 a year per system.

The Department has selected Alternatives 2 and 3 as prompt interim responses. Alternative 2, Bottled Water, was initiated on February 1, 2006 for residences with water supply contamination levels greater than 5 ppb of TCE but less than 25 ppb. Bottled water delivery will continue until a more permanent solution is provided. Alternative 3, Point of Use Water Treatment Systems, will be provided for residences that have TCE levels greater than the inhalation risk numeric value of 25 ppb TCE in their water supply. These systems will be monitored and maintained by the Department until further notice.

The Department is providing this notice under sections 505(b) and 506(b) of the HSCA, and the publication of this notice in the *Pennsylvania Bulletin* starts the administrative record period under the HSCA. The administrative record which contains information about this site and which supports the Department's decision to perform this action at the site is available for public review and comment. The administrative record can be examined Monday through Friday from 8 a.m. to 4 p.m. at the Department's Southcentral Regional Office located at 909 Elmerton Avenue, Harrisburg, PA 17110, by contacting Crystal Snook at (717) 705-6645. The Administrative Record can also be reviewed at the Leacock Township Building, 3545 West Newport Road, Intercourse, PA, (717) 768-8585 from 8 a.m. to 4 p.m., Monday through Friday.

The administrative record will be open for comment from the date of publication of this notice in the *Pennsylvania Bulletin* on April 29, 2006, and will remain open for 90 days. Persons may submit written comments regarding this action to the Department before July 28, 2006, by mailing them to Crystal Snook at the DEP Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA 17110-8200.

The public will have an opportunity to present oral comments regarding the proposed action at a public hearing. The hearing has been scheduled for June 14, 2006, at 7 p.m. at the Leacock Township Building, 3545 West Newport Road, Intercourse, PA. Persons wishing to present formal oral comment at the hearing should register before 4 p.m., June 7, 2006, by calling Sandra Roderick at (717) 705-4703.

If no person registers to present oral comments, by June 7, 2006, the hearing will not be held, but will be replaced with an informational meeting. Persons interested in finding out if anyone has registered, and if the hearing will be held, should also contact Sandra Roderick at the number previously listed.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceedings, should call Sandra Roderick at the previously listed number or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 2

The following plans and reports were submitted under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of Chapter 3 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of submission of plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the act's remediation standards. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis for selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling analytical results which demonstrate that remediation has attained the cleanup standard selected. Submission of plans and reports, other than the final report, shall also be published in the *Pennsylvania Bulletin*. These include the remedial investigation report, risk assessment report and cleanup plan for a site-specific standard remediation. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media; benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements.

For further information concerning plans or reports, contact the Environmental Cleanup Program manager in the Department regional office after which the notice of receipt of plans or reports appears. If information concerning plans or reports is required in an alternative form, contact the Community Relations Coordinator at

the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

Harrelson Res., New Garden Township, **Chester County**. Richard D. Trimpi, Trimpi Assoc., Inc., 1635 Old Plains Road, Pennsburg, PA 18073 on behalf of John Harrelson, 28 Chambers Rock Road, Landenberg, PA 19340 has submitted a Final Report concerning remediation of site soil contaminated with No. 2 fuel oil. The report is intended to document remediation of the site to meet the Statewide Health Standard.

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

Sheetz 38, City of Altoona, **Blair County**. Groundwater & Environmental Services, Inc. 6 Sheraton Drive, Suite 2, Altoona, PA 16601, on behalf of Sheetz, Inc., 5700 6th Avenue, Altoona, PA, 36334, submitted a Final Report concerning remediation of site soils and groundwater contaminated with compounds associated with unleaded gasoline. The report is intended to document remediation of the site to the Statewide Health Standard.

IFS Industries, former Prizer Painter Stove Works, Inc., City of Reading, **Berks County**. Golder Associates, Inc., 1951 Old Cuthbert Road, Suite 301, Cherry Hill, NJ 08034, on behalf of IFS Industries, Inc., 400 Orrton Avenue, Reading, PA 19603 and Prizer Painter Stove Works, Inc., 600 Arlington Street, Reading, PA 19603, submitted a Remedial Investigation Report and a Cleanup Plan concerning remediation of site soils and groundwater contaminated with metals, naphthalene and VOCs. The site will be remediated to a combination of Statewide Health and Site-Specific Standards.

Kohler Well Drilling, Hellam Borough, **York County**. GemChem, Inc. 53 North Cedar Street, P. O. Box 384, Lititz, PA 17543, on behalf of Eichelbergers, Inc., 107 Texaco Road, Mechanicsburg, PA 17050, submitted a Final Report concerning remediation of site soils contaminated with diesel fuel. The report was submitted within 90 days of the release and is intended to document remediation of the site to the Statewide Health Standard.

Mercer Paper Tube, Manchester Township, **York County**. EPSYS Corporation, 1414 North Cameron Street, Harrisburg, PA 17103, on behalf of The Newark Group, Inc., 20 Jackson Drive, Cranford, NJ, 07016, submitted a Final Report concerning remediation of site soils and groundwater contaminated with No. 2 heating oil. The report is intended to document remediation of the site to the Statewide Health Standard.

Adhesives Research, Springfield Township, **York County**. URS Corporation, 5010 Ritter Road, Suite 101, Mechanicsburg, PA 17055, on behalf of Adhesives Research, Inc., 400 Seaks Run Road, P. O. Box 100, Glen Rock, PA 17327, submitted a Final Report within 90 days of release concerning remediation of site soils contaminated with VOCs. The report is intended to document remediation of the site to the Statewide Health Standard.

Greg's Automotive Repair, Gettysburg Borough, **Adams County**. Alliance Environmental Services, Inc., 1820 Linglestown Road, PA 17110, on behalf of Greg's Automotive Repair, 500 York Street, Gettysburg, PA 17325, submitted a Remedial Investigation report con-

cerning remediation of site soil and groundwater contaminated with gasoline constituents. The report is intended to document remediation of the site to the Site Specific Standard.

Eatwell Diner—former, North Lebanon Township, **Lebanon County**. Alliance Environmental Services, Inc., 1820 Linglestown Road, PA 17110, on behalf of Hamdy Aboshusa, c/o Timothy Engler, Esq., Engler Law Office, 411 Cumberland Street, Lebanon, PA 17042, submitted a Final Report within 90 days of release concerning remediation of site soils and groundwater contaminated with No. 2 heating oil. The report is intended to document remediation of the site to the Statewide Health Standard.

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

Calumet Lubricants Rouseville Plant 1, Rouseville Borough, **Venango County**. Daniel Bremer, Rybricon Env. Consulting, 302 Seneca Street, 2nd Floor, Oil City, PA 16301 on behalf of Dan Chapman, Calumet Lubricants Co., 1884 Allegheny Ave., Reno, PA 16343 has submitted a Remedial Investigation Report/Risk Assessment Report concerning remediation of site soil and groundwater contaminated with diesel fuel, fuel oil, kerosene, lead, motor oil, polynuclear aromatic hydrocarbons and unleaded gasoline. The report is intended to document remediation of the site to meet the Site Specific Standards.

LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

UNDER ACT 2, 1995

PREAMBLE 3

The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a site-specific standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan

for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.

380 and 382 North Hanover Street, Borough of Pottstown, **Montgomery County**. Jeremy Boly, Patriot Env. Mgmt., LLC, P. O. Box 629, Douglassville, PA 19518 on behalf of Ken Cusamano, 380 North Hanover St., Pottstown, PA 19464 and Robert Keim, 382 North Hanover St., Pottstown, PA 19464 has submitted a Final Report concerning the remediation of site soil contaminated with No. 2 fuel oil. The report was submitted within 90-days of release-demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on March 21, 2006.

Smith Res., Willistown Township, **Chester County**. Richard D. Trimpi, Trimpi Assoc., Inc., 1635 Old Plains Road, Pennsburg, PA 18073 on behalf of William Smith, 769 S. Warren Ave., Willistown, PA 19355, has submitted a Final Report concerning the remediation of site soil, groundwater and surface water contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on April 4, 2006.

Smith Prop., East Coventry Township, **Chester County**. Richard D. Trimpi, Trimpi Assoc., Inc., 1635 Old Plains Rd., Pennsburg, PA 18073 on behalf of Andrew Wright, Dtr. of Planning and Site Dev., Equitable Owners, The Nolen Group, 5051 1/2 Germantown Pike, Lafayette Hill, PA 19444 has submitted a Final Report concerning the remediation of site soil contaminated with No. 2 fuel oil. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on April 7, 2006.

Cavanugh-Patterson Funeral Home, Borough of Media **Montgomery County**. Joseph Diamadi, Jr., P. G. Marshall Geoscience, Inc., 170 East First Ave., Colledgeville, PA 19426 on behalf of Lee Cavanugh, 43 East Baltimore Avenue, Media, PA 19086 has submitted a Final Report concerning the remediation of site soil contaminated with No. 2 fuel oil. The report was submitted within 90-days of release-demonstrated attainment of the Statewide Health Standard and was approved by the Department of Environmental Protection on April 5, 2006.

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

Susquehanna Township School District-Middle School, Susquehanna Township, **Dauphin County**. Alliance Environmental Services, Inc., 1820 Linglestown Road, Harrisburg, PA 17110, on behalf of Susquehanna Township School District, 3550 Elmerton Avenue, Harrisburg, PA 17109, submitted a Final Report concerning remediation of site soils and groundwater contaminated with heating fuel oil. The final report demonstrated attainment of the Residential Statewide Health Standard, and was approved by the Department on April 18, 2006.

HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

Draft permits issued, revised or withdrawn under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003) and Regulations to Operate a Hazardous Waste Treatment, Storage or Disposal Facility.

Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.

PAD 003 025 418, BAE Systems, Ground Systems Division, P. O. Box 15512, York, PA 17045-1512, West Manchester Township, **York County**.

Draft Postclosure Permit revised on April 17, 2006

The Department of Environmental Protection (Department) is publishing a revised draft postclosure permit for BAE Systems, Ground Systems Division (formerly United Defense, LP). The postclosure permit includes maintenance provisions for the closed Lagoons 1-4 (a/k/a the MTR Landfill) and groundwater monitoring provisions for this hazardous waste disposal unit. The draft permit was originally issued for public comment on November 16, 1997. The draft permit has subsequently been revised to update a change in ownership and address, changes to the proposed postclosure groundwater monitoring system and to include financial assurance provisions for a RCRA Corrective Action permit modification issued by the United States Environmental Protection Agency on March 6, 2006.

Persons wishing to comment on the draft permit should submit comments to the Southcentral Regional Office within 45 days from the date of this public notice. Comments received within this 45-day period will be considered in the formulation of the final determination regarding this application. Responses should include the name, address and telephone number of the writer and a concise statement to inform the Regional Office of the exact basis of any comment and the relevant facts upon which it is based. A public hearing may be held if the Regional Office considers the public response significant.

Following the 45-day comment period and/or public hearing, the Department will make a final determination regarding the proposed permit action. Notice of this action will be published in the *Pennsylvania Bulletin* at which time this determination may be appealed to the Environmental Hearing Board.

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.

39-302-182GP1: Allentown State Hospital (1600 Hanover Avenue, Allentown, PA 18109) on April 13, 2006, to construct and operate a Superior Boiler in Allentown, **Lehigh County**.

66-310-011GP3: Haines and Kibblehouse, Inc. (P. O. Box 196, 2052 Lucon Road, Skippack, PA 19474) on April 13, 2006, to construct and operate a portable stone crushing plant and associated air cleaning device in Falls Township, **Wyoming County**.

48-310-061GP3: Haines and Kibblehouse, Inc. (P. O. Box 196, 2052 Lucon Road, Skippack, PA 19474) on April 13, 2006, to construct and operate a Pegson portable stone crushing plant and associated air cleaning device at the ABE Materials facility in Lower Mount Bethel Township, **Northampton County**.

48-310-062GP3: Reading Materials, Inc. (P. O. Box 1467, Skippack, PA 19474) on April 13, 2006, to construct and operate a Nordberg portable stone crushing plant and associated air cleaning device at the ABE Materials facility in Lower Mount Bethel Township, **Northampton County**.

54-310-038GP3: Pennsy Supply, Inc. (1001 Paxton Street, Harrisburg, PA 17104) on April 13, 2006, to construct and operate a portable stone crushing plant and associated air cleaning device at the Summit Station facility in Wayne Township, **Schuylkill County**.

45-329-002GP9: Sanofi Pasteur, Inc. (Discovery Drive, Swiftwater, PA18370) to construct and operate of eight emergency generators in Pocono Township, **Monroe County**.

45-312-002GP2: Sanofi Pasteur, Inc. (Discovery Drive, Swiftwater, PA18370) to construct and operate a fuel oil storage tank in Pocono Township, **Monroe County**.

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

GP1-07-03001: Altoona Area School District (2407 6th Avenue, Altoona, PA 16602) on April 10, 2006, for Small Gas and No. 2 oil fired combustion units under GP1 in City of Altoona, **Blair County**.

GP3-5-05-03010: New Enterprise Stone and Lime Co., Inc. (P. O. Box 77, New Enterprise, PA 16664) on April 10, 2006, for Portable Nonmetallic Mineral Processing Plants under GP3 in Snake Spring Township, **Bedford County**.

GP3-13-07-03014: New Enterprise Stone and Lime Co., Inc. (P. O. Box 77, New Enterprise, PA 16664) on April 10, 2006, for Portable Nonmetallic Mineral Processing Plants under GP3 in Taylor Township, **Blair County**.

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

GP3-56-00011C: The New Enterprise Stone and Lime Co., Inc. (P. O. Box 77, New Enterprise, PA 16664) on April 11, 2006, to operate the following equipment under the provisions of General Permit No. 3, "Portable Nonmetallic Mineral Processing Plants": One Allis-Chalmers No. 3655 Crusher (700 tons/hr), One Barber-Greene Conveyor (700 tons/hr), and One Caterpillar No.

3508 Diesel Generator (1089 Bhp). This equipment will be at the Central City Sand Plant in Shade Township, **Somerset County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.

GP-10-306: Universal Manufacturing Corp. (550 West New Castle Street, Zelienople, PA 16063) on April 6, 2006, for a burn off oven in Zelienople, **Butler County**.

Plan Approvals Issued under the Air Pollution Control Act and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.

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

46-0029B: Glasgow, Inc. (Route 309 and Hartman Road, Montgomeryville, PA 18936) on April 14, 2006, to operate a replace components/upgrades in Montgomery Township, **Montgomery County**.

23-0091A: Union Packaging, LLC (6250 Baltimore Ave, Yeadon, PA 19050) on April 14, 2006, to operate a flexographic printing press in Yeadon Borough, **Delaware County**.

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

54-305-022: Wheelabrator Culm Services, Inc. (475 Morea Road, Frackville, PA 17931) on April 5, 2006, to construct an anthracite coal culm processing plant in Mahanoy Township, **Schuylkill County**.

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

67-05004K: P. H. Glatfelter Co. (28 South Main Street, Spring Grove, PA 17362-1000) on April 10, 2006, to use calcium chloride as an antifreezing agent to railcar delivered coal during the months of January and February in Spring Grove Borough, **York County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.

37-023D: Orion Power Midwest, LP—New Castle (2189 Street, Route 168 South, West Pittsburgh, PA 16160-0325) on April 7, 2006, to permanently install the selective noncatalytic reduction systems on Units 3—5 in Taylor Township, **Lawrence County**. This is a Title V facility.

42-178B: Glenn O. Hawbaker, Inc. (Turtlepoint Sid-ing, Turtlepoint, PA 16750) on April 12, 2006, to modify a plan approval to burn alternative fuels including Nos. 2, 5 and 6, reprocessed/recycled oil or biodiesel fuel at Glenn O. Hawbaker, Inc. Plant No. 7—Turtlepoint Asphalt in Annin Township, **McKean County**.

Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act and 25 Pa. Code §§ 127.13, 127.13a and 127.32.

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

09-0122: Arkema Inc. (2000 Market Street, Philadelphia, PA 19103) on April 13, 2006, to operate a thermal oxidizer in Bristol Township, **Bucks County**.

09-0122A: Arkema Inc. (2000 Market Street, Philadelphia, PA 19103) on April 13, 2006, to operate a B66 thermal oxidizer in Bristol Township, **Bucks County**.

46-0035D: SmithKline Beecham d/b/a GlaxoSmith-Kline (1250 South Collegeville Road, Collegeville, PA 19426) on April 14, 2006, to operate an incinerator in Upper Merion Township, **Montgomery County**.

46-0220: Micro Coax Inc. (206 Jones Boulevard, Pottstown, PA 19464) on April 13, 2006, to operate two horizontal jennings extruders in Limerick Township, **Montgomery County**.

09-0061: Donaldson Company, Inc.—Tetratec (85 Railroad Drive, Warminster, PA 18974) on April 14, 2006, to operate an extrusion line in Northampton Township, **Bucks County**.

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

48-306-008D: Northampton Generating Co., LP (1 Horwith Drive, Northampton, PA 18067) on April 1, 2006, to modify a fluidized bed boiler to utilize alternate fuels in Northampton Borough, **Northampton County**. The Plan Approval has been extended.

48-328-003A: PPL Generation, LLC (Two North Ninth Street, Allentown, PA 18101) on April 3, 2006, to modify four combustion turbines at at Martins Creek SES, Lower Mount Bethel Township, **Northampton County**. The Plan Approval has been extended.

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

31-05011C: U. S. Silica Co. (P. O. Box 187, Berkeley Springs, WV 25411) on April 14, 2006, to modify an existing fluid bed dryer to use additional fuels of Nos. 4 and 6 oil and recycled oil at their Mapleton Depot Plant in Brady Township, **Huntingdon County**. This plan approval was extended.

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

41-399-026: Penn Recycling, Inc. (2525 Trenton Avenue, Williamsport, PA 17701) on April 10, 2006, to operate an automobile/metal shredding system and associated air cleaning devices (a foam injection system and cyclone collector) on a temporary basis until August 8, 2006, in the City of Williamsport, **Lycoming County**. The plan approval has been extended.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.

24-083E: Carbone of America—Graphite Materials Division (1032 Trout Run Road, St. Marys, PA 15857) on April 30, 2006, to install a scrubber in Benzinger Township, **Elk County**. This is a Title V facility.

24-083F: Carbone of America—Graphite Materials Division (1032 Trout Run Road, St. Marys, PA 15857) on April 30, 2006, to construct Carbon Baking Kiln No. 34 with a thermal oxidizer and connecting to an existing scrubber in Benzinger Township, **Elk County**. This is a Title V facility.

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

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

04-00446: AES Beaver Valley, LLC (394 Frankfort Road, Monaca, PA 15061-2254) on March 8, 2006, for their cogeneration facility that sells electricity and steam to neighboring companies in Monaca, **Beaver County**. As a result of the potential levels of NO_x emitted from this facility, it is a major stationary source as defined in Title I, Part D of the Clean Air Amendments. The facility is therefore subject to the Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G.

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

24-00009: Weyerhaeuser Co. (100 Center Street, Johnsonburg, PA 15845) on April 4, 2006, to reissue their Title V Operating Permit to operate the paper plant in Johnsonburg Borough, **Elk County**. As a result of potential emissions of NO_x, the facility is a major source, and is therefore subject to Reasonable Available Control Technology. The issued renewal Title V Operating Permit does not reflect any changes in air emission from the facility. The facility is subject to Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. Two sources (boilers Nos. 6 and 7) at the facility are subject to Compliance Assurance Monitoring under 40 CFR Part 64.

Operating Permits for Non-Title V Facilities Issued under the Air Pollution Control Act and 25 Pa. Code Chapter 127, Subchapter F.

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

09-00004: Tolas Health Care Packaging (905 Pennsylvania Boulevard, Feasterville, PA 19053) on April 14, 2006, to operate two rotogravure presses, six lithographic presses and two cold degreasers to the facility Synthetic Minor Operating Permit in Lower Southampton Township, **Bucks County**.

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

22-05034: Pennsy Supply, Inc. (1001 Paxton Street, Harrisburg, PA 17105) on April 12, 2006, for a hot mix batch asphalt plant at their facility in Hummelstown Quarry in South Hanover Township, **Dauphin County**. This operating permit was administratively amended to update the conditions for waste oil. This is revision No. 1.

22-05037: Pennsy Supply, Inc. (1001 Paxton Street, Harrisburg, PA 17105) on April 13, 2006, to operate an asphalt plant at their Paxton Street Asphalt Plant in the City of Harrisburg, **Dauphin County**. This operating permit was administratively amended to update the conditions for waste oil. This is revision No. 1.

28-05019: Valley Quarries, Inc. (169 Quarry Road, Chambersburg, PA 17201-9099) on April 12, 2006, to operate two asphalt plants at their Chambersburg facility in Guilford Township, **Franklin County**. This is a renewal of the State-only operating permit.

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

41-00063: Ralph S. Alberts Co., Inc. (60 Choate Circle, Montoursville, PA 17754) on March 17, 2006, to issue a State-only operating permit for their polyurethane foam parts manufacturing facility in Fairfield Township, **Lycoming County**. The facility's main sources include a molded plastic parts surface coating operation consisting of five spray booths and one spray gun solvent cleaning sink. The State-only operating permit contains all applicable regulatory requirements including monitoring, recordkeeping and reporting conditions.

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

10-00028: II VI Inc.—Clinton Township (375 Saxonburg Blvd. Saxonburg, PA 16056) on April 4, 2006, to operate their optical instrument and lenses plant located in Clinton Township, **Butler County**.

25-00984: Harrison Machine Co. (3118 Station Road, Erie, PA 16510-6502) on April 11, 2006, to reissue a Natural Minor Operating Permit to operate a metal products fabrication and surface coating operation in Wesleyville Borough, **Erie County**.

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.

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

37-00302: Axion Battery Products, Inc. (3601 Clover Lane, New Castle, PA 16105) on April 11, 2006, to issue an administrative amendment to document the change of ownership from New Castle Battery Manufacturing Co. to Axion Power International Inc. in Neshannock Township,

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 15931-4119, (814) 472-1900.

Permit No. 11900106 and NPDES No. PA 0598909. Cloe Mining, Inc., P. O. Box I, Grampian, PA 16838, permit renewal for reclamation only of a bituminous surface auger mine in Barr and West Carroll Townships, **Cambria County**, affecting 196.5 acres. Receiving streams: Hoppel Run and UNTs to/and West Branch Susquehanna River, classified for the following uses: CWF and WWF. There are no potable water supply intakes within 10 miles downstream. Application received March 3, 2006. Permit issued: April 10, 2006.

Permit No. 11940201 and NPDES Permit No. 0212831. AMFIRE Mining Company LLC, One Energy Place, Latrobe, PA 15650, permit revision—land use change on InterPower-Alhcon Partners LP property from pastureland to unmanaged natural habitat in Adams Township, **Cambria County**, affecting 76.9 acres. Receiving streams: UNTs to South Fork of the Little Conemaugh River classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received on January 19, 2006. Permit issued: April 11, 2006.

Permit No. 32020106 and NPDES Permit No. 0249271. Britt Energies Inc., 2450 Philadelphia Street, Indiana, PA 15701, permit revision—land use change on Mystic Brooke Development LP property from Forestland to Pastureland in Center Township, **Indiana County**, affecting 114.4 acres. Receiving streams: UNTs to Yellow Creek and UNTs to Tearing Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received on January 26, 2006. Permit issued: April 11, 2006.

Greensburg District Mining Office: Armbrust Building, R. R. 2 Box 603-C, Greensburg, PA 15601-0982, (724) 925-5500.

03940111 and NPDES Permit No. PA0201138. Canterbury Coal Company (125 Old Farm Drive, Pittsburgh, PA 15239-2353). Permit renewal issued for continued reclamation only of a bituminous surface/auger mine located in Kiskiminetas Township, **Armstrong County**, affecting 88.4 acres. Receiving streams: UNTs to Roaring Run and Roaring Run. Application received on January 4, 2006. Reclamation only renewal issued on April 12, 2006.

26000201 and NPDES Permit No. PA0202801. Carbon Fuel Resources, Inc. (200 College Drive, Suite 300, Lemont Furnace, PA 15456). Permit renewal issued for continued operation and reclamation of a bituminous surface/coal refuse reprocessing mine located in German Township, **Fayette County**, affecting 73.7 acres. Receiving streams: UNT to Browns Run, Browns Run and the Monongahela River. Application received on January 19, 2006. Renewal issued on April 12, 2006.

65950111 and NPDES Permit No. PA0201511. M. B. Energy, Inc. (175 McKnight Road, Blairsville, PA 15717-7961). Permit renewal issued for continued operation and reclamation of a bituminous surface mine located in Derry Township, **Westmoreland County**, affecting 84.7 acres. Receiving streams: UNT to Miller Run to Loyalhanna Creek. Application received on February 1, 2006. Renewal issued on April 12, 2006.

03900110 and NPDES Permit No. PA0592404. State Industries, Inc. (P. O. Box 1022, Kittanning, PA 16201). Permit renewal issued for continued operation and reclamation of a bituminous surface/auger mine located in Boggs Township, **Armstrong County**, affecting 81.3 acres. Receiving streams: North Fork Pine Creek and

UNT to North Fork of Pine Creek to Allegheny River. Application received on March 16, 2006. Renewal issued on April 12, 2006.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.

33950102 and NPDES Permit No. PA0226904. Leonard Yenzi (P. O. Box 62, Anita, PA 15711) Renewal of an existing bituminous strip operation in Knox Township, **Jefferson County** affecting 68.0 acres. This renewal is issued for reclamation only. Receiving stream: Sandy Lick Creek. Application received on December 27, 2005. Permit issued on April 7, 2006.

10803018 and NPDES Permit No. PA0126268. Western Hickory Coal Co., Inc. (R. R. 2, Box 2139, Wampum, PA 16157) Renewal of an existing bituminous strip, auger and coal ash placement operation in Venango Township, **Butler County** affecting 509.9 acres. This renewal is issued for reclamation only. Receiving streams: three UNTs of Seaton Creek and two UNTs to Little Scrubgrass Creek and Little Scrubgrass Creek. Application received on February 8, 2006. Permit issued on April 11, 2006.

24960101 and NPDES Permit No. PA0227170. Energy Resources, Inc. (P. O. Box 259, Brockway, PA 15824) Renewal of an existing bituminous strip and auger operation in Horton Township, **Elk County** affecting 235.0 acres. This renewal is issued for reclamation only. Receiving streams: four UNTs to Mead Run and Mead Run. Application received on November 2, 2005. Permit issued on April 12, 2006.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

17980122 and NPDES No. 0238155. Forcey Coal, Inc. (P. O. Box 225, Madera, PA 16661), renewal for reclamation only of a bituminous surface mine in Knox Township, **Clearfield County**, affecting 110.0 acres. Receiving streams: Pine Run and UNTs of Pine Run to Pine Run, Pine Run to Clearfield Creek, Clearfield Creek to West Branch Susquehanna River. Application received: April 6, 2006.

17950113 and NPDES No. PA0220159. Waroquier Coal Company (P. O. Box 128, Clearfield, PA 16830), permit renewal for the continued operation and restoration of a bituminous surface auger mine in Greenwood Township, **Clearfield County**, affecting 60.2 acres. Receiving streams: UNTs Nos. 1 and 2 to Watts Creek to Watts Creek to Clearfield Creek to West Branch of the Susquehanna River classified for the following use: HQF. Application received on January 25, 2006. Permit issued on April 6, 2006.

Noncoal Permits Actions

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

37002803. S & S Processing, Inc. (P. O. Box 373, West Pittsburg, PA 16160) Transfer of an existing small noncoal operation from B. & P. Slag Co. in Pulaski Township, **Lawrence County** affecting 6.0 acres. Receiving streams: Shenango River. Application received on April 25, 2005. Permit Issued on April 6, 2006.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

08050802. Steven C. Tewell (R. R. 1, Box 102D, Sugar Run, PA 18846), commencement, operation and restoration of a small, noncoal (flagstone) surface mine in Wilmot Township, **Bradford County**, affecting 5.0 acres.

Receiving stream: none. Application received on January 13, 2005. Application withdrawn on April 19, 2006.

08060801. Gerald C. Sarnosky (R. R. 1, Box 91, Ulster, PA 18850), commencement, operation and restoration of a small, noncoal (bluestone) surface mine in Wilmot Township, **Bradford County**, affecting 5.0 acres. Receiving stream: Sugar Run, tributary to Susquehanna River. Application received on February 21, 2006. Permit issued: on April 5, 2006.

08000810. Donald E. Johnson, Jr. (R. R. 2, Box 48H, Wysox, PA 18854), transfer of an existing small, noncoal (bluestone) surface mine permit from Donald E. Johnson, Sr. (R. D. 2, Box 278, Towanda, PA 18848), in Warren Township, **Bradford County**, affecting 5.0 acres. Receiving streams: UNT to Wappasening Creek, Pendleton Creek. Application received March 25, 2005. Application returned: April 7, 2006.

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

66050802. Shawn L. Adams (R. R. 1, Box 152, Sugar Run, PA 18846), commencement, operation and restoration of a quarry operation in Falls Township, **Wyoming County**, affecting 5.0 acres. Receiving stream: none. Application received on August 31, 2005. Permit issued on April 13, 2006.

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.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.

24064001. Dirt Excavating (792 W. Songbird Road, Bradford, PA 16701). Blasting activity permit for the excavation of service roads for wells in Highland and Wetmore Townships, **Elk and McKean Counties**. This blasting activity permit will expire on April 10, 2007. Application received on April 5, 2006. Application issued on April 10, 2006.

20064002. Eugene C. Carpenter (36 Vaughn Street, Jackson, OH 45640). Blasting activity permit for seismic exploration in Springboro Borough and Cussewago Township, **Crawford County**. This blasting activity permit will expire on August 14, 2006. Application received on April 12, 2006. Application issued on April 14, 2006.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

59065001. Issued April 13, 2006. Application received April 13, 2006. The description of the project is Jackson 3D NY-PA 06-2001. The permit is located in Tioga, Lawrence and Jackson Townships, **Tioga County**. This permit expires July 1, 2006.

08064001. Demtech, Inc. (65 Bald Mountain Road, Dubois, WY 82513), construction blasting for Athens bridge replacement located in Athens Borough and Township, **Bradford County**. Application received April 7, 2006. Permit issued April 14, 2006 Permit expiration date is May 14, 2006.

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

40064109. Hayduk Enterprises (P. O. Box 554, Dalton, PA 18414), construction blasting for Walgreens in Dallas Borough, **Luzerne County** with an expiration date of December 31, 2006. Permit issued April 10, 2006.

67064014. J. Roy's, Inc. (Box 125, Bowmansville, PA 17507), construction blasting at Thistle Downs Subdivision in West Manchester Township, **York County** with an expiration date of March 31, 2007. Permit issued April 12, 2006.

67064015. Abel Construction Company, Inc. (P. O. Box 476, Mountville, PA 17554), construction blasting at Rentzel Heights Phase I Subdivision in East Manchester Township, **York County** with an expiration date of March 31, 2007. Permit issued April 12, 2006.

67064016. J. Roy's, Inc. (Box 125, Bowmansville, PA 17507), construction blasting at Spring Meadows Subdivision in Manchester Township, **York County** with an expiration date of April 15, 2007. Permit issued April 12, 2006.

01064107. Hall Explosives, Inc. (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting for Adams Commerce Center in Straban Township, **Adams County** with an expiration date of April 30, 2007. Permit issued April 12, 2007.

06064107. Schlouch, Inc. (P. O. Box 69, Blandon, PA 19510), construction blasting for Furnace Manor in Wernersville Borough, **Berks County** with an expiration date of January 1, 2007. Permit issued April 12, 2007.

15064110. Brubacher Excavating, Inc. (P. O. Box 528, Bowmansville, PA 17507), construction blasting for Schuylkill Elementary Center in Phoenixville Borough and Schuylkill Township, **Chester County** with an expiration date of December 31, 2007. Permit issued April 12, 2006.

21064122. Newville Construction Services, Inc. (408 Mohawk Road, Newville, PA 17241), construction blasting for a pool in Silver Spring Township, **Cumberland County** with an expiration date of April 1, 2007. Permit issued April 12, 2006.

35064104. Hayduk Enterprises (P. O. Box 554, Dalton, PA 18414), construction blasting for Summerfield Development in Glenburn Township, **Lackawanna County** with an expiration date of April 30, 2007. Permit issued April 12, 2006.

36064105. Warren's Excavating & Drilling, Inc. (P. O. Box 189, Bowmansville, PA 17507), construction blasting for a single dwelling in Paradise Township, **Lancaster County** with an expiration date of April 15, 2007. Permit issued April 12, 2006.

39064105. Hayduk Enterprises (P. O. Box 554, Dalton, PA 18414), construction blasting for Cedar Hill Cemetery in Hanover Township, **Lehigh County** with an expiration date of April 30, 2007. Permit issued April 12, 2006.

45064128. Hayduk Enterprises (P. O. Box 554, Dalton, PA 18414), construction blasting for Greenwood Acres in Tunkhannock Township, **Monroe County** with an expiration date of April 30, 2007. Permit issued April 12, 2006.

45064129. Austin Powder Company (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for Columbia Pipeline Section 3 in Middle Smithfield Township, **Monroe County** and Dingman Township, **Pike County** with an expiration date of July 1, 2007. Permit issued April 12, 2006.

45064130. Explosive Services, Inc. (7 Pine Street, Bethany, PA 18431), construction blasting for Ivy Ridge in Smithfield Township, **Monroe County** with an expiration date of April 10, 2007. Permit issued April 12, 2006.

46064112. Austin Powder Company (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for Conservatory at Perkiomen in Perkiomen Township, **Montgomery County** with an expiration date of April 10, 2007. Permit issued April 12, 2006.

52064112. Hayduk Enterprises (P. O. Box 554, Dalton, PA 18414), construction blasting for Hemlock Farms Development in Blooming Grove, Porter and Dingman Townships, **Pike County** with an expiration date of April 30, 2007. Permit issued April 12, 2006.

52064113. Hayduk Enterprises (P. O. Box 554, Dalton, PA 18414), construction blasting for Pocono Ranch Lands in Lehman Township, **Pike County** with an expiration date of April 30, 2007. Permit issued April 12, 2006.

67064114. Hall Explosives, Inc. (2981 Elizabethtown Road, Hershey, PA 17033), construction blasting for Chestnut Valley in East Manchester Township, **York County** with an expiration date April 30, 2007. Permit issued April 12, 2006.

45064131. Austin Powder Company (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for Columbia Pipeline Section 3 in Middle Smithfield Township, **Monroe County** and Dingman Township, **Pike County** with an expiration date of July 1, 2007. Permit issued April 15, 2006.

46064113. Newville Construction Services, Inc. (408 Mohawk Road, Newville, PA 17241), construction blasting for Swamp Creek Sewer Project in New Hanover Township, **Montgomery County** with an expiration date of April 12, 2007. Permit issued April 15, 2006.

46064114. Austin Powder Company (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for the Conservatory at Perkiomen in Perkiomen Township, **Montgomery County** with an expiration date of April 10, 2007. Permit issued April 15, 2006.

FEDERAL WATER POLLUTION CONTROL ACT SECTION 401

The Department of Environmental Protection (Department) has taken the following actions on previously received permit applications, requests for Environmental Assessment approval and requests for Water Quality Certification under section 401 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C.A. § 1341).

Except as otherwise noted, the Department has granted 401 Water Quality Certification certifying that the construction and operation described will comply with the applicable provisions of sections 301—303, 306 and 307 of the FWPCA (33 U.S.C.A. §§ 1311—1313, 1316 and 1317) and that the construction will not violate applicable Federal and State water quality standards.

Persons aggrieved by an action may appeal, under section 4 of the Environmental Hearing Board Act (35 P.S. § 7514) and 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457, (717) 787-3483. TDD users should contact the Environmental Hearing Board (Board) through the Pennsylvania Relay Service, (800) 654-5984. Appeals must be filed with the Board

within 30 days of publication of this notice in the *Pennsylvania Bulletin*, unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary of the Board at (717) 787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decision law.

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

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

Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).

Permits, Environmental Assessments and 401 Water Quality Certifications Issued

WATER OBSTRUCTIONS AND ENCROACHMENTS

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

E36-904, Harry H. Bean, III, 404 Rome Road, Lititz, PA 17543 in Lititz Borough, Lancaster County, ACOE Baltimore District.

To maintain a 170-foot long and 38-inch high timber crib wall made of railroad ties at the left bank of Hubers Run (WWF) to restore the stream bank erosion located about 800 feet from its confluence with Santo Domingo Creek (Lititz, PA Quadrangle N: 6.41 inches; W: 6.25 inches) (Lat: 40°, 09', 37"; Long: 76°, 17', 41") in Lititz Borough, **Lancaster County**.

E06-551, George Moyer, 231 Frystown Road, Myerstown, PA 17067, Bethel Township, **Berks County**, ACOE Baltimore District Office.

To excavate and fill a 0.35 acre complex of emergent and scrub/shrub wetlands and 220 lineal feet of a UNT to Little Swatara Creek (CWF) for the purpose of constructing a fire protection pond. The permit also authorizes the construction and maintenance of a 15-inch permanent outfall structure with a 12-foot by 16-foot rock apron from the pond to a UNT to Little Swatara Creek (CWF). The project is located on the north side of Frystown Road (SR 4002) about 0.89 mile east of its intersection with SR 0645 (Bethel, PA Quadrangle; N: 14.33 inches, W: 9.66 inches; Latitude: 40° 27' 14", Longitude: 76° 19' 10") in Bethel Township, Berks County. To compensate for wetland impacts, the permittee will construct 0.35 acre of replacement wetlands adjacent to the existing wetlands and proposed pond.

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

E02-1516. Allegheny County Public Works, 501 County Office Building, 542 Forbes Avenue, Pittsburgh, PA 15219. To construct an arch bridge in West Deer Township, **Allegheny County**, Pittsburgh ACOE District. (New Kensington West, PA Quadrangle N: 21.5 inches; W: 11.7 inches and Latitude: 40° 37' 16.5"—Longitude: 79° 50' 02.5"). To remove the existing structure, construct and maintain a 36 foot by 7.5 foot conspan arch bridge; approximately 100 feet long; to reconstruct approximately 220 feet of the channel on the upstream side of the new bridge; to reconstruct approximately 180 feet of the channel on the downstream side of the new bridge and to construct and maintain various outfalls to Little Deer Creek (TSF). The bridge (Little Deer Creek Bridge No. 6) is located on McKrell Road near its intersection with Little Deer Creek. The total proposed project impacts will be 500 feet of Little Deer Creek.

STORAGE TANKS

SITE-SPECIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permits, under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504 and 6021.1101—6021.1102) and under 25 Pa. Code Chapter 245, Subchapter C, have been issued by the Bureau of Land Recycling and Waste Management, Director, P. O. Box 8763, Harrisburg, PA 17105-8763.

SSIP Permit No.	Applicant Name & Address	County	Municipality	Tank Type	Tank Capacity
06-61-005	Heath Oil, Inc. P. O. Box 1128 Oil City, PA 16301 Attn: Richard Fisher	Venango	Barkeyville Borough	One existing AST to regulated use storing gasoline	292,900 gallons
06-42-002	American Refining Group, Inc. 77 N. Kendall Ave. Bradford, PA 16701 Attn: Steve Sherk	McKean	Bradford City	Four ASTs storing diesel fuel and new oil	1,639,723 gallons total capacity

SPECIAL NOTICES

Catergorical Exclusion

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

Location:

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Elkland Borough	105 Parkhurst St. Elkland, PA 16920	Tioga

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 Borough of Elkland proposes to replace sewers on Ellison Road in conjunction with the Department of Transportation's bridge replacement. This work will require realignment of the existing sewers. The Department of Environmental Protection's (Department) review of the project and the information received has not identified any significant, adverse environmental impacts resulting from this proposal. The Department has categorically excluded this project from the State Environmental Review Process.

Notice of Public Hearing For NPDES Permit No. PAI025406002

The Department of Environmental Protection (Department) will hold a public hearing to accept comments on individual NPDES Permit Application No. PAI025406002 for discharge of stormwater from construction activities at the proposed Penske Truck Leasing land development project in Cass Township, Schuylkill County.

The public hearing will be conducted on Wednesday, June 7, 2006, at 7 p.m. in the Department's Pottsville District Office, 5 West Laurel Boulevard, Pottsville, PA 17901, by the Department of Environmental Protection, Watershed Management Program, Permitting and Technical Services Section, 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511. The hearing is in response to an application submitted by Penske Truck Leasing. The NPDES permit application proposes the discharge of stormwater from construction activities to Dyer Run.

The Department requests that individuals wishing to testify at the hearing submit a written notice of intent to Penske Truck Leasing Public Hearing, Department of Environmental Protection, Watershed Management Program, Permitting and Technical Services Section, 2 Public Square, Wilkes-Barre, PA 18711-0790. The Department will accept notices up to the day of the hearing. The Department requests that individuals limit their testimony to 10 minutes so that all individuals have the opportunity to testify. The Department can only review comments made with regard to NPDES Permit Application No. PAI025406002. Written copies of oral testimony are requested. Relinquishing of time to others will not be allowed. Individuals attending the hearing will have the opportunity to testify if they so desire; however, individuals who preregister to testify will be given priority on the agenda.

Persons with a disability who wish to testify and require an auxiliary aid, service or other accommodation should contact Christine Domashinski, (570) 826-2511 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department can meet their needs.

The NPDES permit application is available for review at the Department's Northeast Regional Office in Wilkes-Barre. Contact the Records Management Section at (570) 826-2511 to schedule an appointment to review the application. The permit application is also available for review at the Schuylkill County Conservation District offices, (570) 622-3742.

For further information, contact Mark Carmon, Northeast Regional Office, (570) 826-2511.

Catergorical Exclusion

West Providence Township Municipal Authority, 83 East Fifth Avenue, Everett, PA 15537.

The Pennsylvania Infrastructure Investment Authority which administers the Commonwealth's State Revolving Fund is intended to be the funding source for this project. The Authority's proposed project involves replacement of the existing sewers in the township. The Department of Environmental Protection's review of the project and the information received has not identified any significant adverse environmental impact resulting from this proposal. The Department hereby categorically excludes this project from the State Environmental Review Process.

[Pa.B. Doc. No. 06-711. Filed for public inspection April 28, 2006, 9:00 a.m.]

Acceptance of Applications for New or Innovative Water/Wastewater Technology Grants Through the Growing Greener Program

As part of the Department of Environmental Protection's (Department) Growing Greener Program, applications are now being accepted for New or Innovative Water/Wastewater Technology Grants. The Environmental Stewardship and Watershed Protection Act, 27 Pa.C.S. §§ 6101—6113, authorizes the Department to make these grants available to municipalities, municipal authorities, counties and school districts that are making improvements to existing drinking water or sewage treatment facilities using new or innovative technology. Grants for individual projects will be available up to \$500,000 under this program. Preference will be given to the following new or innovative projects:

- Cost-effective treatment of groundwater under the direct influence of surface water that promotes virus inactivation rather than removal.
- Holistic approaches to treatment of drinking water for arsenic.
- Water reuse and water conservation technologies, consistent with applicable Department guidelines.
- Nutrient reduction technologies, particularly biOMEMBRANE technologies, in watersheds where nutrient removal has been identified by the Department as a priority (see the 2004 Pennsylvania Integrated Water Quality Monitoring and Assessment Report, available for viewing on the Department's website at www.depweb.state.pa.us (DEP Keywords: "Water Quality Standards").

The deadline for submitting grant applications to the Department's Growing Greener Grants Center is June 30, 2006. The grant application form is available electronically on the Department's website at www.depweb.state.pa.us (Select "Forms and Publications" and "Water Standards and Facility Regulation"). The form number

and name are: 3800-FM-WSFR0271, Application for Growing Greener Grant Assistance New or Innovative Water/Wastewater Technology.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 06-712. Filed for public inspection April 28, 2006, 9:00 a.m.]

Availability of Technical Guidance

Technical guidance documents are available on the Department of Environmental Protection's (Department) website at www.depweb.state.pa.us (DEP Keywords: Technical Guidance). The "Final Documents" heading is the link to a menu of the various Department bureaus where each bureau's final technical guidance documents are posted. 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 2006.

Ordering Paper Copies of Department Technical Guidance

The Department encourages the use of the Internet to view and download technical guidance documents. When this option is not available, persons can order a paper copy of any of the Department's draft or final technical guidance documents by contacting 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.

Final Technical Guidance:

DEP ID: 361-0100-003. Title: Water Quality Toxics Management Strategy. Description: This guidance provides for a coordinated and consistent Statewide process for dealing with the United States Environmental Protection Agency priority pollutants with known or suspected toxic impacts under the National Pollutant Discharge Elimination System permit program. It is based upon the Department's Toxics Management Policy statement as contained in 25 Pa. Code Chapter 16 (relating to water quality toxics management strategy—statement of policy). Notice of availability of the draft of this document was published at 35 Pa.B. 2355 (April 16, 2005), with provision for a 30-day public comment period. The Department did not receive any comments from the public on the draft of this technical guidance. Contact: Tom Starosta, Bureau of Water Standards and Facility Regulation, Rachel Carson State Office Building, P. O. Box 8774, Harrisburg, PA 17105-8774; (717) 787-4317; tstarosta@state.pa.us. Effective Date: April 29, 2006

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 06-713. Filed for public inspection April 28, 2006, 9:00 a.m.]

Draft Pennsylvania Stormwater Best Management Practices Manual; Public Meetings

At 36 Pa.B. 1797 (April 15, 2006), the Department of Environmental Protection (Department) published a notice of availability for draft technical guidance document #363-0300-002: Pennsylvania Stormwater Best Management Practices Manual (Draft Manual). The Department will hold four public meetings concerning the Draft Manual. At these meetings, the Department will also provide a general overview of a proposed draft Stormwater Management Model Ordinance (Draft Ordinance), which it expects to publish for public comment in the *Pennsylvania Bulletin* in the near future. These meetings will be information sessions to inform the public about the Draft Manual and Draft Ordinance and how the documents relate to one another to promote coordinated stormwater management. These public meetings will not be public hearings nor will they provide the public with opportunities to provide testimony. The public meetings are scheduled as follows:

Allegheny County, Tuesday, May 2, 2006

Ross Township Municipal Building, 1000 Ross Municipal Drive, Pittsburgh, PA 15237. The 1 p.m.—4 p.m. meeting will be held in the gymnasium. The 6 p.m.—9 p.m. meeting will be held in the Commissioner's meeting room. Driving directions can be found on the Ross Township website, www.ross.pa.us/administration/communctr.htm.

Dauphin County, Thursday, May 4, 2006

Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17105. Both the 1 p.m.—4 p.m. and 6 p.m.—9 p.m. meetings will be held in the second floor auditorium. Driving directions can be found on the Department's website, www.depweb.state.pa.us/dep/cwp/view.asp?a=3&q=474491.

Lehigh County, Monday, May 8, 2006

Lehigh Carbon Community College, Schnecksville Campus (Main Campus), 4525 Education Park Drive, Schnecksville, PA 18078. Both the 1 p.m.—4 p.m. and 6 p.m.—9 p.m. meetings will be held in Room 8113/8115 of the Administration Building. Driving directions can be found on the Lehigh Carbon Community College website, www.lccc.edu/default.aspx?pageid=58.

Montgomery County, Thursday, June 1, 2006

DEP Southeast Regional Office, 2 East Main Street, Norristown, PA 19401. Both the 1 p.m.—4 p.m. and 6 p.m.—9 p.m. meetings will be held in the Delaware River conference room. Driving directions can be found on the Department's Southeast Regional Office website, www.depweb.state.pa.us/southeastro/site/default.asp.

The purpose of the Draft Manual is to establish recommended guidance for stormwater management utilizing best management practices in this Commonwealth. Due to the increased need to improve water quality and protect water resources through improved stormwater runoff management, the Draft Manual will provide the planning concepts and design standards to guide local and state governments, planners, land developers, contractors and others involved with planning, designing, reviewing, approving and constructing land development projects in meeting those needs. The Department is accepting comments on the Draft Manual until June 14, 2006. See 36 Pa.B. 1797.

Questions concerning the meetings can be directed to the Bureau of Watershed Management, Division of Water-

ways, Wetlands and Stormwater Management, P. O. Box 8775, Harrisburg, PA 17105-8775, (717) 787-6827. An electronic copy of the Draft Manual is located on the Department's website at www.depweb.state.pa.us (DEP Keywords: Stormwater Management; select "Announcements"; and then select "Draft PA Stormwater Best Management Practices Manual—(363-0300-002)")."

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 06-714. Filed for public inspection April 28, 2006, 9:00 a.m.]

Various Ozone Transport Region Measures under Consideration by the Ozone Transport Commission and the Mid-Atlantic/Northeast Visibility Union; Public Meetings

The Department of Environmental Protection (Department) is holding three public meetings regarding control measures under consideration for adoption by the Ozone Transport Commission (Commission). These meetings will be held at 10 a.m. as follows:

- May 22, 2006 Department of Environmental Protection
Rachel Carson State Office Building
Room 105
Market Street
Harrisburg, PA 17105
- May 23, 2006 Department of Environmental Protection
Southwest Regional Office, Waterfront
A & B
400 Waterfront Drive
Pittsburgh, PA 15222
- May 25, 2006 Department of Environmental Protection
Southeast Regional Office, Library
2nd Floor
2 East Main Street
Norristown, PA 19401

At the meetings, Department staff will review the control measures, answer questions on them and seek public input. These meetings are being held consistent with the requirements of section 7.4 of the Air Pollution Control Act (35 P.S. § 4007.4). At the June 6, 2006, meeting of the Commission, the Environmental Commissioners of the Ozone Transport Region (OTR) jurisdictions are scheduled to vote on a number of action items and recommendations for additional programs to be considered by the OTR jurisdictions for implementation to reduce ground-level ozone and its precursors.

Specific action items for follow up and/or to be voted on by the Commissioners are:

1. Authorizing the Chair of the Commission to send a letter to the United States Environmental Protection Agency (EPA) urging EPA's adoption of rulemaking to require small engine manufacturers to meet the most stringent technically and economically feasible emission reduction control measures.
2. Directing Commission executive staff to work with staff from Commission jurisdictions to develop revisions to the Commission Consumer Products model rule.
3. Directing Commission executive staff to work with staff from Commission jurisdictions to develop revisions to the Commission Architectural and Industrial Maintenance (AIM) Coatings model rule.

4. Directing Commission executive staff to work with staff from Commission jurisdictions to develop a model rule that mandates the installation and maintenance of software (chip reflashing) to correct the defeat device option on certain heavy-duty diesel engines.

In addition, the Commissioners have directed the Commission executive staff to work with staff from Commission jurisdictions to advance air quality modeling efforts to ensure that the control strategy modeling for 2009 reflects the appropriate level of emission reductions from a number of control measures under consideration for model rule development. The candidate control measures include reducing emissions from the following source categories:

1. AIM Coatings.
2. Asphalt Paving.
3. Asphalt Production Plants.
4. Auto Refinish Coatings.
5. Consumer Products, including Portable Fuel Containers.
6. Diesel Truck Chip Reflash.
7. Electrical Generating Units.
8. EGU Peaking Units.
9. Glass Furnaces.
10. Lime Kilns.
11. Cement Plants.
12. Industrial, Commercial and Institutional Boilers.
13. Municipal Waste Combustors.
14. Refineries.
15. A Regional Motor Fuel based on Reformulated Gasoline Options.
16. A Regional Distillate Fuel Sulfur Content Limit of 500 parts per million.

The Department is requesting comments regarding the four specific action items scheduled for consideration and the proposed inclusion in regional ozone air quality modeling of anticipated emission reductions from the 16 candidate control measures.

In addition to the importance of these potential control strategies for the reduction of ozone, the strategies are being evaluated by the Mid-Atlantic/Northeast Visibility Union (MANE-VU). The Department is also requesting comment on the implementation of the potential strategies to address the sulfate, nitrate and organic components of regional haze.

Written comments should be sent by May 30, 2006, to J. Wick Havens, Chief, Division of Air Resource Management, Bureau of Air Quality, P. O. Box 8468, Harrisburg, PA 17105-8468, jhavens@state.pa.us. The Department will review and consider all written comments prior to voting on any mechanism that would commit the Commonwealth to adopt and implement these control strategies.

Persons with a disability who wish to attend a meeting and require an auxiliary aid, service or other accommodation to participate in the meeting should contact Connie Cross at (717) 787-9498 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

Information regarding the action items may be found at: www.otcair.org/document.asp?fview=meeting#.

Information regarding the 16 candidate control strategies proposed for inclusion in regional ozone air quality modeling may be found at: www.otcair.org/projects_details.asp?FID=93&fview=stationary

The Commission is a multistate organization created under the Federal Clean Air Act. The Commission is responsible for advising the EPA on transport issues and for developing and implementing regional solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic regions. The Commonwealth is a member of the Commission.

MANE-VU was formed by the Mid-Atlantic and Northeastern states, tribes and Federal agencies to coordinate regional haze planning activities for the region and to encourage a coordinated approach to meeting the requirements of the EPA's regional haze rules and reducing visibility impairment in major National parks and wilderness areas in the Northeast and Mid-Atlantic region.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 06-715. Filed for public inspection April 28, 2006, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Federal Poverty Income Guidelines for 2006

The Department of Public Welfare (Department) announces the implementation in this Commonwealth of the 2006 Federal Poverty Income Guidelines (FPIGs) which were issued by the Department of Health and Human Services and published at 71 FR 3848 (January 24, 2006).

The FPIGs are the basis for the income eligibility limits for several categories of Medicaid whose regulations are published in 55 Pa. Code (relating to public welfare) and administered by the Department. These categories include Healthy Beginnings for Pregnant Women and Qualified Children (55 Pa. Code Chapter 140, Subchapter A), Healthy Horizons for the Elderly and Disabled (55 Pa. Code Chapter 140, Subchapter B) and Extended Medical Coverage under Categorically Needy TANF-Related Categories (55 Pa. Code Chapter 140, Subchapter C).

The percentages for the Medicaid categories of Healthy Beginnings and Healthy Horizons are set forth as follows:

These percentages apply as follows:

Healthy Beginnings—

- a. 185% for pregnant women and infants up to 1 year of age.
- b. 133% for children age 1 through 5 years of age.
- c. 100% for children age 6 and older.

Healthy Horizons—

- a. 100% for persons eligible for the categorically needy and Medicare cost-sharing benefits.
- b. 120% for persons eligible for the Specified Low-Income Medicare Beneficiaries and Medically Needy Only benefits.
- c. 135% for persons eligible for the Qualifying Individuals Beneficiaries benefits.

(There are different resource limits for each of these programs.)

<i>Persons</i>	<i>100% of FPIG</i>		<i>120% of FPIG</i>		<i>133% of FPIG</i>		<i>135% of FPIG</i>	
	<i>Month</i>	<i>Annual</i>	<i>Month</i>	<i>Annual</i>	<i>Month</i>	<i>Annual</i>	<i>Month</i>	<i>Annual</i>
1	\$817	\$9,800	\$980	\$11,760	\$1,087	\$13,034	\$1,103	\$13,230
2	\$1,100	\$13,200	\$1,320	\$15,840	\$1,463	\$17,556	\$1,485	\$17,820
3	\$1,384	\$16,600	\$1,660	\$19,920	\$1,840	\$22,078	\$1,868	\$22,410
4	\$1,667	\$20,000	\$2,000	\$24,000	\$2,217	\$26,600	\$2,250	\$27,000
5	\$1,950	\$23,400	\$2,340	\$28,080	\$2,594	\$31,122	\$2,633	\$31,590
6	\$2,234	\$26,800	\$2,680	\$32,160	\$2,971	\$35,644	\$3,015	\$36,180
7	\$2,517	\$30,200	\$3,020	\$36,240	\$3,348	\$40,166	\$3,398	\$40,770
8	\$2,800	\$33,600	\$3,360	\$40,320	\$3,724	\$44,688	\$3,780	\$45,360
Each Additional Person	\$284	\$3,400	\$340	\$4,080	\$377	\$4,522	\$383	\$4,590

Persons	185% of FPIG		200% of FPIG		235% of FPIG		250% of FPIG	
	Month	Annual	Month	Annual	Month	Annual	Month	Annual
1	\$1,511	\$18,130	\$1,634	\$19,600	\$1,920	\$23,030	\$2,042	\$24,500
2	\$2,035	\$24,420	\$2,200	\$26,400	\$2,585	\$31,020	\$2,750	\$33,000
3	\$2,560	\$30,710	\$2,767	\$33,200	\$3,251	\$39,010		
4	\$3,084	\$37,000	\$3,334	\$40,000	\$3,917	\$47,000		
5	\$3,608	\$43,290	\$3,900	\$46,800	\$4,583	\$54,990		
6	\$4,132	\$49,580	\$4,467	\$53,600	\$5,249	\$62,980		
7	\$4,656	\$55,870	\$5,034	\$60,400	\$5,915	\$70,970		
8	\$5,180	\$62,160	\$5,600	\$67,200	\$6,580	\$78,960		
Each Additional Person	\$525	\$6,290	\$567	\$6,800	\$666	\$7,990		

Additional information on the programs is available at the county assistance offices.

This notice shall take effect upon publication in the *Pennsylvania Bulletin* and apply retroactively to January 24, 2006.

Public Comments

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Income Maintenance, Edward J. Zogby, Director, Bureau of Policy, Room 431 Health and Welfare Building, Harrisburg, PA 17120, (717) 787-4081. Comments received within 30-calendar days will be reviewed and considered for any subsequent revision of the notice.

Persons with a disability who require 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

Fiscal Note: 14-NOT-469. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart C. ELIGIBILITY REQUIREMENTS

CHAPTER 140. SPECIAL MA ELIGIBILITY PROVISIONS

Subchapter C. ELIGIBILITY PROVISIONS

FOR EMC UNDER THE CATEGORICALLY NEEDY PROGRAM FOR AFDC/AFDC-U RELATED CATEGORIES

APPENDIX A

EXTENDED MEDICAL COVERAGE (EMC) MONTHLY INCOME LIMITS

185% OF THE 2006 FEDERAL POVERTY INCOME GUIDELINES

<i>Family Size</i>	<i>185% of the Federal Poverty Income Guidelines</i>
1	\$1,511
2	\$2,035
3	\$2,560
4	\$3,084
5	\$3,608
6	\$4,132
7	\$4,656
8	\$5,180
Each Additional Person	\$525

[Pa.B. Doc. No. 06-716. Filed for public inspection April 28, 2006, 9:00 a.m.]

2005 Group Two Exception Requests—Additional Request; Medical Assistance Long-Term Care Participation Review

The purpose of this notice is to add an exception request to the 2005 Group Two Exception Requests.

On August 29, 2005, Beverly Health and Rehabilitation Services wrote to the Department of Public Welfare (Department) requesting to add nursing facility beds to their Blue Ridge Mountain facility in Dauphin County.

The letter was received in the Division of Long-Term Care Client Services on September 19, 2005, but was not provided to the Participation Review Unit until late January, 2006.

Based on the original date of receipt by the Division of Long-Term Care Client Services, this request meets the time frame for inclusion in the 2005 Group Two review group covering the submission period of July 1, 2005, through December 31, 2005, and is being added to the 2005 Group Two Exception Request public notice published at 36 Pa.B. 1017 (February 25, 2006).

Expansion Projects

<i>Number</i>	<i>Facility</i>	<i>Address</i>	<i>County</i>	<i>Beds</i>
JD05002	Beverly Healthcare— Blue Ridge Mountain	3625 North Progress Avenue Harrisburg, PA 17110	Dauphin	56

A copy of the previously listed exception request is available for review during the 30-day comment period. The public may review the request during regular business hours. To schedule an appointment to review a request, call (717) 705-3705.

Public Comment

Interested persons are invited to submit written comments regarding this notice within 30 days of this publication. Comments should be sent to the Department of Public Welfare, Bureau of LTC Programs, Attention: Policy Section, P. O. Box 2675, Harrisburg, PA 17105.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-NOT-470. No fiscal impact; (8) recommends adoption.

[Pa.B. Doc. No. 06-717. Filed for public inspection April 28, 2006, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Contemplated Sale of Land and Improvements No Longer Needed for Transportation Purposes

The Department of Transportation (Department), under section 2003(e)(7) of The Administrative Code of 1929 (71 P. S. § 513(e)(7)), intends to sell certain land owned by the Department.

The following is a property available for sale by the Department:

Eldred Township, Jefferson County. The parcel contains 16,117.20 square feet of improved land situated at the northeast corner of Route 36 and Route 949, Sigel, PA 15860 and is further identified as Tax Map Number 09-001-0300. The estimated fair market value is \$46,000.

Interested public entities are invited to express their interest in purchasing the site within 30 calendar days from the date of publication of this notice to Larry Williams Real Estate Specialists, Department of Trans-

portation Engineering District 10-0, 2550 Oakland Avenue, P. O. Box 429, Indiana, PA 15701.

ALLEN D. BIEHLER, P. E.,
Secretary

[Pa.B. Doc. No. 06-718. Filed for public inspection April 28, 2006, 9:00 a.m.]

Finding

Susquehanna County

Under the provisions section 2002(b) of The Administrative Code (71 P. S. § 512(b)), the Deputy Secretary for Highway Administration makes the following written finding:

The Department of Transportation (Department) plans to construct SR 7407, Section BRG, the T-691, Shaughnessy Bridge Replacement Project in Susquehanna County.

The purpose of this bridge replacement project is to improve the safety and efficiency of the Shaughnessy Road Bridge (also known as Little Meadows Borough Bridge No. 1) to maintain local travel patterns. The existing bridge has a 6-ton weight restriction, and a deck width of 14.2 feet restricting the safe and adequate movement of various vehicle types that include emergency response vehicles, school buses and delivery trucks.

The proposed action is to replace the existing one-lane bridge that carries T-691, Shaughnessy Road, over Apalachin Creek in Little Meadows Borough in Susquehanna County. Structure Replacement Alternative, the preferred alternative, proposes to replace the existing bridge with a two-lane, prestressed concrete box beam bridge superstructure and concrete substructure at the existing location. The replacement bridge will be 56.4 feet long and 24 feet wide with minor grade adjustments to the roadway approaches. Also included in this project are 3-R roadway improvements between the bridge and SR 0858 for a distance of approximately 1,000 feet.

Alternatives were evaluated as required by section 2002 of The Administrative Code. The Structure Replacement Alternative has been identified as the alternative that satisfies the purpose and needs associated with this project and best balance impacts to the socio-economic, cultural and natural environment in the study area. The Structure Replacement Alternative will require the demolition of the Little Meadows Borough Bridge No. 1, a

Section 2002 resource determined eligible for listing on the National Register of Historic Places. Under section 106 of the National Historic Preservation Act, it has been determined that the construction of the Structure Replacement Alternative will have an Adverse Effect on this Section 2002 resource. A Memorandum of Agreement (MOA) has been executed between the Federal Highway Administration and the State Historic Preservation Officer and concurred with by the Department of Transportation and the Susquehanna County Historical Society. Mitigation measures stipulated in the MOA include photographic documentation of the bridge and marketing the bridge for reuse.

The Acting 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, and have concluded that there is no feasible and prudent alternative to the project as designed, and all reasonable steps have been taken to minimize the effect.

RICHARD H. HOGG, P. E.,
*Acting Deputy Secretary for
Highway Administration*

[Pa.B. Doc. No. 06-719. Filed for public inspection April 28, 2006, 9:00 a.m.]

HEALTH CARE COST CONTAINMENT COUNCIL

Meeting Schedule

The following meetings of the Health Care Cost Containment Council (Council) have been scheduled: Wednesday, May 3, 2006, Data Systems Committee meeting—10 a.m., Education committee meeting—1 p.m.; Thursday, May 4, 2006, Council meeting—10 a.m. The meetings will be held in the conference room at the Council Office, 225 Market Street, Suite 400, Harrisburg, PA 17101. The public is invited to attend. Persons who need accommodation due to a disability and want to attend the meetings should contact Choric Filias, Health Care Cost Containment Council, 225 Market Street, Harrisburg, PA 17101, or call (717) 232-6787 at least 24 hours in advance so that arrangements can be made.

MARC P. VOLAVKA,
Executive Director

[Pa.B. Doc. No. 06-720. Filed for public inspection April 28, 2006, 9:00 a.m.]

INDEPENDENT REGULATORY REVIEW COMMISSION

Notice of Filing of Final Rulemakings

The Independent Regulatory Review Commission (Commission) received the following regulations. They are scheduled to be considered on the date noted. The Commission's public meetings are held at 333 Market St., 14th Floor, Harrisburg at 10:30 a.m. Note that the time and date of the meeting are tentative and interested parties are encouraged to contact the Commission at (717) 783-5417 or www.irrc.state.pa.us to confirm that information. To obtain a copy of the regulation, interested parties should first contact the promulgating agency. If a copy cannot be obtained from the promulgating agency, the Commission will provide a copy.

Final-Form

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>	<i>Public Meeting</i>
4-82	Department of Community and Economic Development Manufactured Housing Improvement Program	4/13/06	5/18/06
16A-5412	State Board of Pharmacy Drug Therapy and Injectable Medications, Biologicals and Immunizations	4/13/06	5/18/06

JOHN R. MCGINLEY, Jr.,
Chairperson

[Pa.B. Doc. No. 06-721. Filed for public inspection April 28, 2006, 9:00 a.m.]

INSURANCE DEPARTMENT

Ernest E. Cope, M. D.; Prehearing

**Appeal of Ernest E. Cope, M. D. under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910);
Doc. No. MM06-03-051**

A prehearing telephone conference initiated by this office is scheduled for May 9, 2006. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before May 4, 2006. A hearing date shall be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before April 25, 2006, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any, shall be filed on or before May 2, 2006.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 06-722. Filed for public inspection April 28, 2006, 9:00 a.m.]

Germantown Hospital; Hearing**Appeal of Germantown Hospital under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM06-02-036**

On or before May 2, 2006, the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with MCARE's January 20, 2006, determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages. A prehearing telephone conference initiated by this office is scheduled for May 9, 2006. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before May 4, 2006. A hearing shall occur on June 20, 2006, in Room 200, Administrative Hearings Office, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA.

On or before June 13, 2006, each party shall file with the Administrative Hearings Office a prehearing statement which shall contain: (1) a comprehensive statement of undisputed facts to be stipulated between the parties; (2) a statement of additional contended facts; (3) names and address of witnesses along with the specialties of experts to be called; (4) a list of documents to be used at the hearing; (5) special evidentiary or other legal issues; and (6) the estimated time for that party's case. Contemporaneously with service of the prehearing statement on the opposing party, each party shall supply the other with a copy of any report generated by an expert witness designated on the prehearing statement. Any report subsequently received from a party's expert witness prior to hearing shall be supplied to the other party within 2 business days. Copies of expert reports need not be filed with the Administrative Hearings Office.

Persons with a disability who wish to attend the administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Kathryn Culbertson, Agency Coordinator, (717) 705-4194.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 06-723. Filed for public inspection April 28, 2006, 9:00 a.m.]

Amy L. Harvey, M. D.; Prehearing**Appeal of Amy L. Harvey, M. D. under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM06-03-052**

On or before April 26, 2006, the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with MCARE's March 9, 2006, determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages. A prehearing telephone conference initiated by this office is scheduled for May 18, 2006. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before May 11, 2006. A hearing date shall be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before May 4, 2006, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any, shall be filed on or before May 11, 2006.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 06-724. Filed for public inspection April 28, 2006, 9:00 a.m.]

Lancaster Surgical Group, PC; Prehearing**Appeal of Lancaster Surgical Group, PC under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM06-04-005**

On or before May 10, 2006, the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with MCARE's March 15, 2006, determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages. A prehearing telephone conference initiated by this office is scheduled for May 31, 2006. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before May 25, 2006. A hearing date shall be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before May 17, 2006, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any, shall be filed on or before May 24, 2006.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 06-725. Filed for public inspection April 28, 2006, 9:00 a.m.]

Mark P. Mantell, M. D.; Prehearing**Appeal of Mark P. Mantell, M. D. under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM06-03-054**

On or before April 26, 2006, the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with MCARE's March 10, 2006, determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages. A prehearing telephone conference initiated by this office is scheduled for May 16, 2006. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before May 11, 2006. A hearing date shall be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any,

must be filed on or before May 3, 2006, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any, shall be filed on or before May 10, 2006.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 06-726. Filed for public inspection April 28, 2006, 9:00 a.m.]

Review Procedure Hearings; Cancellation or Refusal of Insurance

The following insureds have requested a hearing as authorized by the act of June 17, 1998 (P. L. 464, No. 68) (Act 68) in connection with the termination of the insureds' automobile policies. The hearings will be held in accordance with the requirements of Act 68; 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure); and 31 Pa. Code §§ 56.1—56.3 (relating to Special Rules of Administrative Practice and Procedure). The administrative hearings will be held in the Insurance Department's regional offices in Harrisburg and Pittsburgh, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearings will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 N. Seventh Street, Harrisburg, PA 17102.

Appeal of Thom E. Lewis; file no. 06-119-16573; Progressive Insurance Company; doc. no. P06-03-043; May 25, 2006, 10 a.m.

Appeal of Gary and Rita Basehore; file no. 06-119-13173; Allstate Insurance Co.; doc. no. P06-04-013; June 13, 2006, 10 a.m.

The following hearing will be held in the Pittsburgh Regional Office, Room 304 State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222.

Appeal of Laurretta Moncrief; file no. 05-303-13333; Safeco Insurance Co. of Indiana; doc. no. P06-03-044; July 13, 2006, 2 p.m.

Parties may appear with or without counsel and offer relevant testimony or evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Insurance Commissioner (Commissioner) may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insured must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Commissioner will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The

Commissioner's Order will be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend an administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Kathryn Culbertson, Agency Coordinator, (717) 705-4194.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 06-727. Filed for public inspection April 28, 2006, 9:00 a.m.]

Review Procedure Hearings under the Unfair Insurance Practices Act

The following insureds have requested a hearing as authorized by section 8 of the Unfair Insurance Practices Act (40 P. S. § 1171.8) in connection with their companies' termination of the insureds' policies. The administrative hearings will be held in the Insurance Department's regional offices in Harrisburg and Pittsburgh, PA. Failure by an appellant to appear at a scheduled hearing may result in dismissal with prejudice.

The following hearings will be held in the Administrative Hearings Office, Capitol Associates Building, Room 200, 901 N. Seventh Street, Harrisburg, PA 17102.

Appeal of Steven Bailey; file no. 06-119-15172; Harleysville Mutual Insurance Co.; doc. no. P06-03-042; June 6, 2006, 1 p.m.

Appeal of Walter F. Texter; file no. 06-130-15353; Lehigh Mutual Insurance Co.; doc. no. P06-04-012; June 7, 2006, 10 a.m.

The following hearing will be held in the Pittsburgh Regional Office, Room 304 State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222.

Appeal of Regis and Regina McClelland; file no. 06-303-13713; Allstate Insurance Co.; doc. no. PI06-03-029; July 13, 2006, 1 p.m.

Each party may appear with or without counsel and offer relevant testimony and/or other relevant evidence. Each party must bring documents, photographs, drawings, claims files, witnesses, and the like, necessary to support the party's case. A party intending to offer documents or photographs into evidence shall bring enough copies for the record and for each opposing party.

In some cases, the Commissioner may order that the company reimburse an insured for the higher cost of replacement insurance coverage obtained while the appeal is pending. Reimbursement is available only when the insured is successful on appeal, and may not be ordered in all instances. If an insured wishes to seek reimbursement for the higher cost of replacement insurance, the insurance must produce documentation at the hearing which will allow comparison of coverages and costs between the original policy and the replacement policy.

Following the hearing and receipt of the stenographic transcript, the Insurance Commissioner (Commissioner) will issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. The Commissioner's Order will

be sent to those persons participating in the hearing or their designated representatives. The Order of the Commissioner may be subject to judicial review by the Commonwealth Court.

Persons with a disability who wish to attend an administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Kathryn Culbertson, Agency Coordinator, (717) 705-4194.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 06-728. Filed for public inspection April 28, 2006, 9:00 a.m.]

Stephanie J. Schwartz, M. D.; Prehearing

Appeal of Stephanie J. Schwartz, M. D. under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM06-03-055

On or before April 26, 2006, the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with MCARE's March 9, 2006, determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages. A prehearing telephone conference initiated by this office is scheduled for May 18, 2006. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before May 11, 2006. A hearing date shall be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before May 4, 2006, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any, shall be filed on or before May 11, 2006.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 06-729. Filed for public inspection April 28, 2006, 9:00 a.m.]

Upper Bucks Orthopedic Associates; Prehearing

Appeal of Upper Bucks Orthopedic Associates under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910); Doc. No. MM06-03-053

A prehearing telephone conference initiated by this office is scheduled for May 9, 2006. Each party shall provide a telephone number to be used for the telephone conference to the Hearings Administrator on or before May 4, 2006. A hearing date shall be determined, if necessary, at the prehearing telephone conference.

Motions preliminary to those at hearing, protests, petitions to intervene or notices of intervention, if any, must be filed on or before April 25, 2006, with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Sev-

enth Street, Harrisburg, PA 17102. Answer to petitions to intervene, if any, shall be filed on or before May 2, 2006.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 06-730. Filed for public inspection April 28, 2006, 9:00 a.m.]

Whetstone Mobil; Hearing

Appeal of Whetstone Mobil under the Storage Tank and Spill Prevention Act; Underground Storage Tank Indemnification Fund; USTIF File 2004-0187(M); Doc. No. UT06-03-046

The proceedings in this matter will be governed by 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law), 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedures) and any other relevant procedure provisions of law.

A prehearing telephone conference shall be held on May 11, 2006. A hearing shall occur on May 24, 2006, in the Administrative Hearings Office, Room 200, Capitol Associates Building, 901 North Seventh Street, Harrisburg, PA 17102. Motions preliminary to those at hearing, protests, petitions to intervene, notices of appearance or notices of intervention, if any, must be filed with the Hearings Administrator at the previous address on or before April 25, 2006. Answers to petitions to intervene, if any, shall be filed on or before May 8, 2006.

Persons with a disability who wish to attend the administrative hearing and require an auxiliary aid, service or other accommodation to participate in the hearing should contact Kathryn Culbertson, Agency Coordinator, (717) 705-4194.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 06-731. Filed for public inspection April 28, 2006, 9:00 a.m.]

LIQUOR CONTROL BOARD

Expiration of Leases

The Liquor Control Board seeks the following new site:

Allegheny County, Wine & Spirits Shoppe #0232, Pittsburgh.

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 4,000 net useable square feet of new or existing retail commercial space in a shopping center environment along the North Shore of the Ohio River within 1 mile of the intersection of Route 65 and I-79, Pittsburgh.

Proposals due: May 19, 2006, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222
Contact: George Danis, (412) 565-5130

The following Liquor Control Board leases will expire:

Clinton County, Wine & Spirits Shoppe #1802, 536 Erie Avenue, Renovo, PA 17764.

Lease Expiration Date: March 31, 2007

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 1,200 net useable square feet of new or existing retail commercial space. Location must be within Renovo Borough.

Proposals due: May 19, 2006, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Matthew L. Sweeney, (717) 657-4228

Dauphin County, Wine & Spirits Shoppe #2201, Kline Village Shopping Center, 29 Kline Village, Harrisburg, PA 17104.

Lease Expiration Date: May 31, 2007

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 3,800 net useable square feet of new or existing retail commercial space. Location must be on South 25th Street between Martin Luther King Boulevard and Rudy Road, Harrisburg.

Proposals due: May 19, 2006, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Charles D. Mooney, (717) 657-4228

Erie County, Wine & Spirits Shoppe #2509, Eastway Plaza, 4045 Buffalo Road, Erie, PA 16510.

Lease Expiration Date: May 31, 2007

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 4,000 to 4,500 net useable square feet of new or existing retail commercial space in a shopping center environment along Buffalo Road in Harborcreek Township. Site should have free parking and access for tractor-trailer loading.

Proposals due: May 19, 2006, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, State Office Building, Room 408, 300 Liberty Avenue, Pittsburgh, PA 15222
Contact: George Danis, (412) 565-5130

Lancaster County, Wine & Spirits Shoppe #3612, Village at Gap Shopping Center, 5360 Lincoln Highway, Store 14, Gap, PA 17527-9619.

Lease Expiration Date: May 31, 2007

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 2,500 net useable square feet of new or existing retail commercial space. Location must be on U.S. Route 30 within 1/2 mile of its intersection with SR 41, Salisbury Township.

Proposals due: May 19, 2006, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Matthew L. Sweeney, (717) 657-4228

Luzerne County, Wine & Spirits Shoppe #4013, South Main Plaza, 379 South Main Street, Wilkes-Barre, PA 18701.

Lease Expiration Date: April 30, 2007

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 6,000 net useable square feet of new or existing retail commercial space. Location must be on South Main Street between South Street and Garfield Street, City of Wilkes-Barre.

Proposals due: May 19, 2006, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Matthew L. Sweeney, (717) 657-4228

Luzerne County, Wine & Spirits Shoppe #4026, Gateway Shopping Center, Store #27, Edwardsville, PA 18704.

Lease Expiration Date: March 31, 2007

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 4,000 to 7,000 net useable square feet of new or existing retail commercial space. Location must be within the immediate vicinity of the intersection of U.S. Route 11 and Northampton Street, Edwardsville or Kingston Boroughs.

Proposals due: May 19, 2006, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Charles D. Mooney, (717) 657-4228

Lycoming County, Wine & Spirits Shoppe #4110, Loyal Plaza Shopping Center, 1903 E. 3rd Street, Williamsport, PA 17701.

Lease Expiration Date: April 30, 2007

Lease retail commercial space to the Commonwealth. Proposals are invited to provide the Liquor Control Board with approximately 6,000 to 9,000 net useable square feet of new or existing retail commercial space. Location must be within the immediate vicinity of the intersection of East Third Street and Tinsman Avenue, Loyalsock Township.

Proposals due: May 19, 2006, at 12 p.m.

Department: Liquor Control Board
Location: Real Estate Division, Brandywine Plaza, 2223 Paxton Church Road, Harrisburg, PA 17110-9661
Contact: Charles D. Mooney, (717) 657-4228

JONATHAN H. NEWMAN,
Chairperson

[Pa.B. Doc. No. 06-732. Filed for public inspection April 28, 2006, 9:00 a.m.]

PATIENT SAFETY AUTHORITY

Public Meeting

The Patient Safety Authority (Authority), established by section 303 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.303), enacted on March 20, 2002, will hold a meeting of the Authority's 11 member board on Tuesday, May 9, 2006, at 10:30 a.m. in the Wildwood Conference Center, Harrisburg Area Community College, One HAAC Drive, Harrisburg, PA.

Individuals having questions regarding this meeting, which is open to the public, should contact the Authority at (717) 346-0469.

ALAN B. K. RABINOWITZ,
Administrator

[Pa.B. Doc. No. 06-733. Filed for public inspection April 28, 2006, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition for a Determination

P-00062211. UGI Utilities, Inc.—Gas Division. Petition of UGI Utilities, Inc.—Gas Division, for a determination under section 619 of the Pennsylvania Municipalities Planning Code (53 P.S. § 10619) that the placement of a building is reasonably necessary for the convenience or welfare of the public.

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 May 15, 2006. 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: UGI Utilities, Inc.—Gas Division

Through and By Counsel: Mark C. Morrow, Esquire,
460 North Gulph Road, King of Prussia, PA 19406

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-734. Filed for public inspection April 28, 2006, 9:00 a.m.]

Request for Qualifications; Implementation of the Alternative Energy Portfolio Standards Act of 2004; Doc. No. M-00051865

The Pennsylvania Public Utility Commission (Commission) has issued the following Request for Qualifications (RFQ). The RFQ is issued under the Alternative Energy Portfolio Standards Act of 2004 (73 P.S. §§ 1648.1—1648.8), which authorizes the Commission to select an alternative energy credits program administrator. Qualified individuals or firms may submit a Statement of Qualifications to the Commission for review.

Responses to this RFQ must be complete and consistent with the instructions set forth in the RFQ. After reviewing the responses, the Commission will inform applicants of a schedule of interviews. Statements of Qualifications are due within 45 days of publication of this notice in the *Pennsylvania Bulletin*, and should be filed with the Secretary's Bureau. Copies should be submitted by electronic mail to cbeale@state.pa.us.

JAMES J. MCNULTY,
Secretary

Request For Qualifications for Alternative Energy Credit Program Administrator

PART I: GENERAL INFORMATION FOR CONTRACTORS

I-1. Purpose. This request for qualifications ("RFQ") provides interested contractors with sufficient information to enable them to prepare and submit qualifications for consideration by the Pennsylvania Public Utility Commission ("Commission") to assist in the selection of an alternative energy credit program administrator.

I-2. Issuing Office. This RFQ is issued by the Commission's Bureau of Conservation, Economics and Energy Planning. The Commission regulates public utilities furnishing the following in-state services for compensation: electricity, natural gas, telephone, water, wastewater collection and disposal, steam heat, transportation of passengers and property by motor coach, truck and taxicab, pipeline transmission of natural gas and oil, and public highway-railroad crossings. The Commission is funded by assessments of regulated public utilities.

The contact for this RFQ is:

Carrie Beale
PA Public Utility Commission
Commonwealth Keystone Building
Bureau of Conservation, Economics and Energy
Planning
400 North Street, 2nd Floor
Harrisburg, PA 17120
(717) 783-5411
E-mail: cbeale@state.pa.us

The Issuing Office is the sole point of contact in the Commonwealth for this RFQ.

I-3. Scope. This RFQ contains instructions governing the Statement of Qualification to be submitted by contractors and the material to be included therein and a description of the service to be provided by the alternative energy credit program administrator.

I-4. Problem Statement. The Alternative Energy Portfolio Standards Act of 2004 (the "Act"), 73 P.S. §§ 1648.1 — 1648.8, requires electric distribution companies ("EDCs") and electric generation suppliers ("EGSs") to use certain percentages of electricity derived from alternative energy sources in their sales to retail customers in Pennsylvania. The Commission is responsible for carrying out the provisions of this Act.

Compliance with the act is measured in quantities of alternative energy credits, which represent one megawatt hour of electric generation from a qualified alternative energy source.

The Act authorizes the Commission to establish an alternative energy credit trading program. 73 P.S. § 1648.3(e)(2). An independent entity will serve as the program administrator. Specifically, the Act provides that:

The commission shall approve an independent entity to serve as the alternative energy credits program administrator. The administrator shall have those powers and duties assigned by commission regulations. Such powers and duties shall include, but not be limited to, the following:

(i) To create and administer an alternative energy credits certification, tracking and reporting program. This program should include, at a minimum, a process for qualifying alternative energy systems and determining the manner credits can be created, accounted for, and transferred.

(ii) To submit reports to the commission at such times and in such manner as the commission shall direct.

73 P.S. § 1648.3(e)(2). Services provided pursuant to this section are exempt from the competitive procurement procedures of 62 Pa.C.S. (relating to procurement). 73 P.S. § 1648.3(e)(1).

I-5. Administrator Responsibilities. Consistent with the Problem Statement, the Commission expects that the program administrator role would encompass the following responsibilities:

- Administering a process for qualifying alternative energy systems. This process will involve a review of applications, incorporating the Pennsylvania Department of Environmental Protection's ("DEP") verification of alternative energy source status and environmental compliance into the qualification process, making qualification decisions consistent with standards established by the Commission, and notifying applicants of qualifications decisions. Applicants should review the Commission's Tentative Order proposing standards and processes on this matter. *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards and Processes for Alternative Energy System Qualification and Alternative Energy Credit Certification*, Docket No. M-00051865 (Order entered January 31, 2006).¹

¹ Commission Orders are available at www.puc.state.pa.us using the "Search for document" feature.

- Administering an alternative energy credits certification, tracking and reporting program consistent with standards established by the Commission. This program will involve the use of an alternative energy credits registry, such as the PJM Environmental Services, Inc.'s Generation Attribute Tracking System ("GATS").² The administrator may need to independently verify data provided by behind the meter generators and demand side management/energy efficiency resources. Some information collected by the administrator will need to be made available to the public. Some additional verification may need to be performed for non-PJM generation. Applicants should review the Commission's Orders designating GATS as the alternative energy credit registry and providing for demand side management/energy efficiency tracking and verification standards. *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Designation of the Alternative Energy Credit Registry*, Docket No. M-00051865 (Order entered January 31, 2006); *Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources*, Docket No. M-00051865 (Order entered October 3, 2005)

- The administrator may need to serve as an aggregator for behind the meter generation and demand side management/energy efficiency resources in order that qualified systems receive alternative energy credits.

- The administrator may need to assist the Commission in determining whether alternative energy resources are reasonably available, in the event that an EDC or EGS requests a force majeure determination.

- Confirming that the same alternative energy used to satisfy another state's portfolio requirements is not used to satisfy the requirements of the Act.

- Providing reports on EDC and EGS compliance to the Commission at the end of each reporting period (May 31).

- Providing reports on EDC and EGS compliance to the Commission at the end of each true-up period (August 30).

- Assisting the Commission and DEP in preparing reports to the Pennsylvania General Assembly on the alternative energy market.

- Maintaining a log of all administrator activities, issues requiring Commission action, and opportunities for improvement of the program.

I-6. Work Proposals, Bid Process, Evaluation Criteria and Contract Terms and Conditions. After reviewing the Statements of Qualifications and completing an initial round of interviews, the Commission will notify contractors of the process and requirements for submitting work proposals, bids, the criteria for evaluation, and contract terms and conditions. Only those contractors who have submitted a Statement of Qualifications will be eligible to submit a work proposal and bid for the program administrator role.

The first reporting year for the Act commences on June 1, 2006, and runs through May 31, 2007. Actual compliance is not required for EDCs and EGSs until February 28, 2007. The Commission's objective is for an administrator to be selected and performing by February 28, 2007.

² www.pjm-eis.com

PART II: INFORMATION REQUIRED FROM CONTRACTORS

Statements of Qualifications must be submitted in the format, including heading descriptions, outlined below. To be considered, the Statement of Qualifications must respond to all requirements in this part of the RFQ. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal.

II-1. Statement of the Problem. State in succinct terms your understanding of the problem presented or the service required by this RFQ.

II-2. Management Summary. Contractors must provide an executive summary of the proposed activities to the Commission. It should be a high level overview of how the contractor proposes to manage the responsibilities identified at I-5.

II-3. Prior Experience. Include all relevant experience. As part of the review and approval process, the following information must be provided. In responding to each statement, please cite the alpha/numeric reference point. Experience shown should be work done by individuals who will be assigned to this project as well as that of your company. Studies or projects referred to should be identified and the name of the customer shown, including the name, address, and telephone number of the responsible official of the customer, company, or agency who may be contacted.

a. Company Profile

1. Complete name and address,
2. A short narrative description of company's organization, including organizational charts and indicate company officers by name where applicable,
3. Principal type of business,
4. Total number of years in business, and
5. Number of years providing services similar to those requested in this Statement of Work.

If subcontractors are to be used for this project, please provide the following information on each subcontractor:

b. Subcontractor Profile

1. Complete name and address,
2. A short narrative of the sub-contractor's experience level, years in business, and years experience providing services similar to those requested in this Statement of Work.

3. Experience

c. Provide detailed experience related to the requirements of this project, to include at least three past clients; most notable would be work performed for governmental agencies. For each of these references include:

1. Business name,
2. Address,
3. Contact Person,
4. Phone Number,
5. Type of work performed,
6. Period work was performed, and
7. Brief description of scope of work, limit the description to one page per client,
8. If you intend to subcontract, describe the Vendor's experience in managing subcontractors and the experience with the proposed subcontractor.

II-4. Personnel. Include the number, and names where practicable, of executive and professional personnel, analysts, auditors, researchers, programmers, consultants, etc., who will be engaged in the work. Show where these personnel will be physically located during the time they are engaged in the work. Include through a resume or similar document (1-2 pages) their education and relevant work experience.

Indicate the responsibilities each will have in this project and how long each has been with your company. Identify subcontractors you intend to use and the services they will perform.

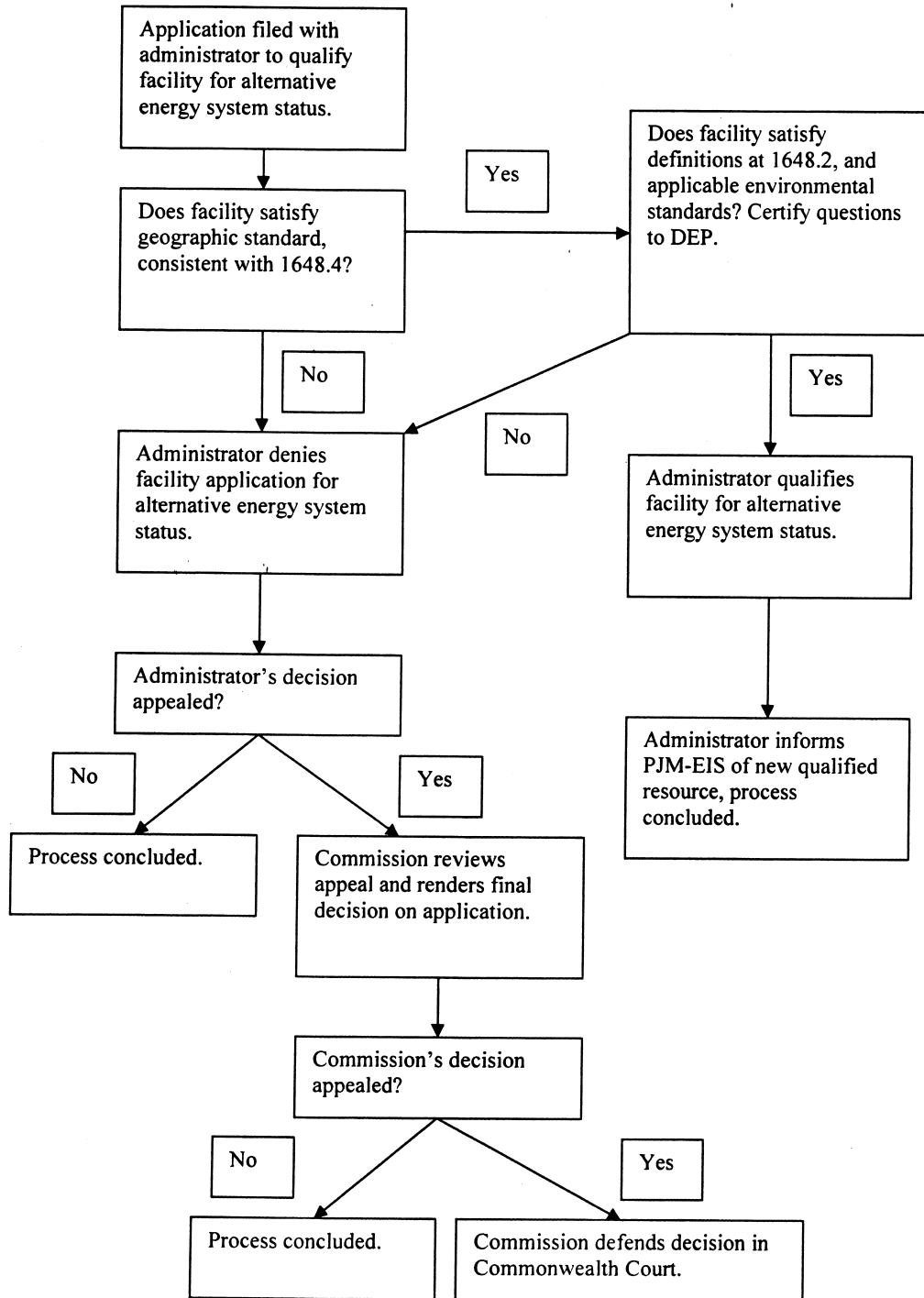
Contractor staff assigned to this project must be able to communicate clearly and work in a cooperative fashion with various Commission staff during all phases of the project. Contractor staff must be able to coordinate and receive direction from designated Commission staff during the project. The Commission will identify specific individuals to provide supervision, direction and coordination to the contractor throughout the project. The Commission will assign certain staff to the project to work in conjunction with the selected contractor as part of an overall project. The Commission cannot at this time identify the specific number of resources that it will dedicate to this project.

Due to the sensitive nature of client information handled by the Commission, the approved contractor's participating staff will be required to sign confidentiality agreements before commencing with the project. Contractor staff must also have a criminal background check completed by the Pennsylvania State Police before beginning work on this project. Due to the sensitive nature of client information handled by the Commission, the approved contractor's participating staff, as well as any subcontractors, must not include offshore resources.

II-5. Conflicts of interest. Identify all affiliations, investments, agreements or client relationships with entities or the parent company of entities regulated by the Commission, including EDCs and EGSSs, participating in Pennsylvania's energy markets, including generators and energy services providers, and entities or the parent company of entities participating in any matter pending before the Commission.

APPENDIX A

Resource Qualification Process



[Pa.B. Doc. No. 06-735. Filed for public inspection April 28, 2006, 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, May 22, 2006. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Application of the following for approval to *begin* operating as *common carriers* for transportation of *persons* as described under the application.

A-00122577. Robert F. Book (11 South Hershey Avenue, Leola, Lancaster County, PA 17540)—persons, in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in the County of Lancaster, to points in Pennsylvania, and return.

Application of the following for *amendment* to the certificate of public convenience approving the operation of motor vehicles as *common carriers* for transportation of *persons* as described under the application.

A-00117236, F.2, Am-A. Darlene Pearson McKinney t/a Moving Right Along (726 Greenleaf Street, Allentown, Lehigh County, PA 18102) for amendment to her certificate to transport, as a common carrier, by motor vehicle, persons in paratransit service, between points in the County of Lehigh, and from points in said county, to points in Pennsylvania, and return, subject to the following conditions: (1) persons to and from work at Lehigh Valley Industrial Park No. 1, DayTimer, Inc. on East Texas Boulevard in Emmaus, ManPower, Inc. in Allentown and industrial sites in Fogelsville; (2) elementary school children to and from school and daycare centers; (3) individuals from senior citizens' facilities to grocery stores; and (4) individuals for after school summer programs, *So As To Permit*: transportation of persons in paratransit service from points in Lehigh and Northampton Counties, to points in Pennsylvania and return. *Attorney*: Michael S. Hino, Esq., 400 Berwyn Park, 899 Cassatt Road, Berwyn, PA 19312-1183.

Application of the following for approval of the *beginning* of the exercise of the right and privilege of operating motor vehicles as *common carriers* for the transportation of *persons* by *transfer of rights* as described under the application.

A-00122588. P. T. Cruisers, LLC (299 U. S. Route 130 South, Cinnaminson, NJ 08057)—persons in limousine service, between points in Pennsylvania, excluding the right to transport between points in the County of Allegheny, and excluding service which is under the jurisdiction of the Philadelphia Parking Authority; which is to be a transfer of all the right authorized under the certificate issued at A-00115500 to Tony's Class Act Limousine Service, Inc. t/a Class Act Limousine, subject

to the same limitations and conditions. *Attorney*: Thomas J. Coleman, Esquire, 325 Albany Road, Moorestown, NJ 08057.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-736. Filed for public inspection April 28, 2006, 9:00 a.m.]

Telecommunications

A-311014F7005. North Pittsburgh Telephone Company and Armstrong Telecommunications, Inc. Joint petition of North Pittsburgh Telephone Company and Armstrong Telecommunications, Inc. for approval of an Interconnection Agreement under section 252(e) of the Telecommunications Act of 1996.

North Pittsburgh Telephone Company and Armstrong Telecommunications, Inc., by its counsel, filed on April 10, 2006, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. The comments are due on or before 10 days after the date of publication of this notice. Copies of the North Pittsburgh Telephone Company and Armstrong Telecommunications, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-737. Filed for public inspection April 28, 2006, 9:00 a.m.]

Telecommunications

A-310084F7002. The United Telephone Company of Pennsylvania d/b/a Sprint and Capital Telecommunications, Inc. Joint petition of The United Telephone Company of Pennsylvania d/b/a Sprint and Capital Telecommunications, Inc. for approval of a master resale agreement under section 252(e) of The Telecommunications Act of 1996.

The United Telephone Company of Pennsylvania d/b/a Sprint and Capital Telecommunications, Inc., by its counsel, filed on April 7, 2006, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of a master resale agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the The United Telephone Company of Pennsylvania d/b/a Sprint and Capital Telecommunications, Inc. joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-738. Filed for public inspection April 28, 2006, 9:00 a.m.]

Telecommunications

A-310555F7000. Verizon Pennsylvania Inc. (f/k/a Bell Atlantic-Pennsylvania, Inc.) and RCN Telecom Services of Philadelphia, Inc. (f/k/a C-TEC Services Inc., f/k/a Residential Communications Network, Inc.). Joint petition of Verizon Pennsylvania Inc. (f/k/a Bell Atlantic-Pennsylvania, Inc.) and RCN Telecom Services of Philadelphia, Inc. (f/k/a C-TEC Services Inc., f/k/a Residential Communications Network, Inc.) for approval of amendment no. 5 to the interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania Inc. (f/k/a Bell Atlantic-Pennsylvania, Inc.) and RCN Telecom Services of Philadelphia, Inc. (f/k/a C-TEC Services Inc., f/k/a Residential Communications Network, Inc.), by its counsel, filed on March 30, 2006, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of amendment no. 5 to the interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Verizon Pennsylvania Inc. (f/k/a Bell Atlantic-Pennsylvania, Inc.) and RCN Telecom Services of Philadelphia, Inc. (f/k/a C-TEC Services Inc., f/k/a Residential Communications Network, Inc.) joint petition are on file with the Commission and are available for public inspection.

The contact person is Cheryl Walker Davis, Director, Office of Special Assistants, (717) 787-1827.

JAMES J. MCNULTY
Secretary

[Pa.B. Doc. No. 06-739. Filed for public inspection April 28, 2006, 9:00 a.m.]

Water Service

A-212285F0134. Pennsylvania-American Water Company and Lexington Woods Corporation. Application of Pennsylvania-American Water Company and Lexington Woods Corporation, for approval of: 1) the transfer, by sale, of the water works property and rights of the Lexington Woods Corporation to Pennsylvania-American Water Company; and 2) the commencement by Pennsylvania-American Water Company of water service to the public in additional portions of Coolbaugh Township, Monroe County, PA, presently being served by Lexington Woods Corporation.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities).

ties). 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 May 15, 2006. The documents filed in support of the application are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the applicant's business address.

Applicant: Pennsylvania-American Water Company

Through and By Counsel: Velma A. Redmond, Esquire, Susan Simms Marsh, Esquire, Seth A. Mendelsohn, Esquire, 800 West Hersheypark Drive, Hershey, PA 17033

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-740. Filed for public inspection April 28, 2006, 9:00 a.m.]

Water Service

A-212490F2000. Redstone Water Company, Inc. Application of Redstone Water Company, Inc., for approval of: 1) the sale of its Royal Water System to the North Fayette County Municipal Authority; and 2) the abandonment of water service by Redstone Water Company, Inc. to its Royal Water System Customers in what is known as the Chestnut Ridge Area of Redstone Township, Fayette County, PA.

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 May 15, 2006. 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: Redstone Water Company, Inc.

Through and By Counsel: Thomas T. Niesen, Esquire, Thomas, Thomas, Armstrong and Niesen, 212 Locust Street, P. O. Box 9500, Harrisburg, PA 17108-9500

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 06-741. Filed for public inspection April 28, 2006, 9:00 a.m.]

PHILADELPHIA REGIONAL PORT AUTHORITY

Request for Bids

The Philadelphia Regional Port Authority (PRPA) will accept sealed bids for Project #06-006.1, South Apron Repairs at Pier 80 South until 2 p.m. on Thursday, June 8, 2006. The bid documents can be obtained from the Director of Procurement, PRPA, 3460 N. Delaware Ave., 2nd Floor, Philadelphia, PA 19134, (215) 426-2600 and will be available May 9, 2006. Additional information and project listings may be found at www.philaport.com. The cost of the bid document is \$35 (includes 7% Pennsylvania

nia 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 May 18, 2006, at 10 a.m. at Columbus Blvd. and Snyder Ave. (Pier entrance gate, north of Pier 78 S. Annex), Philadelphia, PA.

JAMES T. MCDERMOTT, Jr.,
Executive Director

[Pa.B. Doc. No. 06-742. Filed for public inspection April 28, 2006, 9:00 a.m.]

STATE BOARD OF PHARMACY

**Bureau of Professional and Occupational Affairs v.
Robert Matthew Shutty, R. Ph.; Doc. No. 0105-
54-05**

On March 8, 2006, Robert Matthew Shutty, License No. RP-028637-L, of Grantville, Dauphin County was assessed a \$1,000 civil penalty and ordered to make up the deficient 30 credit hours and submit them to the State Board of Pharmacy (Board) counsel by April 7, 2006, the effective date of the order, based on his failure to complete 30 hours of continuing education during the biennial renewal period and trying to procure a license through fraud, misrepresentation or deceit because he believed he had the required number of credit hours.

Individuals may obtain a copy of the amended adjudication by writing to Carole L. Clarke, Board Counsel, State Board of Pharmacy, P. O. Box 2649, Harrisburg, PA 17105-2649.

This amended adjudication and order represent the final Board decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court must

serve the Board with a copy of the petition for review. The Board contact for receiving service of appeals is the previously named Board counsel.

EDWARD J. BECHTEL, R. Ph.,
Chairperson

[Pa.B. Doc. No. 06-743. Filed for public inspection April 28, 2006, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

**Bureau of Professional and Occupational Affairs v.
William F. Dynarski; Doc. No. 0460-56-01**

On January 5, 2006, the State Real Estate Commission (Commission) assessed a \$3,000 civil penalty and reprimanded the license for acting in the capacity of a real estate salesperson without possessing a real estate license and being a party to materially false or misleading representation in a writing regarding a real estate transaction in which respondent was acting in a representative capacity in violation of sections 301 and 604(a)(15) of the Real Estate Licensing and Registration Act (63 P. S. §§ 455.301 and 455.604(a)(15)).

Individuals may obtain a copy of the adjudication by writing to Judith Pachter Schulder, Board Counsel, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649.

This adjudication and order represents the final Commission decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court, must serve the Commission with a copy of the petition for review. The Commission contact for receiving service of appeals is the previously named board counsel.

JOSEPH TARANTINO,
Chairperson

[Pa.B. Doc. No. 06-744. Filed for public inspection April 28, 2006, 9:00 a.m.]

STATE CONTRACTS INFORMATION

DEPARTMENT OF GENERAL SERVICES

Act 266 of 1982 provides for the payment of interest penalties on certain invoices of "qualified small business concerns". The penalties apply to invoices for goods or services when payments are not made by the required payment date or within a 15 day grace period thereafter.

Act 1984-196 redefined a "qualified small business concern" as any independently owned and operated, for-profit business concern employing 100 or fewer employees. See 4 Pa. Code § 2.32. The business must include the following statement on every invoice submitted to the Commonwealth: "(name of business) is a qualified small business concern as defined in 4 Pa. Code 2.32."

A business is eligible for payments when the required payment is the latest of:

The payment date specified in the contract.

30 days after the later of the receipt of a proper invoice or receipt of goods or services.

The net payment date stated on the business' invoice.

A 15-day grace period after the required payment date is provided to the Commonwealth by the Act.

For more information: contact: Small Business Resource Center
PA Department of Community and Economic Development
374 Forum Building
Harrisburg, PA 17120
800-280-3801 or (717) 783-5700

Reader's Guide



Legal Services & Consultation

① Service Code Identification Number

② Commodity/Supply or Contract Identification No.

B-54137. Consultant to provide three 2-day training sessions, covering the principles, concepts, and techniques of performance appraisal and standard setting with emphasis on performance and accountability, with a knowledge of State Government constraints.

Department: General Services
Location: Harrisburg, Pa.
Duration: 12/1/93-12/30/93
Contact: Procurement Division 787-0000

③ Contract Information

④ Department

⑤ Location

⑥ Duration

⑦

(For Commodities: Contact:
Vendor Services Section
717-787-2199 or 717-787-4705

REQUIRED DATA DESCRIPTIONS

- ① Service Code Identification Number: There are currently 39 state service and contractual codes. See description of legend.
- ② Commodity/Supply or Contract Identification No.: When given, number should be referenced when inquiring of contract of Purchase Requisition. If more than one number is given, each number represents an additional contract.
- ③ Contract Information: Additional information for bid preparation may be obtained through the departmental contracting official.
- ④ Department: State Department or Agency initiating request for advertisement.
- ⑤ Location: Area where contract performance will be executed.
- ⑥ Duration: Time estimate for performance and/or execution of contract.
- ⑦ Contact: (For services) State Department or Agency where vendor inquiries are to be made.

(For commodities) Vendor Services Section (717) 787-2199 or (717) 787-4705

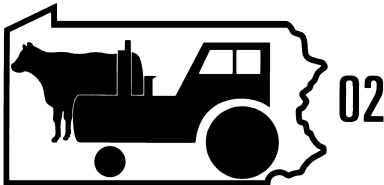
DO BUSINESS WITH STATE AGENCIES

The Treasury Department's Bureau of Contracts and Public Records can help you do business with state government agencies. The bureau is, by law, the central repository for all state contracts over \$5,000. Contract Specialists can supply you with descriptions of contracts, names of previous bidders, pricing breakdowns and other information. They can also direct you to the appropriate person and agency looking for your product or service. Copies of state contracts are also available. (Duplicating and mailing costs may apply). For more information, visit us online at www.patreaury.org.

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

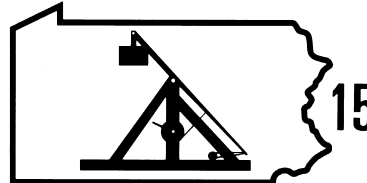
SERVICES



Agricultural Services

6/1 Provide fish food used in a statewide fish culture program during the period July 01 - September 30, 2006. Fish food products purchased in bulk and bagged quantities only from vendors who have had their products tested and accepted by the Fish and Boat Commission.

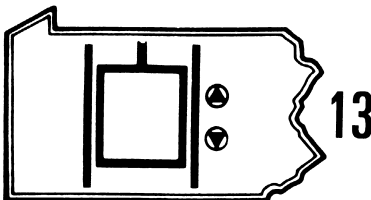
Department: Fish and Boat Commission
Location: Statewide to various state fish hatcheries as requested.
Duration: July 01 - September 30, 2006
Contact: Debbie Rose, 814-359-5141



Environmental Maintenance Service

BOGM 06-1 Cleaning Out and Plugging Thirty-Five (35) Abandoned Oil Wells. (Oil Creek State Park and The Pennsylvania Historical and Museum Commission Properties). The principal items of work include cleaning-out and plugging thirty-five (35) abandoned oil wells, estimated to be 600 feet each in depth, to Department specifications, preparing and restoring well sites and mobilizing and demobilizing plugging equipment. This project issues on April 28, 2006 and bids will be opened on May 25, 2006 at 2:00 p.m. Bid documents cost \$10.00 per set and will not be mailed until payment has been received. A pre-bid conference is planned for this project but a date has not been set. Please use the contact information contained in this advertisement to find out more about the pre-bid.

Department: Environmental Protection
Location: Cherrytree Township, Venango County
Duration: 150 calendar days after the official starting date.
Contact: Construction Contracts Section, 717-787-7820



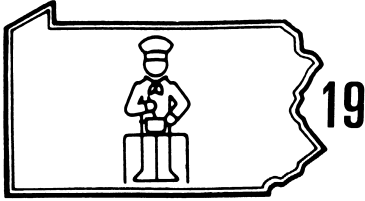
Elevator Maintenance

cn00020281 Contractor shall furnish monthly maintenance for 5 passenger elevators, 1 dumbwaiter and 1 wheelchair lift at the State Correctional Institution, Cambridge Springs, PA.

Department: Corrections
Location: S.C.I. Cambridge Springs, 451 Fullerton Avenue, Cambridge Springs, PA 16403
Duration: 7/1/06 to 6/30/09
Contact: Darla Spaid, 814/398-5400

BOGM 06-6 Cleaning Out and Plugging Four (4) Abandoned and Orphan Oil and Gas Wells. (Ms. Gloria Anderson, Mr. and Mrs. Earl T. Kilmer, Mr. and Mrs. Scott M. Hickey, and the Allegheny National Forest Properties). The principal items of work and approximate quantities include cleaning out and plugging four (4) abandoned and orphan oil and gas wells, estimated to be between 1,878-2,300 feet each in depth, to Department specifications, preparing and restoring well sites and mobilizing and demobilizing plugging equipment. This project issues on April 28, 2006 and bids will be opened on May 25, 2006 at 2:00 p.m. Bid documents cost \$10.00 per set and will not be mailed until payment has been received. A pre-bid conference is planned for this project but a date has not been set. Please use the contact information contained in this advertisement to find out more about the pre-bid.

Department: Environmental Protection
Location: Mt. Jewett Borough, Hamlin, Hamilton and Wetmore Townships, McKean County
Duration: 90 calendar days after the official starting date.
Contact: Construction Contracts Section, 717-787-7820



Food

CN00020234 Contractor shall supply Beverage in a Box Dispensing System for Fruit Drinks. Specifications are contained within a quote format. Approximate consumption for a 12 month period should approach seven thousand (7,000) gallons of concentrated drink mix. Anticipated Contract Period: Thirty-six (36) months or three (3) years.

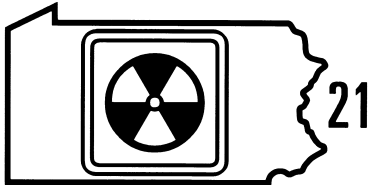
Department: Corrections
Location: State Regional Correctional Facility, 801 Butler Pike, Rte. 258 South, Mercer, PA 16137
Duration: July 1, 2006 to June 30, 2009
Contact: John Pitonyak, Ext. 1009, 724/662-1837

30115815 This Bid is for bread, rolls, and English muffins. A copy of the Bid Packet is available by contacting the Purchasing Department by phone at 610-740-3427, 610-740-3425 or by fax at 610-740-3424.

Department: Public Welfare
Location: Allentown State Hospital, 1600 Hanover Avenue, Allentown, PA 18109-2498
Duration: July 1, 2006 to June 30, 2007
Contact: Mary D Maskornick or Robert Mitchell, 610-740-3427

CN00020249 Contractor to provide daily delivery of milk and milk products such as: milk, lowfat 2%, milk plain 5% butterfat, milk chocolate 1% to Southwestern Veterans Center. Specifications available upon request.

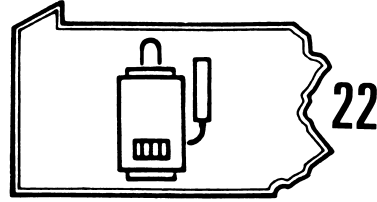
Department: Military Affairs
Location: Southwestern Veterans Center, 7060 Highland Drive, Pittsburgh, PA 15206
Duration: 07/01/2006 - 08/01/2007
Contact: Ken Wilson, 412-665-6727



Hazardous Material Services

DAIRY BARN The Pennsylvania Dept. of Agriculture is requesting bids from qualified lead based paint abatement contractors to do an abatement on the interior of an approx. 9,300 sq. ft. dairy barn. Request a copy of the bid package by e-mailing mmesaris@state.pa.us. Please include your company name and complete mailing address.

Department: Agriculture
Location: Harrisburg State Farm, Susquehanna Township, PA
Duration: Work should be completed by June 30, 2006
Contact: Michael Mesaris, 717-787-5674



HVAC Services

CN00020247 Vendor to furnish and install 25-ton temporary air conditioning unit for Ward 37-1 at Wernersville State Hospital. A/C unit must be skid mounted. Facility will provide electrical connections. Price must include ALL ducting, parts, equipment, delivery/pick-up and installation charge. Rental period is estimated to be approximately 4 months. Anticipated bid opening date: May 12, 2006. Prospective vendors must register with the Integrated Enterprise System (IES) at www.vendor-registration.state.pa.us. DPW utilizes the information contained in the vendor master file for its procurement activities. Registered vendors who need to update or change the existing information in this file must contact IES and provide the changes or updates to IES. It is the vendor's responsibility to contact IES for changes, as DPW is unable to change vendor information. If you fail to update or change information, you may not receive requested bid information.

Department: Public Welfare
Location: South Heidelberg Township, Wernersville, PA
Duration: Approximately 4 months
Contact: Mary Hein, (610) 670-4128

124010 Repair/Maintenance of or existing electrical system(s) in District 12-4 Washington County and stocking shed areas in the county. To include all installations maintained by PennDOT - Washington County - PA Dept. of Transportation.

Department: Transportation
Location: Washington County and stocking areas in the county
Duration: One year contract with option for three one-year renewals. Tentative contract period is: July 1, 2006 to June 30, 2007
Contact: Terri Schubenski, (724) 223-4489

CN00020209 Emergency Diesel Generator with automatic transfer switch. To include installation with the exception of the concrete pad on which it will be set.

Department: Public Welfare
Location: Youth Development Center, 1745 Frew Mill Road, New Castle, PA 16101
Duration: Until project completion
Contact: Dean Fetterolf/Bill Hilko, 717 789-5612/724 656-7391

PLUMBING SUPPLIES Plumbing supplies to include various valves, unions, couplings, temperature gauges and other related plumbing items.

Department: Corrections
Location: State Correctional Institution, 1000 Follies Road, Dallas, PA 18612
Duration: April 2006 to June 2006
Contact: Joe Holocheck, Maint. Dept., 570-675-1101

CN00019772 The State Correctional Institution at Rockview, Bellefonte, Centre County, is seeking bidders for Furnish and Install 15KVA Power Mains. Estimated period of service: 05/01/06 - 06/30/06. Prospective bidders must possess a Vendor number issued by the Department of General Services Central Vendor Management Unit, 1-866-775-2868, or www.vendorregistration.state.pa.us. Interested vendors may request bid packages via e-mail jcalland@state.pa.us, or via fax (814) 355-6026. Bid opening date: 04/24/06, 2:00 p.m.

Department: Corrections
Location: SCI-Rockview, SR 26, Box A, Bellefonte, PA 16823
Duration: 05/01/06 - 06/30/06
Contact: Janine E. Calland, PUR AGT 2, 814-355-4874, X425



Janitorial Services

FM8951 Furnish materials, equipment, and labor to perform Janitorial Services three (3) visits per week at the Troop listed below. The detailed Work Schedule and Bid Specifications must be obtained from the Facility Management Division, 717-705-5952.

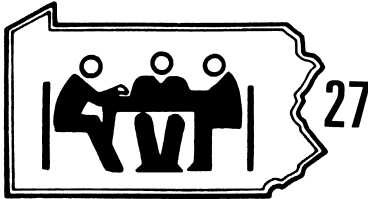
Department: State Police
Location: Pennsylvania State Police, Troop D, Kittanning Station, 184 Nolte Drive, Kittanning, PA 16201
Duration: July 1, 2006 through June 31, 2009
Contact: Helen Fuhrman, 717-705-5952

FM8949 Furnish all materials, equipment, and labor to perform janitorial services three (3) visits per week at the location listed below. The detailed work schedule and bid Specifications must be obtained from the Facility Management Division at 717-705-5952.

Department: State Police
Location: Troop C, Clearfield Station, 147 Doe Hill Road, Woodland, PA 16881-9781
Duration: July 1, 2006 through June 30, 2009
Contact: Helen Fuhrman, 717-705-5952

FM8952 Furnish materials, equipment, and labor to perform janitorial services three (3) visits per week at the Troop listed below. The detailed work schedule and bid specifications must be obtained from the Facility Management Division, 717-705-5952.

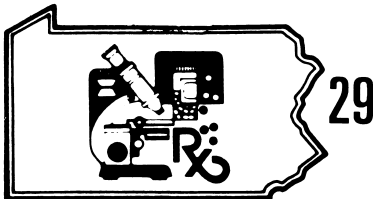
Department: State Police
Location: Pennsylvania State Police, Troop D, New Castle Station, RD #5, Box 5265, New Castle, PA 16105
Duration: July 1, 2006 through June 31, 2009
Contact: Helen Fuhrman, 717-705-5952



Lodging/Meeting Facilities

BNKG-CONFERENCE-001-REVISED The Department of Banking has issued REVISED SPECS for BNKG-CONFERENCE-001. Provide lodging, meeting rooms and meals for one (1), four (4) day "Conference" for the Department of Banking ("DOB") for approximately 170 attendees. Proposed meeting date is July 18, 19, 20 and 21, 2006. Contract shall be awarded to the lowest responsible bidder within a 15-mile radius of 17 North 2nd Street, Harrisburg, PA. The lowest responsible bidder shall have the contract administrator on-site for the entire period of the meeting.

Department: Banking
Location: 17 N. 2nd Street, Harrisburg, PA 17101
Contact: Christie Sharma, 717-346-9344



Medical Services

41406 To provide the services of a professional Oral Surgeon qualified in Oral and Maxillofacial Surgery. Copies of the Bid Proposal can be obtained by contacting the Purchasing Department of the Allentown State Hospital. Fax 610-740-3425.

Department: Public Welfare
Location: Allentown State Hospital, 1600 Hanover Avenue, Allentown, PA 18109-2498
Duration: 7/1/2006 to 6/30/2010
Contact: Robert Mitchell, 610-740-3425

CN00020162 Dental services.

Department: Military Affairs
Location: Pennsylvania Soldiers' and Sailors' Home, 560 East Third Street, Erie, PA 16507
Duration: 07/01/2006 to 06/30/2007
Contact: Rosemarie Rendulic, 814-878-4930

SP 1161111001 Dental Lab. Services: Contractor shall furnish all labor, equipment, materials, supplies, and physical facilities necessary to provide Dental Laboratory Services to SCI-Chester. More detailed information can be obtained from the Institution.

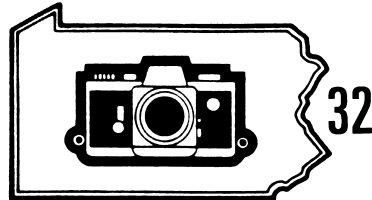
Department: Corrections
Duration: July 1, 2006 and ending June 30, 2008
Contact: Jacqueline Newson, Purchasing Agent, 610-490-4370

CN00020196 Contractor to provide Ambulance Service for Warren State Hospital.

Department: Public Welfare
Location: Warren State Hospital, 33 Main Dr., N. Warren, PA 16365-5099
Duration: 07/01/2006 - 06/30/2007
Contact: Ms. B. Muntz, PA III, 814-726-4496

CN00020132 Oral Surgeon - Provide consultation and dental surgical procedures that cannot be performed by the Dental Department at Norristown State Hospital. Prospective vendors must register with the Integrated Enterprise System (IES) at www.vendorregistration.state.pa.us. DPW utilizes the information contained in the vendor master file for its procurement activities. Registered vendors who need to update or change the existing information in this file must contact IES and provide the changes or updates to IES. It is the vendor's responsibility to contact IES for changes, as DPW is unable to change vendor information. If you fail to update or change information, you may not receive requested bid information.

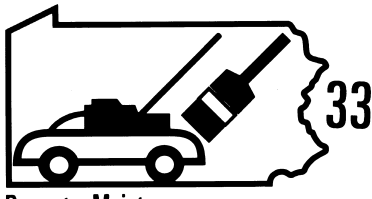
Department: Public Welfare
Location: Norristown State Hospital, 1001 Sterigere Street, Norristown, PA 19401
Duration: Anticipated to begin on 7/1/06 through 6/30/11 (5 Years). The bid opening date is 5/3/06 at 2 p.m.
Contact: Debbie Jones, 610-313-1025



Photography Services

CN00020032 Processing and printing aerial color films. Aerial color films shall be processed under rigidly controlled conditions utilizing equipment and chemical processes recommended by the aerial film manufacturers for the films being processed.

Department: Transportation
Location: Bureau of Design, Photogrammetry and Surveys Section, 145 Limekiln Road, Suite 300, New Cumberland, PA 17070
Duration: 7/1/06 to 6/30/07, with one-year renewal options for a total of two such renewals
Contact: Deb Long, 717-787-3311



Property Maintenance

FM 8979 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Clearfield Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop C, Clearfield Station, 147 Doe Hill Road, Woodland, PA 16881. Contact: Sgt. Thomas Hollenbaugh, 814-857-3800
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8980 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Tionesta Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop C, Tionesta Station, RD #1, 43DD, Tionesta, PA 16353 (SR 36, 4.6 miles south of Tionesta Borough). Contact: Sgt. Kenneth Thornton, 814-755-3565, ext. 203
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

13670A Provide all labor, material, devices and equipment required to replace the four (4) existing Doric style columns located at the west entrance of the chapel.

Department: Military Affairs
Location: Scotland School for Veterans' Children, 3583 Scotland Road, Scotland, PA 17254-0900
Duration: Approx. May 22, 2006 through October 16, 2006
Contact: Marion E. Jones, (717) 264-7187, Ext. 661

CN00020260 The Department of Conservation and Natural Resources, Bureau of State Parks, requires the services of a contractor to repair chimneys at Nescopeck State Park, c/o Hickory Run State Park, R. R. 1, Box 81, White Haven, Luzerne County, PA. Work shall include, but is not limited to, the furnishing of all labor, superintendence, materials, tools and equipment, and miscellaneous items, and performing all work necessary to complete all construction to the satisfaction of, and subject to the approval of, the Department. The site may be visited Monday through Friday from 8:00 AM to 4:00 PM. Please call David Madl at 717-554-0400 to make an appointment. Prospective bidders must be registered with the Commonwealth and have a registered vendor number prior to the bid opening date of 05/02/06. To register please call 1-866-775-2868. Bid Opening Date: 05/02/2006, 2:00 PM.

Department: Conservation and Natural Resources
Location: Nescopeck State Park, c/o Hickory Run State Park, R. R. 1, Box 81, White Haven, Luzerne County, PA
Duration: The Contract shall commence upon execution and receipt of Purchase Order and Notice to Proceed Letter, and terminates August 31, 2006.
Contact: Gloria Strawser, 717-783-0733

FM 8981 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, New Castle Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop D, New Castle Station, 3539 Wilmington Road, New Castle, PA 16105. Contact: Lt. Peter Vogel, 724-598-2239
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8982 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Corry Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop E, Corry Station, 11088 Route 6 East, Union City, PA 16438. Contact: Sgt. Michael Presnar, 814-663-2043, ext. 223
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8988 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Newport Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop H, Newport Station, 52 Red Hill Court, Newport, PA 17074. Contact: Sgt. Charles Ringer, 717-567-3110
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8990 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Ephrata Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop J, Ephrata Station, 21 Springhouse Road, Ephrata, PA 17522. Contact: Sgt. Steven Miller, 717-721-7667
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8991 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Lehighton Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop N, Lehighton Station, 5730 Interchange Road, Lehighton, PA 18235. Contact: Sgt. Duane Lacock, 610-377-4270
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8993 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Shickshinny Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop P, Shickshinny Station, 872 Salem Boulevard, Berwick, PA 18603. Contact: Sgt. Raymond Whittaker, 570-542-7105, ext. 213
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8986 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Milton Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop F, Milton Station, 50 Lawton Lane, Milton, PA 17847. Contact: Sgt. Walter Witkowski, 570-524-2662, ext. 3119
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8994 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Gibson Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop R, Gibson Station, RD #1 Box 227B, New Milford, PA 18834 (1/2 mile west of SR 0081 on SR 0848). Contact: Sgt. Joseph Gaughan, 570-465-3154, ext. 215
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8983 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Franklin Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop E, Franklin Station, 6724 US 322, Franklin, PA 16323. Contact: Sgt. Bernard Loll, 814-676-6596, ext. 222
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8985 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Emporium Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop F, Emporium Station, 12921 Route 120, Emporium, PA 15834. Contact: Sgt. Frank Mickle, 814-486-3321
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8996 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Punxsutawney DEO, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Punxsutawney DEO, 305 Sutton Street, Punxsutawney, PA 15767. Contact: Sgt. James Jones, 814-938-0565
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8997 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Williamsport DEO, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Williamsport DEO, 150 Choate Circle, Montoursville, PA 17754. Contact: Sgt. Daniel Hawk, 570-433-3966
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8999 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Northwest Training Center, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Northwest Training Center, 195 Valley View Drive, Meadville, PA 16335. Contact: Sgt. Christopher Walsh, 814-332-6888
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8984 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Coudersport Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop F, Coudersport Station, 3140 East Second Street, Coudersport, PA 16915. Contact: Sgt. Todd Weltmer, 814-274-8690
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8989 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, York Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop H, York Station, 110 North Street, York, PA 17403. Contact: Lt. Patrick Gebhart, 717-428-1011
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8992 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Swiftwater Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

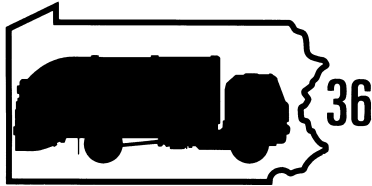
Department: State Police
Location: Troop N, Swiftwater Station, HCI Box 121, Swiftwater, PA 18370 (SR 611, 3 miles north of I-80, Exit 299). Contact: Lt. David Douglas, 570-839-7701
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

FM 8995 Furnish all labor, materials and equipment to cut, trim and maintain grass area at the Pennsylvania State Police, Honesdale Station, three (3) cuttings per month, or as required by the Station Commander. Detailed Work Schedule and Bid must be obtained from the Facility Management Division at 717-705-5951.

Department: State Police
Location: Troop R, Honesdale Station, RR 16, 14 Collan Park, Honesdale, PA 18431. Contact: Sgt. David Relph, 570-251-7207, ext. 221
Duration: 07/01/06 to 06/30/09
Contact: Sandy Wolfe, 717-705-5951

0020004 Vendor to perform pave reconstruction, crackfilling, seal coating, and line painting to the Gino J Merli Veterans Center Parking lot. Please see Scope of services in Bid Packet.

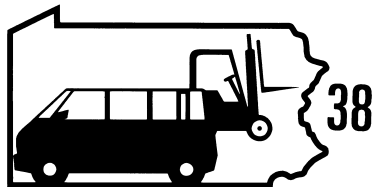
Department: Military Affairs
Location: Gino Merli Veterans Center, 401 Penn Avenue, Scranton, PA 18503
Duration: May 1, 2006 through June 30, 2006
Contact: Robert J Casey, 570-961-4317



Sanitation

CN0002093 The Department of Conservation and Natural Resources, Bureau of State Parks, requires the services of a contractor to provide solid waste collection and disposal and recycling services at French Creek State Park, Berks County, PA. Bid Opening Date: 04/27/2006, 2:00 PM

Department: Conservation and Natural Resources
Location: French Creek State Park, 843 Park Road, Elverson, PA 19520-9680
Duration: The contract shall commence upon execution and receipt of Purchase Order or June 1, 2006, whichever is later, and terminates December 31, 2008.
Contact: Gloria Strawser, 717-783-0733



Vehicle, Heavy Equipment and Powered Machinery Services

CN0002027 Rental of up to two (2) Caterpillar 312 Excavators, and up to two (2) Caterpillar D-4 Bulldozers, or approved equivalent. The Department shall provide the operators for the equipment. This contract is a renewable yearly contract. The number of pieces of equipment and equipment type requested each year and the rental periods, shall be at the discretion of the Project Manager. The Project Manager will notify the awarded vendor each year, prior to renewal, of the equipment needed and the rental period, for each upcoming year. NOTE: Equipment needed for first year of contract is one (1) excavator and one (1) bulldozer. Each machine requested will be rented for a minimum of four (4) weeks, and not to exceed twelve (12) weeks per year. Bid Opening Date/Time: May 2, 2006; 2:00 p.m.

Department: Conservation and Natural Resources
Location: Forest District No. 10 Office, Renovo, PA; project locations would be Clinton, Centre, Potter, or Cameron Counties, PA
Duration: Commence July 1, 2006, and terminate June 30, 2007. Parties may renew the contract for up to two (2) additional consecutive annual terms, and request 5 percent increase in prices each year, with final termination date of June 30, 2009.
Contact: Nancy Weibley, 717-783-4884

CN00019675 The Pennsylvania Department of Environmental Protection, Wilkes-Barre Bureau of Abandoned Mine Reclamation, is seeking bids for On-Call Mechanical Maintenance at the Rausch Creek AMD Treatment Plant and other miscellaneous mechanical installations in Northeast Pennsylvania.

Department: Environmental Protection
Location: Rausch Creek AMD Treatment Plant, 315 Schwenks Road, P.O. Box 758, Valley View, PA 17983-0758
Duration: July 1, 2006 to June 30, 2007, with option to renew.
Contact: Jack Buckwalter, 570-682-3448

CN00020248 Department of Transportation, District 11-1, is seeking a vendor to install 20 new tarp systems on state equipment. Vendor must be within Allegheny County.

Department: Transportation
Location: Maintenance Garage is located at 51 Fox Chapel Road, Pittsburgh, PA 15238. Stockpiles are located throughout Allegheny County.
Duration: Estimated Start Date of installation: 5/19/06
Contact: Tim Claypoole, 412-781-3260 x217

124011 Tire Repair Service. Repair of existing and installation of new tires. Service will include mounts, dismounts, wheel changes, flat repairs, and other services performed to repair a tire. Specifications will be included in the bid package. Work/repairs to be done at the county maintenance shed as well as in the field at various sites throughout the county.

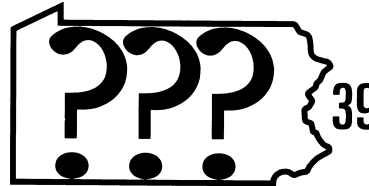
Department: Transportation
Location: All sites/routes within Washington County
Duration: One year contract with option for three one-year renewals. Tentative contract period is: July 1, 2006 to June 30, 2007.
Contact: Terri Schubenski, (724) 223-4489

CN00020171 To supply Inspection Equipment for vehicles to the Hickory Run State Park in White Haven, PA. Interested vendors must be registered with the Commonwealth and have registered vendor number. To register and obtain number, call 1-866-755-2868. Bid Opening: 04/27/06, 2:00 PM.

Department: Conservation and Natural Resources
Location: Hickory Run State Park, RR 1, Box 81, White Haven, PA 18661-9712
Duration: Contract shall commence upon execution of Purchase Order and terminate 30 days upon receipt of order
Contact: Lawanza L. Poteat, (717) 783-3309

CN00020242 "On Call" Repairs and semi-annual inspections of 9 forklifts located at Fort Indiantown Gap. For a copy of the bid package, please fax your request to 717-861-2932 or e-mail to the address below. Bid opening will be Wednesday, May 10, 2006 at 2:00 PM.

Department: Military Affairs
Location: State Reservation Maintenance, Various Buildings, Ft. Indiantown Gap, Annville, PA 17003-5002
Duration: 1 July 2006 - 30 June 2009 with 2 Option to Renew years
Contact: Brenda Lower, 717-861-2118



Miscellaneous

0852012006 Professional design services for exhibits and visitor contact environments which will include a variety of services, including design, fabrication and installation of exhibits and other type of visitor contact environments, including but not limited to signs, audio/visual presentations, computer interactives, information desks/points of purchase, visitor lobbies, public spaces, museum sales shops and associated fixtures. Services will also include development, research and writing of exhibit scripts, including development of objects and graphics lists and development, facilitation and production of various types of planning documents related to the services above. This work will be performed for various sites and museums owned by the Commonwealth and administered by the Pennsylvania Historical and Museum Commission.

Department: Historical and Museum Commission
Location: Statewide
Duration: 5 Years
Contact: Tobi Gilson, 717-772-8875

CN00020211 Provide food services at the North Central Secure Treatment Unit, Danville, PA. Cooking facilities are available.

Department: Public Welfare
Location: North Central Secure Treatment Unit, 210 Clinic Road, Danville, PA 17821
Duration: 7/1/06-6/30/07
Contact: Nikki Koser or Tami Myers, (717) 789-5509

CN00019749 Vendor(s) to enter into an agency contract to cover the requirements of the Department of Conservation and Natural Resources (DCNR) for supply of sodium hypochlorite for chlorination and disinfection at specifically designated state parks' swimming pool complexes within the Commonwealth of Pennsylvania. In order to be awarded a state contract, interested vendors must be registered with the Commonwealth and must have a registered vendor number. To register and obtain number, call CVMU at 1-866-775-2868 or online at www.vendorregistration.state.pa.us. Bid Opening: April 20, 2006, 2 p.m.

Department: Conservation and Natural Resources
Location: Delivery to be to various DCNR offices. Location to be noted on purchase order.
Duration: The contract shall commence upon execution of contract and terminate December 31, 2006, and may agree to renew this contract for two additional annual terms with final termination December 31, 2008.
Contact: Naomi Rudisill, 717-783-0749

CN00020213 Flocculant (Polymer - Powder Form) for use as flocculant aide in clarifiers and belt filter press at the Brandy Camp AMD Treatment Plant. Product to be delivered upon request in 50 or 55 pound lined bags. Estimated Quantity: 8,000 pounds per year.

Department: Environmental Protection
Location: Brandy Camp AMD Treatment Plant, Brandy Camp Road, Horton Township, Brandy Camp, PA 15822
Duration: July 1, 2006 to June 30, 2007 with option of four yearly renewals
Contact: Phyllis Cocco, 814-472-1811

PGC-2876 Agency seeking vendor to supply 150 Side-lock, Percussion Cap Inert Muzzle Loading Rifles. Additional specifications are available in the bid package. Bid opening date: May 5, 2006 - 2:00 PM.

Department: Game Commission
Location: Pennsylvania Game Commission, Bureau of Administrative Services, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797
Duration: Upon award through August 4, 2006
Contact: Diane Shultz or Barb Kline, 717/787-6594

CN00020205 The Department of Labor and Industry is soliciting bids for 9,000, 20 PT Type 1 Pressboard Classfiles, letter size, 1/3 Top tab assorted, 2 Kraft Dividers with no tabs, 2 inch Tyvek Gussett Expansion, 6-2 inch Bonded Fasteners (Left side), 2 3/4 inch center to center, Color: Blue. For bid package please call 717-772-0727 or fax your request to 717-787-0688.

Department: Labor and Industry
Location: Department of Labor and Industry, 1220 - Labor and Industry, Hiram G. Andrews Center Central Stores, 727 Goucher Street, Johnstown, PA 15905.
Duration: All Bids must be received in the Procurement Office by 05/04/2006 by 2:00 p.m. All late bids will not be considered.
Contact: Robyn Stacey, 717-772-0727

CN00020206 The State Correctional Institution at Somerset will be soliciting bids for dental supplies for a 6 month period. All quantities on the bid will be estimates. Dental Department will call for supplies against the awarded PO as required.

Department: Corrections
Location: State Correctional Institution at Somerset, 1590 Walters Mill Road, Somerset, PA 15510-0001
Duration: 7/1/06 through 12/31/06
Contact: Theresa Solarczyk, Purchasing Agent II, 814 445-6501 X1232

CN00020278 RE-BID, Provide Non-Emergency Ambulance Transportation 24 hours, 7 days a week upon request. Fax requests to 570-372-5675 or email for bid package. Prospective vendors must register with the Integrated Enterprise System (IES) at www.vendorregistration.state.pa.us. DPW utilizes the information contained in the vendor master file for its procurement activities. Registered vendors who need to update or change the existing information in this file must contact IES and provide the changes or updates to IES. It is the vendor's responsibility to contact IES for changes, as DPW is unable to change vendor information. If you fail to update or change information, you may not receive requested bid information.

Department: Public Welfare
Location: Selinsgrove Center, 1000 Route 522, Selinsgrove, PA 17870
Duration: 1 year 4 year renewals
Contact: Patti Kreamer, 570-372-5670

ADV - 278 Indiana University of Pennsylvania (IUP), a member of the Pennsylvania State System of Higher Education, is seeking bids to purchase digital payment multi-space parking stations for the main campus, Indiana, PA 15705. Requests for a bid package should be made in writing, referencing Advertisement No. ADV-278 and directed to Robert L. Bowser, Jr. C.P.M., Director of Purchasing Services, IUP, 650 South 13th Street, Indiana, PA 15705, Fax (724) 357-2670, Telephone (724) 357-3077, or e-mail rbowser@iup.edu. Requests for a bid package will be accepted until Wednesday, April 26, 2006. Bid packages will be mailed to vendors after April 27, 2006. The University encourages responses from small and disadvantaged, minority, and women-owned firms.

Department: State System of Higher Education
Location: Indiana University of Pennsylvania, Robertshaw Building, 650 South 13th Street, Indiana, PA 15705-1087
Duration: Reference Advertisement.
Contact: 724-357-8317

ADV - 279 Indiana University of Pennsylvania (IUP), a member of the Pennsylvania State System of Higher Education, is seeking bids to purchase multiple height mobile folding risers for the main campus, Indiana, PA 15705. Requests for a bid package should be made in writing, referencing Advertisement No. ADV-279 and directed to Robert L. Bowser, Jr. C.P.M., Director of Purchasing Services, IUP, 650 South 13th Street, Indiana, PA 15705, Fax (724) 357-2670, Telephone (724) 357-3077 or e-mail rbowser@iup.edu. Requests for a bid package will be accepted until Thursday, April 26, 2006. Bid packages will be mailed to vendors after April 27, 2006. The University encourages responses from small and disadvantaged, minority, and women-owned firms.

Department: State System of Higher Education
Location: Robertshaw Building, 650 S. 13th Street, Indiana, PA 15705-1087
Duration: Reference Advertisement
Contact: 724-357-3077

13679 Provide 200 each Charles River Warmup Jacket No. 9949 (The Finalist Jacket) and 200 pair Charles River Warmup Pant No. 9950 (The Finalist Pants).

Department: Military Affairs
Location: Scotland School for Veterans' Children, 3583 Scotland Road, Scotland, PA 17254-0900
Duration: One time purchase (delivery needed by June 30)
Contact: Marion E. Jones, (717) 264-7187, Ext. 661

CN00020239 Graffiti removal from metal, concrete, stone and various other surfaces as required. All quantities are estimated.

Department: Transportation
Location: All counties of District 4-0: Lackawanna, Luzerne, Pike, Susquehanna, Wayne and Wyoming.
Duration: 3-year period.
Contact: Gerald Pronko, (570) 963-4039

CN00020218 The Pennsylvania Emergency Management Agency (PEMA) an agency representing the Commonwealth of PA is soliciting bid proposals to provide a series of training courses for hospital emergency departments and emergency personnel on the evaluation and treatment of radiological contaminated injured individuals. If you are interested in requesting a bid package, please contact Jill Dimpsey at jdimpsey@state.pa.us; or call (717) 651-2029. Facsimile requests may be submitted to (717) 651-2025. Deadline for requesting a bid package will be April 28, 2006. Deadline for a bid submission is May 5, 2006. Please include your name, title, phone number, fax number, complete address, Federal ID number and reference CN00014872. You will also need to be registered with SAP, who gives you a SAP Vendor Number. You can register by logging on to vendorregistration.state.pa.us.

Department: PA Emergency Management Agency
Location: Various locations within the Commonwealth of PA.
Duration: July 1, 2006 through June 30, 2007, and July 1, 2007 through June 30, 2008
Contact: Jill Dimpsey, 717-651-2029

CN00020102 Security locks and Accessories as per specification. For a copy of the bid package please fax your request to 717-861-2932 or e-mail to the address below. Bid opening will be Friday, April 28, 2006 at 2:00 P.M.

Department: Military Affairs
Location: Fort Indiantown Gap, Annville, PA 17003-5002
Duration: Date of Award - 30 June 2009
Contact: Sharon Wessner, 717-861-8519

CN00020232 Humidifiers (3 ea.) such as Nortec NHMC-050 or NHMC-075 Model or approved equal. Bid Opening Date: 27 April 06, 2:00 PM. Please fax or e-mail a request for Bidding Documents to: Regine Hensel, fax 717 861-2932 or e-mail: rhensel@state.pa.us.

Department: Military Affairs
Location: Ft. Indiantown Gap, Annville, PA 17003
Duration: Estimated Delivery Date: 10 May 06
Contact: Regine Hensel, 717 861 8455

CN00020243 The Pennsylvania Department of Transportation (Chester County 6-2 Maintenance) is accepting bids for concrete blocks. These concrete block are fabricated from excess ready mix concrete and a 1/2 inch piece of rebar embedded in each block to hook to. Sizes will range from 2' by 2' by 6', 2' by 2' by 4' and 2' by 2' by 3'. To receive a bid package please fax your name, address and phone number to Michael Burkhart at 610-436-1904. Bids will be opened in Chester County Maintenance Office. The anticipated date for the release of bid packages is April 20, 2006.

Department: Transportation
Location: 401 Montgomery Ave., West Chester, PA 19380
Duration: June 30, 2006
Contact: Michael Burkhart, 610-436-1907

CN00020170 State Awards as per specifications. For a copy of the bid package please fax your request to 717-861-2932 or e-mail to the address below. Bid opening will be Wednesday, April 26, 2006 at 2:00 P.M.

Department: Military Affairs
Location: Fort Indiantown Gap, Annville, PA 17003-5002
Duration: Date of Award - 30 June 2009
Contact: Sharon Wessner, 717-861-8519

[Pa.B. Doc. No. 06-745. Filed for public inspection April 28, 2006, 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

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 1, 3 AND 5]

[L-00020156]

Practice and Procedure Before the Commission

The Pennsylvania Public Utility Commission, on December 15, 2005, adopted a final rulemaking order revising and updating the Commission's rules of practice and procedure.

Executive Summary

Periodically the Commission reevaluates its procedural rules to ensure that they reflect the Commission's current policies and the current state of the law.

On September 12, 2002, the Commission issued an Advance Notice of Proposed Rulemaking to solicit comments from interested persons regarding possible changes and development of the Commission's procedural rules.

On October 30, 2004, the *Pennsylvania Bulletin* published the Commission's Order and Annex of proposed amendments at 34 Pa.B 5895. The Order established a 60-day deadline for Comments following publication in the *Pennsylvania Bulletin*. The Comment period expired on December 28, 2004. The Commission received nine sets of comments and additionally incorporated the views of individual Commission Bureaus in evaluating possible changes.

From December 2004 through December 2005, the Commission reviewed the proposed amendments and comments. On December 15, 2005, the Commission adopted an Order and Annex establishing final regulations. The Commission entered a final Order and Annex on January 4, 2006.

The final regulations accomplish a number of Commission objectives. First, the final rules abandon the proposal to allow electronic filing until development of an electronic filing capability at the Commission. Second, the final rules develop or expand definitions in response to comments of the parties and the Independent Regulatory Commission (IRRC). The final rules reorganize the procedural requirements to be more reader friendly and easier to navigate. Fourth, the final rules make a number of ministerial changes, such as shortening or lengthening time periods for filing various documents and changing terminology, to be more consistent with modern practice and the Pennsylvania Rules of Civil Procedure. Finally, the Commission abandoned proposals to use forms in lieu of regulatory requirements, particularly with regard to water applications and security transactions, in response to comments. Taken together, the combination of changes and continuation of existing practices provide for more efficient practice and procedure before the Commission.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 15, 2004, the Commission submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 5895 to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 20, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 21, 2006, and approved the final-form rulemaking.

Public Meeting held
December 15, 2005

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Kim Pizzingrilli; Terrance J. Fitzpatrick

Final Rulemaking for the Revision of Chapters 1, 3 and 5 of Title 52 of the Pennsylvania Code Pertaining to Practice and Procedure Before the Commission;
Docket No. L-00020156

Final Rulemaking Order

By the Commission:

On September 12, 2002, the Commission adopted an Advance Notice of Proposed Rulemaking Order announcing our intention to revise the Commission's rules of practice and procedure, 52 Pa. Code Chapters 1, 3 and 5. We noted that the rules were last revised in 1996, and that since then the Commission's jurisdiction and responsibilities have changed significantly. We stated our intention to solicit input regarding proposed revisions and our commitment to carefully consider the views of all interested persons prior to taking any formal action.

On May 10, 2004, we entered an Order and Annex A. The Order contained an explanation for the proposed revisions. Annex A contained the proposed regulations.

On October 30, 2004, the *Pennsylvania Bulletin* published our Order and Annex A at 34 Pa.B. 5895. The Order established a 60-day Comment period following publication in the *Pennsylvania Bulletin*. The Comment period expired on December 28, 2004.

We thank the following for their comments to our proposed revisions: The Office of Consumer Advocate (OCA comment), the Office of Small Business Advocate (OSBA comment), Ryan, Russell, Ogden & Seltzer on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company (Ryan comment), the Department of Environmental Protection (DEP comment), and Saul Ewing on behalf of the Practitioners' Group, a group of seasoned, respected, and experienced attorneys appearing before the Commission on multiple utility matters (the Utility Bar comment). On January 15, 2005, Thomas, Thomas, Armstrong, and Niessen submitted a comment (Thomas comment). The Independent Regulatory Review Commission (IRRC) submitted comments on January 28, 2005 (IRRC comment).

The language of the final regulations contained in Annex A reflects our resolution of these varied comments. The Order explains the reasoning for the final regulations.

The first part of the Order contains a general summary of the important changes to the regulations. The second part contains a regulation by regulation summary of the proposed regulation, the comments, and the Commission's reasoning and disposition reflected in the final regulation. Annex A reflects the final regulations.

A number of important general considerations guided the Commission when considering the merits of each comment. While recognizing that the final rules should be thorough and comprehensive, we seek to avoid making them unnecessarily lengthy and have therefore elected not to create a particular, narrowly-focused rule to address every possible situation that might arise in a proceeding.

Other considerations include an intention to avoid unduly restricting a presiding officer's ability to conduct hearings, to make rulings that resolve factual circumstances, and to make credibility determinations on a case-by-case basis. The Commission also wanted to ensure that the final rules are not unduly burdensome and strike the appropriate balance between the interests of pro se individual complainants, statutory parties, intervenors and involved utilities, jurisdictional or otherwise.

Summary of Changes

Summary of Major Ministerial Changes

The term participant is replaced with the term party throughout the regulation. This change ensures that those who wish to appear before the Commission do so consistent with Pennsylvania law and Commission procedure based on standing as a party. This final change eliminates any uncertainty associated with the term participant. Each Section in which this is the only change is noted in the Annex below.

The word Prothonotary is changed to Secretary wherever it appears. This change reflects the absence of a Prothonotary at the Commission. The duties assigned to the Prothonotary are now assigned to the Secretary. This change aligns the Commission's rules with our structural practice and enabling statute set forth at Section 305(b) of the Public Utility Code, 66 Pa.C.S. § 305(b).

Executive Director is changed to Director of Operations throughout the Commission's rules. This change reflects the statutory language set forth in Section 305(a) of the Public Utility Code, 66 Pa.C.S. § 305(a). The Director of Operations has the responsibilities of the former Executive Director. This change aligns our practice with the enabling statute.

Summary of Major Substantive Changes

In addition to the ministerial changes set forth above, the Commission made some adjustments on important issues between the version set forth in the Proposed Regulations and our Final Regulations. These major changes, set forth in Annex A, are briefly presented here given their importance as reflected in the comments.

Electronic Filing. The Proposed Regulations added language that would permit electronic filing in the future. IRRRC questions the wisdom of developing electronic filing requirements in advance of securing the funding and implementing an electronic system. The IRRRC suggested addressing those requirements at a later date. The General Assembly subsequently approved funding for the Commission's electronic network. That system is under development.

We agree with IRRRC that adoption of regulations governing electronic filing is inadvisable at this time. The

final regulations delete any detailed reference or discussion of electronic filing. The final regulations do allow the parties, as opposed to the Commission, an option to use electronic service among themselves when they agree it is appropriate. The Commission does not permit electronic filing even as an option because the Commission is not presently equipped to accept electronic filing.

Section 1.8 Definitions. The Proposed Regulations contained no detailed definitions for many terms in the proposed rules. IRRRC urged the Commission to develop definitions for adversarial proceedings, nonadversarial proceedings, informal proceedings, agency, political subdivision, and government entity. In response to these comments, the Commission has developed definitions and rules for many additional terms.

However, some terms are governed by statutes and court precedent. Reliance on a statute or reference for a definition requires revision of the definition if the statute or caselaw change. For that reason, the Commission did not develop definitions for terms that depended on a statute or caselaw. The Commission has, and will continue to, incorporate statutory or judicial changes in undefined terms using incorporation by adoption instead of amendment given the cost differential.

The Commission did, however, develop many of the definitions IRRRC requests. This includes definitions for non-adversarial proceedings and informal proceedings.

Section 1.24. Notice of Appearance or Withdrawal and Telefacsimile Transmittals. The proposed regulation did not allow multiple appearances by a party represented by more than one attorney. The comments suggest that all attorneys listed on an initial pleading be considered attorneys of record and that parties be allowed to file using telefacsimile transmittals.

The Commission rejected the suggestion for multiple service on more than one attorney. The vast majority of proceedings before the Commission involve pro se litigants without counsel. Multiple appearances by a party represented by more than one attorney typically occur in high-profile or costly proceedings like rate cases. Multiple service requirements will increase the cost and burden of service on the Commission. This invites the submission of more pleadings raising, and resources devoted to deciding, claims of defective or imperfect service. This also requires more staff and resources than is the case today when the only apparent benefit seems to be the private litigant's ability to shift the cost and burden of duplication and service to the Commission even though those costs are recovered in assessments and rates.

Section 3.501 Application Requirements for a Certificate of Public Convenience for a Water Supplier or Wastewater collection, treatment or disposal provider. The Proposed Regulation eliminated the requirements imposed on an applicant seeking a Certificate of Public Convenience as a new or existing but uncertificated water supplier or wastewater collection, treatment, or disposal provider. The final regulation restores the existing requirements and meshes our enabling statute and regulations with those of the DEP.

The final regulation also formalizes the Commission's authority to reject nonconforming filings. The final regulation includes existing but uncertificated utilities. The final regulation in § 3.501(a)(2)(vi) requires an applicant to provide a Map of Service Area including the County Comprehensive Plan, Municipal Comprehensive Plan, and Zoning Designations if requested. An applicant letter is required to address compliance with the applicable re-

quirements of these plans pursuant to § 3.501(a)(7) regardless of whether the Commission requests a copy of these voluminous documents. Section 3.501(b) provides additional considerations that the Commission will consider and may rely on. This includes Comprehensive Plans, Multimunicipal Plans, Zoning Ordinances and Joint Zoning Ordinances reflecting the Municipalities Planning Code. This reflects our agreement with IRRC and DEP about important considerations that should be considered when evaluating an application.

Sections 3.501(c) through (f) expand and retain the Commission's existing notice and publication requirements. Section 3.501(d) restores the existing 60-day notice and protest period as well as the requirement of daily publication for two weeks in a newspaper of general circulation located in the territory covered by the application. Section 3.501(f) restores service on the Office of Consumer Advocate and expands notice or service to include the statutory advocates, the central and regional office of the DEP, any utility or municipality within one mile or abutting an application's service territory, and customers of an initial or existing utility without a certificate.

Finally, the Commission retains an option to develop forms for purposes of § 3.501. The Commission believes this will make it easier for an applicant to obtain Commission authority although the final regulation establishes a process for development of any forms. This reflects comments asking the Commission to provide notice and an opportunity to provide input.

Sections 5.14 and 5.53. Applications Requiring Notice and Protest Period. The proposed regulation eliminated the list of applications subject to notice and publication in the existing regulation. The final regulation retains the existing list in response to comment. The final regulation at § 5.14(a) also requires publication of applications in the *Pennsylvania Bulletin*. The final regulation at § 5.14(b) details additional publication requirements.

The final regulation in § 5.14(c) provides that protest periods are governed by § 5.53, which, in turn, states that the protest period is governed by publication of the application. Sections 5.14(c) and 5.53 together establish a 60-day default period for those situations where publication inadvertently fails to establish a protest period. This default rule is tantamount to the general rule suggested in the IRRC comments.

The final regulation at § 5.14(d) restores and reinstates the list of applications subject to notice and publication in § 5.14(b) of the existing regulation. This responds to comments, particularly those of the Utility Bar, about retaining the list for certainty, clarity, and predictability. The final regulation at § 5.14(d) retains the existing protest periods. These are 15-days for the applications set forth in the list and 30-days for more complex applications. The Commission does so because applications range from basic transportation applications of small businesses seeking market entry to the complex applications of multiple service providers in other utility industries.

Section 5.24: Satisfaction of Formal Complaints. The proposed regulation established procedures allowing a complainant or respondent to submit proof of the satisfaction of formal complaints. The comments were concerned about a regulation that allowed a party to claim satisfaction without proof such as a written statement.

The final regulation for § 5.24(a) requires a complainant to file a certified statement of satisfaction. In the alternative, § 5.24(b) allows the respondent to file a

certified writing of satisfaction provided the complainant acknowledges satisfaction to the respondent or the complainant acknowledges that they are not pursuing the matter. If the alternative satisfaction of § 5.24(b) is taken, the respondent must simultaneously serve the complainant a copy of the certified writing filed with the Commission. The complainant must also be provided a statement informing the complainant of their right to object in writing within 10 days. The docket is closed after 10 days unless the complainant objects in writing under § 5.24(c).

Sections 5.62 and 5.63: Answers seeking affirmative relief or raising new matter. The proposed regulation contains no requirement that answers raising new matter contain a notice to plead. The comments suggest that a notice to plead be specified in a new matter given that failure to file a timely reply is deemed a default and facts stated may be deemed to be admitted. The § 5.63(b) ramifications of not responding within the time period set forth in § 5.63(a) provide sufficient notice.

The Commission disagrees with this suggestion. A Notice to Plead requirement may be appealing because it might better inform the recipient of an obligation to file and answer. However, this well-intentioned procedural suggestion actually erects another procedural hurdle for dismissing otherwise valid pro se matters on grounds unrelated to the substantive issue. Dismissal of pro se complaints for failure to comply with a Notice to Plead undermines the value these complaints play in warning the Commission about possible utility service problems. Moreover, a disgruntled complainant can always file another complaint and that would require the expenditure of resources addressing a matter that could have been just as easily addressed in the first complaint. Finally, large respondents with seasoned or multiple numbers of attorneys need not be advised of the well-appreciated ramifications of failing to respond. Given these considerations, the Commission declines to require a Notice to Plead.

Sections 5.74: Filing of Petitions to Intervene. The proposed regulation established a uniform deadline for a private party's Petition to Intervene as well as a Notice of Intervention filed by the OTS, OCA, and OSBA.

In response to the comments, the final regulation distinguishes between a private party's Petition to Intervene and a statutory advocate's Notice of Intervention or Right of Participation. A Petition to Intervene is subject to express time limits although they can be set aside for good cause shown. A Notice of Intervention or Right of Participation, on the other hand, are not subject to an express time limit although a party making such a filing after expiration of the time period takes the record as the party finds it absent extraordinary circumstances. This approach reconciles the need for reasonable intervention limits with the statutory advocate's rights.

Section 5.101. Preliminary Objections. The proposed regulation substituted the phrase "preliminary objection" for the existing "preliminary motion" and deletes the requirement that all preliminary objections be filed at once.

The final regulation uses preliminary objection in place of preliminary motion. The final regulation also requires a party to serve all preliminary objections at one time. The final regulation retains the Commission's existing prohibition against the filing of a motion or preliminary objection in response to a preliminary objection. The final regulation requires a response to a preliminary objection within 10 days.

The response time period, the requirement to raise all preliminary objections at once, and a prohibition against preliminary objections in response to a preliminary objection should discourage dilatory pleading. This also reduces administrative costs for all parties given that such costs are, in the end, reflected in assessments and rates.

Section 5.342: Answers or objections to written interrogatories by a party. Section 5.342(a) imposes verification of answers in accord with Section 1.36. Section 5.342(c) governs objections. Section 5.342(d) imposes a 15-day period for answers in rate cases and a 20-day period for nonrate cases. This facilitates compliance with the statutory requirement in section 332(g) of the Public Utility Code. This also addresses concerns about an inconsistency between the general rule in § 5.342(d) and the additional rule in § 5.342(d)(1) of the proposed regulation. Section 5.342(e) of the final regulation establishes a 10-day period for filing objections regardless of the nature of the proceeding.

Detailed Discussion of Regulatory Changes

Chapter 1. Rules of Administrative Practice and Procedures

Sections 1.2, 1.3, 1.4, and 1.7.

The proposed regulation makes ministerial changes concerning the name Secretary, the Commission's address, the location of the Commission's normal meeting place, and the use of the Commission's website. There were no objections to these ministerial changes. The final regulation makes the changes consistent with Commission practice and provides a liberal construction of the rules for pro se litigants.

Section 1.8 Definitions.

The proposed regulation updated definitions in Section 1.8. There are updated definitions for "individual" to distinguish between the legal term "person" and a human being. "Mediation" was defined given the important role it plays at the Commission. The proposed regulation also defined "verification" while "party" replaced "participant" throughout the regulation.

There were several comments. IRRC expressed concern about using undefined terms. These terms are "adversarial proceedings," "nonadversarial proceedings," "informal proceedings," "agency," "political subdivision," and "government entity." IRRC believes the regulation would be improved by defining these terms. IRRC suggests cross-referencing definitions used elsewhere in the statute or regulations.

The final regulation reflects agreement with IRRC that a definition for nonadversarial proceedings is appropriate. The final regulation defines "nonadversarial proceedings" in order to distinguish those proceedings and other proceedings that may be subject to the prohibition against ex parte communications for contested "on the record" proceedings in 66 Pa.C.S. § 334(c). In this regard, the Commission may, in its discretion, designate a particular proceeding as adversarial and subject to ex parte prohibitions if warranted by the circumstances. The final regulation also reflects agreement with IRRC that a definition for informal proceeding is needed.

The final regulation does not define "agency" or "political subdivision" or "government entity" as suggested by IRRC. Defining these terms beyond the definition already provided by the regulations would require the Commission to amend the regulations whenever the cross-referenced definition is amended, revised, or addressed in the courts. The Commission prefers to incorporate legisla-

tive or judicial changes in practice instead of regulatory amendments. Other comments asked the Commission to distinguish between "active" and "inactive" parties in the regulations. The Commission declines to do that given the fact that this determination is better made on a case-by-case basis and not in a general regulation. The final regulation deletes the attempt to differentiate between "active" and "inactive" parties by referring only to parties in the final regulation.

The Commission agrees with other comments seeking clarification of terms. The final regulation adopts definitions for the terms "electronic mail," "formal complaint," "formal investigation," "formal proceeding," "friendly cross-examination," "informal complaint," "informal investigation," "informal proceeding," "mediation," "mediator," "person," "pleading," "Secretary," "Statutory Advocate," "submittal," "telefacsimile transmittal" and "verification."

The definitions respond to other comments about the need for definitions. A definition for electronic mail is necessary to clarify when the parties can use electronic service among themselves as opposed to the prohibition against electronic filing with the Commission. This approach reflects comments suggesting that the Commission avoid electronic filing requirements due to the current unavailability of the system. The final rulemaking also defines formal and informal complaints, investigations, and proceedings. These definitions respond to comments suggesting the need to explain the difference between informal and formal matters at the Commission.

A revised definition of "mediation" and a definition of "mediator" respond to the Utility Bar comment on the need to distinguish between dispute resolution and litigation. However, the Commission denies the Ryan comment seeking the development of formal dispute resolution regulations in this rulemaking.

Revised definitions of friendly cross-examination, party, person, and pleading are developed. A definition of statutory advocate is developed to differentiate the service and intervention rights of public advocates and private parties. A revised definition of transmittal is developed in response to an IRRC suggestion. There is a revised definition of the term verification to ensure compliance with the requirement.

Subchapter B. Time

Section 1.11 Date of filing

The proposed regulation at § 1.11(a)(4) established how an electronic filing occurs at the Commission. The proposed regulation specified that it must: (1) enter the information processing system, (2) be designated by the Commission for the purpose of receiving documentary filings, (3) be in a form which the Commission is capable of retrieving, and (4) be in a form readable by the system. The revision did not permit electronic filing but specified how electronic filing may be permitted by the Commission.

The proposed regulation at § 1.11(a)(3) eliminated the use of a United States postage stamp on an envelope as postal proof of the date of filing. The proposed regulation limits postal proof of filing to United States Postal Service Form 3817. The proposed regulation at § 1.11(c) retained the prohibition against document filing by telefacsimile as well.

IRRC questions the wisdom of electronic filing when there is no system or funding for a system. IRRC is also concerned that elimination of proof of postal filing based on the date "shown on the United States Postal Service

(USPS) stamp on the envelope” could be significant for individual pro se litigants unfamiliar with the intricacies of Postal Form 3817. IRRC further questions the reasonableness of precluding parties from filing documents by telefacsimile given that this is allowed in other agencies so long as an original is filed within a reasonable time thereafter. IRRC also identifies the inconsistent use of “local time” and “Eastern Standard Time” in the proposed regulation.

The Utility Bar encourages the Commission to adopt electronic filing for greater transparency. The Utility Bar shares IRRC’s concerns about the wisdom of developing regulations for a non-existent system.

The Commission agrees with IRRC that electronic filing is premature. The Commission eliminates all regulations addressing electronic filing with the Commission in §§ 1.24(b)(2)(i)(A), 1.25(a), 1.32(d), 1.35(a)(2), 1.37(c), 1.53(b)(3), 1.54(b)(3), 1.56(a)(5), 1.59(b)(1)(ii), and 5.306. The final regulations at §§ 1.11(a)(4), 1.32(d), 1.35(a)(2), and 1.37(c) also prohibit the use of electronic filing by private parties.

The final regulations in §§ 1.24(b)(2)(i)(A), 1.25(a), 1.54(b)(3), 1.56(a)(5), and 1.59(b)(1)(ii) do allow the parties to use electronic communications to service documents or communicate among themselves when they deem it appropriate. Even in those cases, however, the parties must comply with traditional Commission filing requirements based on our decision to not incorporate electronic filing at this time due to the current unavailability of the system.

The final regulation for § 1.54(b)(3) allows the parties to voluntarily use electronic service among themselves. However, even in such cases, the party must file a hard copy of the final version with the Secretary stamped on the due date. A party can file a corrected version so long as the version is not substantive and the presiding officer approves the filing.

The Commission rejects the Utility Group suggestion that we rewrite subsection (a)(1)–(4) by inserting semicolons with “or” after (3) since the proposal does not reflect the correct format used by the *Pennsylvania Bulletin* in the publication of regulations.

The Commission agrees with IRRC that retention of the existing postal proof rule is advisable given the potential for confusion among parties unfamiliar with the intricacies of Form 3817. The Commission adopts many of the Utility Bar’s ministerial corrections, including a suggestion that the Commission resolve an inconsistency between references to “local time” and “Eastern Standard Time” in the regulations. The Commission adopts “pre-vailing local time” to address this issue.

The Commission disagrees with IRRC’s suggestion that the Commission approve the use of telefacsimile transmittals as do other Pennsylvania agencies. The Commission previously considered telefacsimile filing and rejected it for several reasons.

A telefacsimile transmittal contains no legal signature and, even if it did, the Commission’s regulations require a party to file an original. A telefacsimile copy is not an original under traditional filing. We also agree with IRRC that electronic filing is not appropriate in this rule-making. Given that telefacsimile transmittals are a form of electronic filing, we also reject the use of telefacsimile transmittals for filing with the Commission.

Another important consideration is cost. The Commission receives a voluminous amount of pleadings, petitions,

complaints, answers, applications, and other documents numbering in the thousands on a monthly basis. This volume is what motivated the Commission, in part, to propose electronic filing in the proposed regulation. At the current time, the Commission’s telefacsimile facilities are limited generally and even more so in the Secretary’s Bureau.

The Secretary’s Bureau is already challenged to accept, process, and identify the hard copy volume let alone additional telefacsimile transmittals that will occur if we allow telefacsimile transmittals. The Commission could easily be overwhelmed if multiple parties in one proceeding decide to use telefacsimile filing to submit their voluminous pleadings in the final hour on the final day. This challenge would be made worse if other parties also decided to use those same facilities on the same day.

However, in response to IRRC’s suggestions that we prohibit electronic filing yet still consider the use of telefacsimile transmittals, the final regulation at § 1.54(b)(4) allows the parties the option to use electronic communications for service among themselves. In that instance, nevertheless, a final version must be filed with the Secretary no later than the close of business at the Commission on the due date regardless of the parties’ agreement. This reconciles the prohibition against electronic filing with the Commission’s limited facilities.

Section 1.15. Extensions of time and continuances.

Section 1.15(b). The proposed regulation inserted the phrase “for a continuance” in § 1.15(b).

IRRC and the Utility Bar suggest that the phrase “timely filed” replace the current “filed at least 5 days prior to the hearing date” language of § 1.15(b).

The Utility Bar also suggests that the word “filing” replace “submitted” in the last sentence of § 1.15(b).

The Commission disagrees with IRRC and the Utility Bar. The phrase “timely filed” should not replace the phrase “filed at least five days in advance” for several reasons. A strict limit leaves little or no discretion to address cases where a litigant, particularly a pro se litigant, is unable to comply due to unforeseen circumstances or inadvertence. A strict requirement also provides a costly and inefficient basis for dismissing a proceeding, typically involving pro se litigants, on procedural grounds knowing that the case will be refiled. The other recourse, dismissal with prejudice, is relatively draconian compared to the possible violation, e.g., a failure to file in 5 days.

The Commission retains the existing regulatory phrase. However, the Commission agrees that the word “filed” should replace the word “submitted” in the final regulation.

Subchapter C. Representation Before the Commission

The proposed regulation reflected electronic filing requirements and Pennsylvania Supreme Court authority over the practice of law. The Pennsylvania Supreme Court promulgates its own rules. The Commission concluded it lacks authority to promulgate rules that contravene the Pennsylvania Supreme Court rules.

The substance of the proposed regulation is that: (1) individuals may represent themselves, (2) in adversarial proceedings, any entity other than an individual must be represented by an attorney, (3) in nonadversarial proceedings, entities may be represented as permitted by the rules of the Pennsylvania Supreme Court, and (4) in informal proceedings brought under Chapter 14 of the

Public Utility Code or Chapters 56 and 64 of the Commission's regulations only, representation may be by other than a licensed attorney. Throughout, the information required to be provided by an attorney includes the Pennsylvania Supreme Court identification number.

The final regulation deletes the proposed electronic filing and reaffirms the Pennsylvania Supreme Court's authority over the practice of law that requires use of the Pennsylvania Supreme Court attorney identification number whenever appropriate.

Section 1.21. Appearance [in person]. The proposed regulation reflected the Supreme Court's authority over the practice of law in Pennsylvania.

IRRC suggests that the Commission define the term "appropriate individual" in § 1.21(d). The Utility Bar suggests that the Commission define the terms "informal complaint" and "informal proceeding." They also want the Commission to address the relationship with an "informal investigation" under Subchapter B and Section 3.113. The Utility Bar concludes that the correct term should be "informal complaint" rather than "informal proceeding" in the final regulation.¹ The OSBA comment suggests that § 1.21(a) be revised to allow sole proprietorships to represent themselves before the Commission.

The final regulation defines an "appropriate individual" for informal proceedings in a way that does not contravene the Pennsylvania Supreme Court's authority. The final regulations contain definitions for "informal complaint," "informal investigation," and "informal proceeding" as well. The final regulation rejects the OSBA comment that "individual" include sole proprietorships. The OSBA comment includes incorporated sole proprietorships although any incorporated entity must be represented by counsel.

Section 1.22. Appearance by attorney or certified legal intern. The proposed regulation is premised on the Pennsylvania Supreme Court's authority. The Utility Bar suggests that the phrase "Subject to the provisions of § 1.21" be added to underscore the view that § 1.22 does not mean that all must be represented by counsel including pro se individuals that represent themselves. The final regulation inserts the proposed phrase for clarification although the phrase is limited to § 1.21(a) because it governs pro se representation by individuals as defined in § 1.8.

Section 1.24. Notice of appearance or withdrawal. The proposed regulation established the process for filing a notice of appearance or withdrawal including pro se individuals. The proposed regulation permitted electronic filing.

Section 1.24(a). The Utility Bar suggests that the Commission require a pro se litigant to file a change of address with "active" parties under § 1.24(a).

The final regulation adopts the proposed regulation. The regulation does not require a pro se litigant to provide notice to "active" parties.

A regulation that imposes burdens on pro se litigants by attempting to differentiate between "active" and "inactive" parties in a regulation undermines the effort to end attempts to distinguish between "active" and "inactive" parties. It is difficult if not impossible to make that determination in a general rule when that decision is better made on a case-by-case basis by a presiding officer. For that reason, the definition of party does not differentiate between an active and inactive party.

Section 1.24(b)(1). The proposed regulation deems an attorney's signature on the pleading tantamount to an appearance in a representative capacity. The Utility Bar opposes this departure from traditional Commission practice. They view the departure as undermining support for electronic filing when the problem can be easily corrected with a letter of clarification. The Utility Bar alternatively suggests that all counsel listed on an initial pleading be deemed to have entered an appearance if the Commission retains the proposed regulation. The OSBA comment suggests that if the Commission does not intend an appearance sheet to substitute for notice under § 1.25, the Commission should automatically enter the appearance of each attorney listed on the initial pleading regardless of who signed the pleading.

The final regulation retains the proposed regulation holding that the attorney signing the initial pleading in a representative capacity is the attorney of record. There is no valid reason for replacing the proposed regulation with any proposed alternatives. The alternatives are costly, burdensome on the Commission and litigants, and encourage litigation based on allegations of incomplete or defective service of process on multiple attorneys in such instances. These alternatives may have merit in an electronic filing environment because of their potential to reduce duplication, storage, and retention costs. Our decision to prohibit electronic filing renders multiple attorney service inadvisable.

Section 1.24(b)(2)(i)(A). The proposed regulation required an electronic mailing address. IRRC questions the imposition of electronic mailing addresses in the absence of electronic filing. The final regulation agrees with IRRC and deletes the requirement to supply an electronic mailing address although a party can voluntarily provide that address to facilitate service among the parties.

Section 1.25(a). Form of Notice of Appearance. The proposed regulation allowed a party to request email receipt of documents. It also required a party to provide their Pennsylvania Attorney I.D. Number and electronic mailing address. The Utility Bar wants the Commission to clarify whether electronic requests are in lieu of, or in addition to, hard copy requests. This provision, in their view, does not address a telefacsimile number request. IRRC suggests that the electronic filing provisions in this Section reflect the Commission's response to their suggested elimination of electronic filing.

The final regulation prohibits electronic filing. The final regulation requires a party to provide a telefacsimile number and adds the word Pennsylvania to the Attorney I.D. Number. The final regulation inserts the phrase "Other Jurisdictions Admitted" for pro hac vice appearances and lets a party provide an email address.

The telefacsimile line is added for regulatory consistency. Pennsylvania is added to clarify that the Attorney I.D. number is the Pennsylvania Attorney I.D. Otherwise, a pro hac vice counsel must list their jurisdictional admissions. One can voluntarily provide an email address to facilitate electronic communication.

Subchapter D. Documentary Filings

The proposed regulation restructured the form of a documentary filing in formal cases to make it easier to follow. The proposed regulation contained a format for exchanging electronic documents among the parties. The final regulation prohibits electronic filing.

Section 1.31. The proposed regulation addressed documentary filing requirements and procedures. The pro-

¹ Utility Bar, p. 7.

posed regulation addressed the form, attachments, identifying information, and electronically submitted documents.

Section 1.31(a). The proposed regulation required pleadings to be in numbered format. The OSBA claims that § 1.31(a) is routinely ignored and should be abandoned. The Commission disagrees. This requirement is a longstanding requirement that can be addressed if ignored.

Section 1.31(b). The proposed regulation required attachment of documents relied on in the pleadings as exhibits although copies of writings or orders of record with the Commission need not be attached if the docket reference number of the proceeding in which they were filed was provided.

The Utility Bar opposes use of the word “exhibits” because it is misleading and denies attorneys any flexibility in defining how to attach their documents. The OSBA suggests that the Commission intended to include publicly available court decisions within the class of those not required to be produced.

The Commission deletes the word “exhibit” in response to the Utility Bar comment. The Commission agrees with the OSBA comment that reported court decisions do not have to be produced.

Section 1.31(c). The proposed regulation established requirements governing the information provided in any document filed with the Commission. The Utility Bar suggests the phrase “caption of the proceeding” for § 1.31(c)(2) and the phrase “Within the title of the proceeding” for § 1.31(c)(3). The Commission agrees.

Section 1.32. Form of Documents. The proposed regulation at § 1.32(d) requires that electronically filed documents comply with margin and spacing requirements applicable to other filed documents.

IRRC opposes electronic filing in this regulation. The Commission agrees. The final regulation eliminates this requirement because no document can currently be filed electronically with the Commission.

Section 1.33. Incorporation by Reference. The proposed language for § 1.33(b) deleted the existing 20-year time frame covering documents that cannot be incorporated by reference without determining if they are in the Commission’s active files. IRRC and the OSBA suggest restoring some kind of cutoff to avoid subjecting every document to a burdensome determination of its status. The OSBA comment disputes the wisdom of requiring a party to contact the Commission to confirm that even a recently filed comment remains in the active records. This is burdensome and unnecessarily expensive. IRRC recognizes that 20 years may be too long and suggests that the Commission consider a shorter period.

The final regulation reinstates the existing rule. The Commission agrees that elimination of the current rule could be a burden if imposed on every document. The Commission realizes the existing 20-year rule reflects a requirement prior to electronic filing and duplication. Nevertheless, the Commission retains the existing rule pending examination of this issue in any subsequent rulemaking focused on electronic filing.

Section 1.35. Execution. The proposed regulation at § 1.35(a)(2) allowed an electronically filed document to contain an electronic signature in a form approved by the Commission.

IRRC opposes electronic filing. The final regulation deletes electronic filing in this provision based on IRRC’s suggestion that such filing requirements are premature at this time.

Section 1.36. Verification. The proposed regulation expanded the pool of those who may sign the verification, to “other authorized employees” of the party of a corporation or association.

The Utility Group supports the use of verification but requests that the Commission include affidavits. IRRC and the Utility Group comments want the word “utilized” to replace the word “permitted” in the last sentence of § 1.36(a). The Utility Group believes this avoids confusion about verification in lieu of an affidavit. To the best of the Utility Group’s knowledge, there are no specific provisions directing the use of verification or an affidavit in specified circumstances.

The Commission disagrees with replacing the word “permitted” with “utilized” in § 1.36(a). IRRC correctly notes that the word “permitted” means that verification is required. Verification is required in the final rules. The use of the word “utilized” is ambiguous. Counsel could argue that a party, not the rules, determines where verification or notarization is applicable. The final rules do want to allow the parties to choose between less expensive verification and more expensive notarization. The parties, however, cannot unilaterally decide when the regulations require them make that choice. The word “utilized” implies that and is to be avoided.

Section 1.37. Number of Copies. The proposed regulation at § 1.37(c) allowed a single copy of a document to be filed electronically with the Secretary’s Bureau. IRRC opposes electronic filing in this regulation. The Commission agrees. The final regulation eliminates electronic filing of one copy.

Section 1.38. Rejection of Filings. The proposed regulation codifies existing Commission practice. The Commission can reject nonconforming filings or filings by persons that do not comply with Commission directives.

Three concerns underscore IRRC’s objection. The proposal appears to preclude a utility from bringing or defending an action before the Commission for failing to satisfy any regulatory obligation. The statutory authority for this provision is unclear. Subchapter A of the Public Utility Code outlines the procedures for bringing matters to the Commission’s attention. There is no indication the legislature intended to permanently foreclose Commission channels because a utility is not in full compliance with Commission regulations. Finally, IRRC questions the meaning of the phrase “delinquent in its regulatory obligations” and states that if the PUC believes this proposal is consistent with regulatory intent, it should explain the meaning of this phrase.

The Utility Bar has additional concerns. They agree with IRRC that the phrase “delinquent in its regulatory obligations” is unclear. The absence of any materiality standard concerns them. The Commission never rejects a pleading on minor grounds such as delinquencies in fine or assessment payments. The Commission must identify the reasons, establish a time limit, and allow a party an opportunity to cure any defect.

The Commission agrees with IRRC and revises the final rule accordingly. The final regulation does not automatically preclude access to Commission process. This more narrowly drawn provision is consistent with the Commission’s authority in Section 501(b) of the Public Utility Code because it is a necessary and proper require-

ment not otherwise inconsistent with law. Moreover, any abuse can be addressed by an appeal from any staff action pursuant to § 5.44 of our regulations. The Commission also agrees with IRRC that the phrase “delinquent in its regulatory obligations” is vague. The final regulation removes the phrase.

Subchapter E. Fees

Section 1.42. Mode of payment of fees. The proposed regulation permitted other methods of payment in the future, such as credit cards, when the Commission is prepared to accept them.

IRRC suggests that the regulations replace the nonregulatory “should” with the regulatory “shall” in the second sentence if the Commission retains this revision.

The Commission agrees with IRRC. The final regulation replaces “should” with “shall.” The final regulation limits payment methods to the forms of payment allowed in the existing regulation given the Commission’s limitations. The Commission concludes that electronic payments, like electronic filing, are inadvisable at this time.

Section 1.43. Schedule of fees payable to the Commission. The proposed regulation rescinded subsections (b), (c) and (d) of § 1.43 to reflect that the Commission no longer performs testing. The remaining fees are not changed.

The Ryan comment wants the Commission to impose a \$25 fee for filing a Formal Complaint. The final regulation rejects this suggestion. The General Assembly recently rejected a \$25 filing fee when adopting amendments to the Public Utility Code. Such a fee could undermine the warning service that formal complaints of this nature play in advising the Commission about potential service problems. A fee could also frustrate the role that such formal complaints play in helping the Commission meet its statutory obligation to ensure the delivery of adequate, efficient, safe and reasonable service under Section 1501 of the Public Utility Code.

Subchapter F. Service of Documents

The proposed regulations amended Section 1.56(a)(4) to provide that a faxed document must be transmitted prior to 4:30 p.m. local time. This thwarted attempts to send documents after offices close. Section 1.56(a)(5) provided for electronic service when agreed to by the parties. The proposed regulation revised §§ 1.53(b)(3), 1.54(b)(3), 1.56(a)(5), and 1.59(b)(1)(ii) to reflect electronic filing.

IRRC opposes electronic filing regulations and the Commission agrees. The final regulations prohibit electronic filing.

Section 1.53. Service by the Commission. The proposed regulation revised the applicability of this provision, revised the forms of service to allow electronic filing, made minor revisions to registered or certified mail requirements, and addressed provisions concerning change of address and alternative service.

Section 1.53(b)(1). Forms of Service. The proposed regulation allowed service by person, by anyone authorized by the Commission, or by electronic means. IRRC and the OSBA suggest that the word “by” be inserted between “made” and “mailing” in the first sentence. The Utility Group states that the proposed regulation excludes service by mail to a person’s residence. The Utility Group wants the Commission to include residence in the final regulation.

The Commission agrees with IRRC and the Utility Group. The final regulation inserts “by” between “made”

and “mailing” in the first sentence as well as “residence” after “person’s” and before “principle” in § 1.53(b)(1).

Section 1.53(b)(3). Electronic Filing. The proposed regulation allowed the Commission to serve a recipient electronically. IRRC opposes electronic filing in this rule-making. The Commission agrees with IRRC. The final regulation eliminates § 1.53(b)(3).

Section 1.54. Service by a party. The proposed regulation provided detailed provisions governing electronic service.

Section 1.54(b)(3). Section 1.54(b)(3) authorized electronic service among the parties. IRRC asks the Commission to review this provision as part of their response to IRRC’s comment about electronic filing. The Ryan comment proposed a series of revisions to § 1.54 detailing who, what, when, and where service is provided, particularly relating to multi-attorney service.

The Commission agrees with IRRC. Section 1.54(b)(3) is revised to prohibit electronic filing in the final regulation. The final regulation does allow the parties to use electronic service voluntarily. However, even in those situations where the parties agree to use electronic filing, the final regulation at § 1.54(b)(3) requires that the filing be stamped on the due date. The Commission uses the term stamped instead of postmarked so that a filing party can use the United States Postal Service or an overnight delivery service. Corrected versions can be filed if they are not substantive and with the approval of the Presiding officer. This optional use of electronic communications preserves traditional filing given our adoption of IRRC’s comment prohibiting electronic filing.

The Commission does not adopt the Ryan comment on detailed service provisions that include service on multiple numbers of attorneys. The Ryan comment is costly to private parties and the Commission. The suggestion imposes unnecessary burdens on the Commission to provide a minimal benefit. The only benefit seems to be that a party with resources sufficient to retain multiple numbers of attorneys is no longer required to assume the cost and burden of informing those attorneys. This suggestion effectively shifts duplication and distribution costs to the public and the Commission. The suggestion could also dramatically increase the number of challenges based on defective or imperfect service.

Section 1.55. Service on attorneys. This proposed regulation detailed service on attorneys including electronic service. The Ryan comment wants §§ 1.54(a) and 1.55(b) revised to authorize multiple attorney service.

The Commission disagrees with the Ryan comment on multiple attorney service. This comment essentially shifts duplication, distribution, and noncompliance responsibilities from a private party with resources sufficient to have multiple attorneys to the Commission and the public. This needlessly complicates litigation when the only discernible benefit seems to be that litigants no longer bear the cost of circulating information among their multiple counsels in complex litigation. This also increases the potential for parties to raise, and require the Commission to devote resources deciding, allegations of defective or imperfect service.

Section 1.56. Date of Service. The proposed regulation changed the time requirement to 4:30 p.m. prevailing local time in § 1.56(a). The proposed regulation also dates service for electronic filings as the date the document entered an information system designated by the recipient for receiving service and from which the recipient could retrieve the filing.

IRRC opposes the use of electronic filing at the Commission at this time. IRRC wants the provision in § 1.56(a)(5) governing the date of service for electronic documents to reflect its opposition to electronic filing. The Utility Group proposed revisions to § 1.56(a)(5) for clarity and to limit service to “active” parties. The OSBA comment suggests that § 1.56(a)(5)’s provision for electronic email by “4:30 p.m. local time” is ambiguous.

The Commission agrees with IRRC. The final regulation prohibits electronic filing with the Commission. This requires the use of traditional service although the parties can use electronic communications for service among themselves when appropriate.

The Commission does not adopt the Utility Group’s comment on differentiating between active and inactive parties in this provision. As explained throughout this rulemaking, the difficulties of differentiating between an active or inactive party for date of service and disposition is better made by a presiding officer on a case-by-case basis and not in a general regulation.

Section 1.59. Number of copies to be served. Section 1.59(b)(1) of the proposed regulation governed the number of copies of a brief to be served. Section 1.59 differentiated between hard copy filings, which required two, and electronic or telefacsimile filing which only required one copy.

IRRC wants the Commission to revise § 1.59(b)(1)(ii) governing electronic filing copies. The Commission agrees. Section 1.59(b)(1)(ii) is deleted although the parties, as opposed to the Commission, can agree on electronic service on a case-by-case basis.

Subchapter G. Matters Before Other Tribunals

Section 1.61. Notice and filing of copies of pleadings before other tribunals. The proposed regulation for § 1.61(c) was removed because it is identical to (d). The proposed language added the category of “licensee.” The proposed language also required that a licensee or utility whose parent company had declared bankruptcy to inform the Commission. The proposed regulations help the Commission monitor bankruptcy proceedings without approving the bankruptcy plans of certificated utilities.

There were no comments on this proposed regulation. The final regulation adopts the proposed regulation and ministerial changes.

Subchapter H. Public Access to Commission Records

Sections 1.71 to 1.73. Objectives and Fiscal Records. The proposed regulation expressed the Commission’s commitment to maintaining a record system that facilitates public access and imposes an obligation to retain fiscal records according to statutory, regulatory, and administrative requirements. There are no comments. The final regulation adopts the proposed regulation.

Section 1.76. Tariffs, minutes of public meetings and annual reports. The proposed regulation contains no substantive changes compared to the existing regulation. The Utility Group proposed ministerial language changes for clarity. The Commission agrees. The final regulation incorporates those suggestions.

Sections 1.81 to 1.86. Amendments or withdrawals of submittals. The proposed regulation made ministerial changes for clarity and consistency. There are no comments. The final regulation contains the ministerial changes.

Chapter 3. Special Provisions

Section 3.1. Definitions.

The proposed regulation replaces the word “Executive Director” with “Director of Operations” for consistency.

Section 3.2 through Section 3.5. Petitions for issuance of emergency order.

The proposed regulation removed references to the office of Executive Director. The term Director of Operations was used in its place. The Utility Bar comment identifies places in the proposed regulations at §§ 3.1, 3.2, 3.3, 3.4 and 3.5 where Executive Director should be replaced by Director of Operations for consistency.

The Commission agrees with the Utility Group. The final regulation uses the term Director of Operations for consistency and clarity.

The proposed regulation reorganized the emergency order sections. The provisions referring to ex parte emergency orders were located together and those sections referring to interim emergency orders were located together. The proposed regulation provided language adjustments so that there would be parallel standards for both sections. The proposed regulation relocated § 3.5 to § 3.3. This resulted in the elimination of § 3.5. Section 3.9 was relocated to § 3.6a.

IRRC suggests ministerial changes and parallel construction in § 3.2. The Commission agrees with IRRC and made adjustments in the final regulation responsive to these suggestions.

Section 3.6 through Section 3.10. Interim emergency relief. The proposed regulation reorganized this section. The sections referring to interim emergency orders were located together. The proposed regulation provided language adjustments so that there would be parallel standards for this section and §§ 3.2–3.5 for emergency orders. The proposed regulation relocated § 3.5 to § 3.3. This resulted in the elimination of § 3.5. Section 3.9 was relocated to § 3.6a.

There were no comments on this proposal. The final regulation adopts the proposed regulation.

Subchapter B. Informal Complaints

This proposed regulation changed the subheading to read “Informal Complaints and Investigations” because it better reflected the contents of the section. The proposed regulation also created and labeled Sections for ease of reference. Section (b) of § 3.112 proposed a process for staff review of informal complaints.

The Utility Group comment on § 3.112 wants the final regulation to require the Commission to issue and serve a written decision of every informal complaint. The final regulation rejects the Utility Group requirement that Section 3.112 require a written decision. The Commission informally resolves thousands of matters on an ongoing basis. Few of those resolutions become a formal proceeding. The alleged benefit resulting from a mandated written decision because of its usefulness in subsequent formal proceedings is not justified by the additional burden and cost. Such a result could also increase the number of formal appeals of informal complaints. The burden and costs for the paperwork required to implement this suggestion could overwhelm the Commission’s administrative processes and certainly increase staffing and implementation costs ultimately recovered in assessments and rates.

The final regulation takes the least expensive and effective approach for resolving informal complaints. The Commission recognizes that a respondent to informal complaints may want a written decision to address

allegations and factual assertions that could be inaccurate or incomplete. The cost to issue and serve a written decision addressing an informal resolution in those instances is far greater than a cost-effective solution that could, at times, rely on some ambiguous or unexplored factual allegations. The cost to resolve these ambiguities by service of a formal written decision is greater than an informal resolution and will almost certainly increase staff and resource needs ultimately recovered in assessments and rates.

Equally important, the role that these informal matters provide in advising the Commission about service problems is undermined if every informal matter, including allegations by current or ex-employees of a utility, became the subject of a written decision. A written decision imposes additional procedural requirements on pro se litigants. This could well result in more formal appeals and increase those costs.

The Commission, however, recognizes the Utility Group's desire to secure some kind of process for questioning ambiguities in informal complaint resolutions. For that reason, § 3.112(e) of the final regulation permits an appeal of any resolution of informal complaints under § 5.44 of our rules. The final regulation continues addressing Informal Complaints in § 3.112 and Informal Investigations in § 3.113.

Subchapter D. Crossing Proceedings

The proposed regulation modified the service requirements for § 3.361 complaints and notice of the forms for § 3.363. There were no comments on these proposed changes.

Section 3.361. Crossing complaints. The proposed regulation revised subsection (a) to serve the owner of the railroad right-of-way, which may be different from the public utility operating over it, as a party to a Commission proceeding. There are no comments. The final regulation adopts the proposed regulation.

Section 3.363. Claims for property damages from crossings. The proposed regulation modified subsection (a)(2) to indicate that forms are no longer listed in the regulations. They are available from the Secretary. There are no comments. The final regulation adopts the proposed regulation.

Subchapter E. Motor Transportation Proceedings

The proposed regulation made no changes to this section. This Section will be dealt with in a separate rulemaking proceeding.

Subchapter F. Arbitration of Disputes

The proposed regulation contained no substantive revisions to this section. The Ryan comment wants a new § 3.392 regulation addressing Commission arbitrations.

The Commission denies that request. The Commission recognizes the concerns expressed in the Ryan comment. However, the Commission is unwilling to issue a final comprehensive rule given the complexity of such a rule and the very limited opportunity of other parties to address this suggestion.

Subchapter G. Water or Wastewater Utility Proceedings

Section 3.501. Certificate of public convenience as a water supplier or wastewater collection, treatment or disposal provider. The proposed elimination of significant parts of the existing regulation generated substantial comments. In response to those comments, the final regulation retains the existing regulation as well as some

additional provisions. A detailed discussion of each section's existing, proposed, and final Section is set forth below.

Section 3.501(a) and (a)(1) to (a)(10). Applicability. The existing regulation contains a list of requirements an applicant for a certificate of convenience must satisfy. The proposed regulation deleted this list in favor of forms.

The proposed regulation agreed with DEP that additional requirements, including a county comprehensive plan, municipal comprehensive plan and zoning designations, must be addressed by an applicant. The proposed regulation required an applicant to provide a certification letter as opposed to a Commission determination.

IRRC and DEP stress that the existing regulation should be retained because it is more comprehensive than the proposed regulation and reflects years of interagency comity. IRRC and DEP are concerned about establishing mandatory filing requirements in any way other than by setting them forth in a regulation. We agree. The final regulation retains the filing requirements for new and existing but uncertificated service.

The final regulation for § 3.501(a) also makes a ministerial change in § 3.501(a) to underscore that it is the Commission that has always been responsible for determining filing requirements. The final regulation retains the existing regulations for § 3.501(a)(1)—(10) as mandatory filing requirements. There are some minor ministerial title revisions for these provisions at § 3.501(a)(6)—(10). They do not impact retention of the existing filing requirements.

The final regulation at § 3.501(a)(2)(vi) requires that a copy of county comprehensive plans, municipal comprehensive plans and zoning designations be provided upon request of the Commission. Section 3.501(a)(2)(vi) takes this approach because these plans typically are voluminous and reflect a considerable duplication cost. The Commission does not want to impose mandatory submission requirement given these costs unless the plans are necessary and requested. An applicant letter is required to address compliance with the applicable requirements of these plans pursuant to § 3.501(a)(7) regardless of whether the Commission requests a copy of these voluminous documents.

The proposed regulation would have required an applicant to provide a letter certifying compliance with these requirements. The final regulation at § 3.501(a)(7) adopts the proposed regulation and requires an applicant to submit a letter addressing whether the applicant does or does not meet the requirements of these and additional governmental entities.

The Commission also agrees with the Utility Group that the word "new" should be stricken from § 3.501(a). We agree on the need to retain the long-standing filing requirements of § 3.501. The Commission has and will continue to apply these filing requirements to initial and existing but uncertificated utilities.

In addition, DEP raises a concern that, with respect to applications for additional and expanded authority by water and wastewater utilities, the Commission would not consider whether the proposed expansion would be in compliance with DEP requirements. The Commission takes seriously each utility's obligation to comply with the applicable DEP requirements. For this reason, the Commission will continue to require water and wastewater utilities to demonstrate compliance with applicable DEP requirements (via DEP certification) and the Commission will consider and may rely upon the local government's

applicable zoning and planning requirements (via certification by the governmental entity) in considering a utility's application for additional or expanded service.

Section 3.501(b). The existing Section establishes filing requirements. Section 3.501(b) requires the applicant to file an original and three copies with the Commission. The applicant is advised that failure to include the required information and documents may subject the application to rejection. The application must contain exhibits. An affidavit of service must show the identity of those served under Section (d) as an accompaniment to the original and copies submitted to the Commission. Section 3.501(c) governs docketing and publication requirements.

The proposed § 3.501(b) continued many of these provisions. However, the proposed regulation deleted the original and three copies requirement. The proposed regulation retained the affidavit requirement. An applicant had to submit the forms set forth in the proposed § 3.501(c).

The final regulation for § 3.501(b) lists the additional considerations an applicant must address. These additional considerations respond to DEP and IRRC comments as well as our determination in the proposed regulation that these matters are an appropriate subject for the final regulations. They also incorporate the Commission obligations under the act of June 22, 2000 (P. L. 483, No. 67) and the act of June 23, 2000 (P. O. 495, No. 68). The new § 3.501(b) also reflects our Commission Policy Statements concerning Local Land Use at 52 Pa. Code § 69.1101 and small water company issues addressed in our policy statement at 52 Pa. Code §§ 69.701 and 711.

The new § 3.501(c) contains the existing § 3.501(b) requirements. The final regulation retains the copy requirements in the existing regulation. The final regulation adopts the first sentence of the proposed regulation at § 3.501(b) requiring conformity with the Commission's documentary filing requirements in §§ 1.31 and 1.32. It also addresses payment of fees set out in §§ 1.42 and 1.43.

Section 3.501(c). The existing § 3.501(c) regulation addresses docketing with the Commission, publication in the *Pennsylvania Bulletin*, and additional requirements. The proposed § 3.501(c) replaced the requirements of § 3.501(a) in the current regulation.

The OCA is concerned about the proposal to include less, not more, notice in the proposed regulation. The OCA is particularly concerned about the proposal to reduce newspaper publication from daily publications for two consecutive weeks to once a week for two consecutive weeks. We agree and adopt the OCA's position on newspaper publication.

Section 3.501(d). The existing regulation at § 3.501(d) governs copy distribution requirements. The existing regulation at § 3.501(d) does not require service of an application on any water or wastewater utility, municipal corporation or authority with a service area within one mile of a new or affected service area.

The proposed regulation denied a request to expand the copy requirement to include anyone except those abutting a proposed service area. The proposed regulation did, however, allow any water or wastewater utility, municipal corporation or authority with a service area within one mile of the proposed new or affected service area to request a copy. The proposed regulation also eliminated a

requirement that the OCA be served a copy. The proposed regulation moved these revised copy requirements to § 3.501(e).

The OCA wants service expanded to include any water or wastewater utility, municipal corporation or authority within one mile of any proposed or affected service area. The OCA wants notice provided to existing and prospective customers. The OCA opposes the reduction in publication from daily for two consecutive weeks to once a week for two consecutive weeks.

The DEP is concerned about changes that allow or encourage unplanned development or sprawl. DEP claims that the proposed regulation conflicts with the legislative directions of the General Assembly to coordinate agency permitting decisions. DEP is also concerned about the distribution of copies to their regional or central office.

The OSBA is concerned that the Commission's renumbering in the proposed regulation fails to properly convert the existing regulation at § 3.501(d)(1) through (3) into the proposed regulation at § 3.501(e)(1)(i) through (iii), respectively.

In the final regulations, we believe we have addressed all of these concerns. The final requirements relating to copies, notice, and distribution requirements are set forth in § 3.501(c) through (f). The final regulation at § 3.501(f)(3) addresses the OCA's service concern by requiring service on the statutory advocates, including the OCA. These final regulations also restore the existing application requirements. These final regulations expand service to include DEP's regional and central offices, the statutory advocates, and all utilities abutting or within one mile of the proposed service territory. Finally, the customers of any proposed or existing but uncertificated applicant must be notified of any application. This combination of retaining current requirements and expanding the notice and service obligations better meshes our statutory mandates with the concerns of DEP and others.

Based on our agreement with the OCA's position on newspaper publication, we also see no need to reduce the public notice requirements of an applicant as reflected in our newspaper publication requirements. The final regulation continues the existing public notice requirements published in a newspaper of general circulation to ensure broad dissemination of the information.

Section 3.501(e). The existing § 3.501(e) is a reference section. The proposed § 3.501(e) contained reduced copy service requirements. The final § 3.501(e) contains a process for development of any forms.

The proposed regulation would have deleted mandatory application requirements in favor of forms that were subject to revision. The final regulation restores the application filing requirements while allowing the Commission to make forms available so that an applicant can understand exactly what is needed to comply with § 3.501. Also, the procedures governing the development of any form for purposes of § 3.501 require publication, website posting, and consultation with interested agencies or persons. This should resolve concerns about the need for public input in the development of forms that reflect the Commission's filing requirements.

Section 3.501(f). There is no existing or proposed § 3.501(f) because the copy requirements are set forth in § 3.501(e) of the proposed regulation. The final § 3.501(f)(3) regulation establishes a copy requirement for the OCA but also adds OTS and OSBA. The final § 3.501(f)(3) regulation also establishes service of a copy on DEP's central and appropriate regional offices. Finally,

the final § 3.501(f) regulation establishes a service requirement on any water or wastewater utility, municipal corporation or authority with a service area within one mile of or abutting any proposed new or affected service area.

For ease of understanding this complex and lengthy response, Annex A presents our agreement with the parties' comments as new material written in capitalized text. This reflects incorporation of their suggestions. The proposed regulations are deleted in their entirety.

Section 3.502(a). Protests to applications for certificate of public convenience as a water supplier or wastewater collection, treatment and disposal provider. The proposed regulation in § 3.502(a) added the requirement that an attorney for a protestant supply his or her Pennsylvania attorney identification number. There were no comments. The final regulation adopts the proposed regulation.

Section 3.502(b). Participation in a proceeding. The existing regulation allows a protestant to participate in a proceeding as a party intervenor if they file a timely protest. The proposed regulation required that the protest be in appropriate and legally sufficient form. IRRC states that the requirement is vague. IRRC wants the final regulation to cross-reference the applicable regulatory standards.

The Commission agrees with IRRC. The final regulation deletes this proposed change and retains the existing regulation.

Section 3.502(c). The existing regulation makes no changes. The OSBA comment notes that this provision is governed by § 5.101. However, § 5.101 changes the term "Motions" to "Preliminary Objections." The OSBA comment recommends that the language in this provision be consistent with § 5.101.

Subchapter H. Forms

Section 3.551. Official forms. This proposed regulation deleted the current list of forms stating that forms for applications, petitions, complaints and other matters are available on the Commission's website or from the Secretary. There are no comments. The final regulation adopts the proposed regulation.

Subchapter I. Registration of Securities

Section 3.601. The proposed regulation at § 3.601(b) clarified the certificate filing and payment requirements. The proposed regulation at 3.601(c) replaced the existing list of necessary information with a notice that a form is available from the Commission. There were no comments to this proposal.

The final regulation at § 3.601(b) adopts the certificate filing and payment requirement provisions. The final regulation at § 3.601(c) retains the current list of required information in light of IRRC's expressed concern about the use of forms in lieu of regulatory requirements in § 3.501. The final regulation, however, contains new information in § 3.601(d) detailing the process for developing standard formats. The revision balances IRRC and DEP concerns about forms with notice about revisions, provides an opportunity for input, and authorizes an appeal from any staff action under § 5.44.

Section 3.602. Abbreviated securities certificate.

Section 3.602(a). The proposed regulation made no changes to § 3.602(a) on the scope of our abbreviated securities rules. The late-filed Thomas comment urged the Commission to include two additional categories within the scope of the proposed regulation. Rulemaking

is a quasi-legislative function under Pennsylvania law. There were no objections to this late-filed comment on due process or substantive grounds. The Commission considered the comment. The final regulation for § 3.602(a) incorporates the two suggestions.

Section 3.602(b). The proposed regulation contained a list of the required information submitted on the form filed under this provision. There were no comments. The final regulation adopts this proposed regulation. The final regulation, however, also revises the number of days set forth in the proposed regulation for §§ 3.602(c)(1) and (2). Section 3.602(c)(1) is revised from 10 days to 20. The number of days set forth in § 3.602(c)(2) is revised from 10 and 30, respectively, to 20 and 40. These revisions reflect regulatory consistency and review within a reasonable time.

Chapter 5. Formal Proceedings

Subchapter A. Pleadings and Other Preliminary Matters

Section 5.1. General provisions.

Section 5.1(a). The proposed regulation for § 5.1(a) added "New matter, reply to new matter, and motions" to the list of pleadings to accurately reflect practice. The OSBA comment notes that since the proposed regulation changes "preliminary motions" to "preliminary objections," the regulation in § 5.1(a)(5) should include a reference to § 5.61 authorizing answers to preliminary objections. The final regulation allows the filing of an answer to a preliminary objection in § 5.101(g) of the final regulation.

Section 5.1(b). The proposed regulation for § 5.1(b) deleted preliminary motion and replaced it with preliminary objection. There were no comments. The final regulation adopts the proposed regulation.

Sections 5.11—5.14. Applications.

Section 5.12. Contents of applications. The proposed regulation revised § 5.12 to lay out contents of an application. An added provision encourages inclusion of an e-mail address. The proposed regulation denied the OCA's request for service of every application based on considerations of expediency and the availability of the Commission's website. Moreover, the proposed regulation recognized that § 5.14(b) authorizes the Secretary to direct service of applications upon the OCA and other interested persons in appropriate circumstances.

The OCA filed comments opposing the Commission's denial of its request in the proposed regulation. The OCA claims that the Commission's website does contain notice of a new application, but the absence of the detailed schedules and exhibits in the application require the OCA to go to the Secretary's Bureau to review and copy the application.

The final regulation does not require service of every application on the OCA or the other Statutory Advocates. The Commission receives thousands of applications and many are of minimal interest to the OCA. This includes transportation requests for new authority, abandonment or transfer of existing authority, requests for additional authority, or license applications of gas or electric generation suppliers not otherwise regulated by the Commission. The obligation to serve a copy of every application on the statutory advocates imposes unjustified additional costs and encourages challenges based on defective or imperfect compliance. The only discernible benefit seems to be a reduction in the time the OCA staff must spend coming to and from the Commission to review applications following their publication in the *Pennsylvania Bulletin*.

Section 5.13. Applications for construction or alteration of crossings. The proposed regulation for § 5.13(b) added construction within the scope of the plans required under the regulations. There were no comments. The final regulation adopts the proposed regulation.

Section 5.14. Applications requiring notice. The proposed regulation eliminated the § 5.14 list of applications that required notice. The Commission proposal reflected the need to update the list in light of market changes.

IRRC and the Utility Group comments express concern that a general reference to publication of applications is less desirable than retention of the existing list. IRRC is additionally concerned that the proposed regulation at § 5.14(c) references the deadline for filing protests in § 5.53 but § 5.53 provides that the time for filing protests shall be as stated in the published notice. IRRC suggests that the PUC establish a standard deadline for filing protests absent good cause shown. The Utility Group wants the list and exceptions in the existing regulation at § 5.14(b) reinstated in the final regulation.

IRRC suggests a general protest period for all applications submitted to the Commission. IRRC is understandably concerned that the regulated community does not know the timing for filing a protest. IRRC suggests publication occur in the *Pennsylvania Bulletin*. The Utility Group believes a 60-day default period is too long. The Utility Group proposes a 30-day period.

The Commission agrees with IRRC and the Utility Group. A notice of application under § 5.14 will continue to be published in the *Pennsylvania Bulletin*. That notice will also establish a protest period consistent with § 5.14(d).

The final regulation at § 5.14(d) reinstates the applications list of the existing regulation at § 5.14(b). Reinstatement of the existing § 5.14(b) list is provided in the new § 5.14(d) provision. Reinstatement ensures that listed applications are subject to a standard 15-day protest period. The Commission has operated for many years with this standard 15-day protest period and we see no compelling reason to change it given the Secretary's authority to establish additional protest periods as appropriate. Section 5.53 contains a 60-day protest period default in case the Commission's notice of application in the *Pennsylvania Bulletin* inadvertently fails to set a protest period.

As noted per the final regulation in § 5.14(b), the Secretary's Bureau can impose additional publication or notification requirements as warranted. This includes publication in a newspaper of general circulation, actual notification to the parties affected, or another form of actual or constructive notification. These will also contain a protest period unless, as indicated in § 5.53, no protest period is established. In that case, the 60-day protest period applies by default.

There are some minor revisions which make the exception consistent with existing regulations, particularly §§ 3.381 and 5.301. The retained exceptions are subject to the existing 60-day protest period. These exceptions are applications under §§ 3.361—3.363 (Crossing complaints, Reimbursement of damages from crossings, and Claims for property damages from crossings) and 52 Pa. Code §§ 57.71—57.77 (relating to siting and construction of electric lines). The reference to § 3.381 in § 5.14(d) of the regulation is removed to make it consistent with the minimum 15-day protest period set forth in § 3.381 of the existing regulation. Section 3.501 is revised to reflect a cross-reference to the 60-day protest period for water and wastewater in § 3.501.

The Commission disagrees with comments suggesting that we establish a standard rule for protest periods. The Commission believes a general rule is inadvisable regardless of whether it is 15 days, 30 days or 60 days for the reasons set forth below.

The existing regulations already impose a 15-day protest period for the applications listed in the final regulation unless they come within an exception or no protest period is established. In those instances, there is a 60-day protest period. This approach is taken because applications to the Commission range from the basic request of a very small carrier to the more complex authority requested by large utilities. A uniform protest period ignores the very real differences in scale of applicants that come before the Commission. The final regulation provides the flexibility required by this difference.

A 15-day standard protest period is appropriate in situations where an applicant wants to implement a business plan or transportation service but needs Commission approval. This is often the case for telecommunications resellers or transportation providers. The § 5.14(b) list for telecommunications in the existing regulation is retained in the final § 5.14(d) regulation. Retention of the 15-day protest period is consistent with the Utility Group's view that a 60-day protest period is too long.

On the other hand, the same 15 day standard protest period is inappropriate for more complex or controversial applications. A 15-day protest period involving, for example, the construction and siting of high-capacity electric lines, the merger applications of immense interstate carriers, in-depth analysis of technical or financial fitness, or applications with a host of unexpected issues is inadvisable. In those cases, the suggested 30-day standard protest period may be inappropriate when a 60-day protest period is advisable given the complexities of the case.

A 30-day standard protest period is superficially appealing but untenable on close examination. A 30-day period may reconcile a 15-day protest period with the 60-day protest period. A 30-day protest period, however, is equally untenable. On the one hand, it errs by extending the protest period for small applications like telecommunications resellers or transportation providers. On the other hand, it errs by shortening the protest period for complex or controversial cases like HV line construction or railroad crossing abandonments. A 30-day standard protest period may be particularly unwise for telecommunications applications because federal law prohibits state action that constitutes a barrier to entry. An unnecessarily long 30-day protest period in telecommunications runs the risk of preemption as a barrier to entry compared to the short 15-day protest period. In that case, a shorter protest period makes sense. With that in mind, the list in § 5.14(d) retains a 15-day protest period for most applications. This makes more sense than a 30 or 60-day rule.

A 60-day protest period is superficially appealing but equally unwise. That rule may well provide interested parties more time to decide if they want to intervene or protest. It also makes little sense to a taxi driver seeking reinstatement or issuance of a new certificate following revocation. A 60-day protest period is difficult for a transportation provider who relinquished their authority, voluntarily or otherwise, and wants to reenter the market. However, a longer protest period is appropriate for complex matters including the exceptions listed in § 5.14(b) of the current regulation.

Sections 5.21—5.31. Formal Complaints.

Section 5.21 Formal complaints generally. There were no proposed revisions to this section. The Ryan comment suggests language for § 5.21(d). The language provides that it is neither necessary nor appropriate for a respondent to introduce any evidence when the complainant fails to meet its burden of proof by presenting probative evidence or, as is frequently the case with pro se complainant, a failure to appear. The Ryan comment addresses cases where a presiding officer sometimes requires a respondent to present their evidence even though a pro se complainant fails to appear or does not present probative evidence.

The final regulation denies the suggestion for several reasons. For one thing, some utilities want to present their case even if the complainant fails to show or present probative evidence at the hearing. This generates a record in the event the complainant files another complaint.² Moreover, administrative proceedings are not tantamount to proceedings in courts of law in Pennsylvania. See *Pittsburgh Press Company v. Pittsburgh Commission on Human Relations*, 4 Pa. Commonwealth Ct. 448, 287 A.2d 161, 167 (1972) holding that an administrative proceeding is not restricted to the niceties of common law pleadings. The comment seems to commingle burden of proof and burden of persuasion although they are not the same. *Corbett and O'Malley v. Bell Telephone Company*, Docket No. C-00923898 (Order entered January 25, 1995), slip op. at 18—20 citing *Page v. Camp Manufacturing Co.*, 180 N.C. 330, 331, 104 S.E. 667 (1920); *McDonald v. Pennsylvania Railroad Company*, 348 Pa. 558, 36 A.2d 492, 495—96 (1940); *Wilson v. Pennsylvania Railroad*, 421 Pa. 419, 219 A.2d 666, 669—670 (1966) (“Burden of proof never shifts but evidence may establish prima facie case sufficient to shift the burden of persuasion”). In some instances, an presiding officer may require a respondent to go forward based on a determination that the complainant’s allegations and attachments provide evidence of a prima facie showing sufficient to shift the burden of persuasion. In that case, it may well be a violation of due process to not require a respondent to respond to the formal complaint notwithstanding a party’s absence or failure to present probative evidence at the hearing. A general rule is inadvisable given these considerations.

Section 5.22. Contents of formal complaints.

Section 5.22(a). The proposed regulation revised § 5.22 to specify the requirements of a formal complaint when the complainant is represented by an attorney and when the complainant has no formal representation. The proposed regulation at §§ 5.22(a)(2) required an attorney to list his or her attorney identification number. The proposed additions in Sections 5.22(a)(5) and (6) sought more detailed and easier to read information to facilitate Commission responses.

IRRC suggests that the reference to “writing” in § 5.22(a)(7) either define the term or specify what documents are subject to this section. The Utility Group suggests that the final regulation at § 5.22(a)(5) specify whether or not the Formal Complaint is an appeal of an informal complaint. The OSBA thinks this provision seems to contradict § 5.21 of our rules, which only requires identification of a document.

The Commission appreciates the concerns about § 5.22(a)(5). The final regulation retains the requirement

of a clear and concise statement of the act or thing complained of including the result of an informal matter within § 5.22(a)(7). The rephrasing addresses the commentators’ concern, particularly with respect to parties with counsel.

We agree with IRRC on § 5.22(a)(7). In this regard, the Commission generally relied on rules 1019 through 1024 of the Rules of Civil Procedure governing the attachment of writings to a complaint since complaints are the subject of § 5.22. The Commission notes that the language in § 5.22(a)(7) is virtually identical to Rule 1019(i) of the Rules of Civil Procedure. That rule, as this rule, requires attachment of a writing although the term writing is not defined in Rule 76 of the Rules of Civil Procedure’s Rules of Construction nor is the term defined in Sections 1019 through 1024.

The Commission agrees with IRRC and replaces with word “document” for the word “writing” in the final regulation.

The final regulations adopt a modified administrative equivalent of Rules 1002 through 1005 of the Pennsylvania Rules of Evidence for writings (now referred to as documents) and Rules 1019 through 1024 of the Rules of Civil Procedure governing the attachment of a document and its production.

We do not agree with the OSBA comment that § 5.22(a)(7) contradicts § 5.21(b). The final regulation states more clearly that the attachment requirement of § 5.22(a)(7) is not applicable to § 5.21(b) writings. Section 5.21(b) identifies documents that are more easily obtained because they are on file at the Commission. Extension of the mandatory attachment rule of § 5.22(a)(7) to § 5.21(b), particularly with regard to pro se litigants, could dramatically increase the number of pro se proceedings dismissed on procedural grounds. A large increase in dismissals based on noncompliance with an unnecessary procedural requirement could hinder the Commission’s ability to identify and address customer service problems raised by pro se litigants.

Section 5.22(c). The proposed regulation revised the language clarifying that a complainant must reference any order or regulation of the Commission that forms the basis for a formal complaint. IRRC suggests that the last sentence in § 5.22(b) also contain the phrase “the act” for consistency.

We agree with IRRC. We add the phrase “the act” in the second sentence.

Section 5.24. Satisfaction of formal complaints. The proposed regulation revised § 5.24. The proposed revision addressed circumstances in which a complainant does not wish to proceed but neither is the complainant satisfied. The proposed regulation anticipated closing a complainant’s matter after the complainant acknowledges a lack of interest in pursuing the matter.

IRRC’s comment recognizes that the revised § 5.24(b) allows a respondent to certify satisfaction based on a complainant’s acknowledgement of satisfaction or if the complainant no longer wishes to pursue the matter. The Ryan comment wants the Commission to address the current requirement that a complainant file a withdrawal or the respondent obtain the complainant’s signature. The comment claims this requires considerable resources, such as obtaining the complainant’s signature or preparing for a hearing where the complainant will never appear. The Utility Group suggests an efficient revision that allows the respondent to represent that the complainant is not going to pursue a matter.

² *Agnes Manu v. AT&T Communications of Pennsylvania, Inc.; Bell Telephone Company of Pennsylvania, Inc. and Philadelphia Electric Company, Inc.*, Docket Nos. F-09029141, C-00935014, C-00934970, C-00923621, and C-00924554. Three family members filed multiple Formal Complaints regarding arrearages of \$25,775.61, \$1,337.04, \$13,484, \$22,509.82, and \$24,124.21 and then failed to appear. There, a respondent may want to present their response.

The Commission agrees with IRRC as well as the Utility Group and Ryan comments. The final regulation at § 5.24(b) allows the respondent to file a certified writing confirming satisfaction either through a complainant's acknowledgement or in cases where the complainant no longer desires to pursue a matter. The final regulation at § 5.24(c) also requires the respondent to simultaneously serve a copy of the certified writing. The respondent must also include a written statement informing the complainant of their right to object in writing within 10 days. The docket is closed unless the complainant objects in writing. This reconciles concerns about efficiency with due process and certainty.

The final regulation also makes clear that the presiding officer is not required to render a decision unless the parties require one for good cause.

Section 5.31. Staff-initiated complaints. The proposed regulation revised the language to include actions taken pursuant to delegated authority and required the named party to file an answer consistent with § 5.61. The OCA suggests that staff-initiated complaints be served on the OCA and OSBA but not on OTS.

The Commission recognizes the need for greater dissemination of information about staff-initiated complaints to all statutory advocates and not just the OCA. For that reason, the final regulation requires that a copy be provided to the Statutory Advocates and the Chief Counsel. The final regulation deletes the current § 5.31(b) as well. These revisions provide the need for information about staff-initiated matters without imposing a service requirement that could give rise to challenges based on imperfect service. Service, because it is a legal term of art, is distinct from the understandable desire for information on Commission undertakings.

Section 5.32. Complaints in rate proceedings. The proposed regulation added a new section that recognizes a person's right to file a complaint against a proposed rate filing with the need to impose a reasonable time limit on complaints. This reflected narrower time limits for rate cases compared to nonrate cases under section 332 of the Public Utility Code.

There are no comments. Subsequent Commission review shows that the plain language of section 315 of the Public Utility Code requires the Commission to either include any complaint filed against a proposed rate increase in the case itself or to start another one with the utility still having the burden of proof. This means that, as long as the rates are proposed and not approved, the Commission cannot stop the complaint from either being considered or from instituting another proceeding.

For that reason, the final regulation for § 5.32(b) provides that a complainant filing a formal complaint in a rate case takes the record as they find it.

Sections 5.41—5.44. Petitions.

Section 5.41. Petitions generally. The proposed regulation made no major substantive changes. The proposed revisions seek to clarify the regulation.

IRRC suggests clarification to the phrase "in compliance with Commission direction" in § 5.41(c) with a cross-reference to the service requirements contained in the final regulation.

The Commission disagrees with cross references in this provision. This provision addresses who is served or given a copy not how the service or copy is accomplished.

The Ryan comment urges the Commission to insert a new sentence in § 5.41(d) imposing a mandatory time

period for Commission decisions. The Ryan comment concedes that the Public Utility Code differentiates between general rate cases, which impose a 7-month period for decisions in 66 Pa.C.S. § 1308, and other non-rate proceedings under section 332(g) that lack this mandate. The Ryan comment suggests a similar time period for § 5.41 petitions. The Ryan Comment proposes a rule that the Commission decide any proceeding initiated by a petition within seven months after filing unless the Commission grants itself a ninety-day extension for good cause shown.

The Commission declines to adopt this comment for several reasons. The Commission manages multiple, and sometimes controversial if not complex, petitions. Petitions run the gamut from a single suspended taxi driver seeking reinstatement through mid-sized carriers seeking resolution of intercarrier compensation matters under state and federal law to large utilities implementing restructuring or broadband deployment.

It is not possible or advisable to craft a mandatory 7 month decision rule for all non-rate cases premised on a statutory provision governing rate cases. Rate cases already consume such a considerable number of resources and staff in order to meet the statutory deadline. The resource and staff needs of the Commission will increase if the same 7 month statutory requirement were imposed on the entire gamut of non-rate cases. This increase is ultimately reflected in assessments and rates. Moreover, it is often difficult to reach a final decision in many matters in 7 months. This includes, for example, the Commission's promulgation of final rules governing the securitization of stranded costs where there were not dispute and billions of dollars. That problem is exacerbated in non-rate cases where there are disputes and complex questions of law and policy.

A general rule requiring a decision within a specific time period for every petition, regardless of its nature, fails to appreciate the sheer variety of proceedings or the costs that come with such a requirement.

Section 5.42. Petitions for declaratory orders. The proposed regulation contained no substantive changes for § 5.42. Section 5.42 was broken down for ease of reference.

Section 5.43. Petitions for issuance, repeal, or waiver of Commission regulations. The proposed regulation contained no substantive changes for § 5.43. The OCA requested that § 5.43 be revised for consistency to require service on the OCA. The Commission agrees and §§ 5.41—5.43 of the final regulation provides for service of petitions on the Statutory Advocates.

Section 5.44. Petitions for appeal from actions of staff. The proposed regulation extended the appeal period to a standard 20 days.

IRRC suggests that the Commission consider a general rule. The Commission agrees with IRRC and extends the challenge period to 20 days in the final regulation.

The Utility Group suggests that the Commission adopt a provision that appeals under this Section are decided at Public Meeting. The Utility Group makes the suggestion given that staff determinations often have a considerable impact to a party. The final regulation clarifies that the Commission decides these appeals at Public Meeting.

Sections 5.51—5.54. Protests.

Section 5.51. Protest to an application. The proposed regulation made minor linguistic changes for clarity. There were no comments. The final regulation adopts the proposed regulation.

Section 5.52. Content of a protest to an application. The proposed regulation contained no substantive changes. There was rewording for clarity. OSBA suggests that the word “shall” be included in brackets in § 5.52(a). IRRC and the Utility Group suggested elimination of the word “shall” due to a typographical error at § 5.52(c). The Commission agrees and inserts the word “must” in the final regulation.

Sections 5.53 and 5.14. Time of filing protests and applications requiring notice. The proposed regulation revised § 5.53 to provide a consistent default filing time for filing a protest. The proposed regulation deleted § 5.54 as redundant. There was considerable comment.

For the reasons discussed in § 5.14 earlier, the Commission’s final regulation retains the conjunctive approach to §§ 5.53 and 5.14. In deference to IRRC concerns about a standard protest period, the final regulation establishes a default provision for times when an application published in the *Pennsylvania Bulletin* fails to establish a protest period.

Section 5.61—5.66. Answers.

Section 5.61. Answers to complaints, petitions and motions. The proposed regulations for §§ 5.61, 5.102 and 5.103 are revised for consistency in providing a twenty day response time.

The OSBA comment suggests that the numbering requirement of § 5.61(b)(1) is complicated, routinely ignored, and should be eliminated. The Commission retains the existing numbering rule based on its experience.

The OCA suggests that the 20-day rule in § 5.61(a)(1) apply to rate complaints in § 5.61(d) as opposed to the reference to § 5.32. The Commission disagrees. Rate case proceedings are under a very tight timeframe and, for that reason, require a shorter answer period. The final regulation establishes a time identical to that for preliminary objections, e.g., 10 days. This is appropriate given that there is no duty, and hence no adverse consequences, for failure to file an answer in rate case proceedings. The Commission also provides § 5.61(e) clarifying the contents of an answer to a petition.

Section 5.62. Answers seeking affirmative relief or raising new matter. The proposed regulation reformatted the structure for clarity. The IRRC comment suggests that the Commission determine if a notice to plead must be included with the new matter. IRRC thinks this may be important in view of the fact that § 5.63(b) provides that failure to file a timely reply may be deemed an admission of the facts raised. The Utility Group notes that presiding officers do sometimes instruct utility counsel to append a Notice to Plead, particularly in pro se proceedings, when an answer raises new matter. The Utility Bar asks whether the final rules should contain this requirement.

The Commission declines to impose a Notice to Plead requirement. In many cases, particularly involving pro se litigants, the litigant is unaware of the consequences for not filing a reply with or without a Notice to Plead. In such instances, a Notice to Plead encourages dismissal on procedural grounds as opposed to disposition of the substantive concern. A well-intentioned suggestion that a Notice to Plead be required actually creates an avoidable procedural landmine for the unwary or unsophisticated litigant. The Commission prefers to err on the side of caution by not mandating a Notice to Plead in pro se proceedings. As for formal proceedings where the parties are typically represented by seasoned counsel if not

multiple numbers of attorneys, counsel in those proceedings fully appreciate the § 5.63 ramifications of any failure to reply.

Moreover, practice before the Commission is not synonymous with practice in the courts. The Commission has no jurisdiction to entertain counterclaims involving damages. The Commission does, however, retain an interest in new matter raising a counterclaim that is not one related to damages. The Commission does not want litigants dismissed from a proceeding based on failure to append, or reply to, a Notice to Plead. The Commission prefers, particularly for pro se litigants, to hear all the claims and allegations within our jurisdictional authority. The Commission’s final regulations balance the formalities of courtroom-like proceedings where all parties have counsel with those incredibly varied cases involving pro se litigants.

Section 5.63. Replies to answers seeking affirmative relief or new matter. The proposed regulation added replies to new matter including the possible consequences of a failure to reply to new matter. There were no substantive comments.

Section 5.65. Answers to amendment of pleadings. The proposed regulation excepted § 5.101 preliminary objections from the provisions of this regulation. There were no substantive comments.

Section 5.66. Answers to petitions to intervene. The proposed regulation revised § 5.66 to confirm that an answer to a petition to intervene must be filed within 20 days of service. The Utility Group suggests that answers be limited to “active” parties but not “inactive” parties. The Commission confined the language in the final regulation to “parties” given the difficulties, discussed throughout the rulemaking, of distinguishing between the meanings of “active” and “inactive” parties in a regulation.

Sections 5.71—5.76. Intervention:

Section 5.73. Form and content of petitions to intervene. The proposed regulation addressed frustration about facing an unknown intervenor group. The proposed regulation required intervenor petitions filed on behalf of more than one person to list the persons and entities comprising the represented group.

The Ryan comment contains an even more detailed proposal imposing nine additional informational matters that must be provide by an association intervenor. The suggested criteria would require an association intervenor to provide the name of the association, the date of formation, their purpose, their organizational structure, the number of members, their governance structure, whether intervention is by resolution or members, the interest of the association, and specific detail on the association’s alleged interest. The Ryan comment is particularly concerned about associations that provide little or no information about their formation, interest, or basis for intervention.

The Commission adopts the proposed regulation as final. The Ryan comment would mandate detailed information about every association’s standing in every proceeding regardless of the nature of the proceeding. Such a universal, detailed and costly-to-administer pleading is burdensome compared to the benefit. A party that wants to challenge an association’s intervention in any proceeding can always ask the presiding officer to require this kind of detailed information. We conclude that the permissive “may” allows this approach better than use of the directory “must” in the final regulation.

Section 5.74. Filing of petitions to intervene. The proposed regulation in § 5.74 established a default deadline for filing a Petition to Intervene as well as a Notice of Intervention. The proposed regulation limited intervention regardless of the party. The Sections are revised to notify the presiding officer of the appropriate standard to use in considering a request for intervention.

The IRRC comment notes that this is a marked departure from prior Commission practice. IRRC wants the Commission to clarify the intent behind this regulation. The OCA states that this provision may be legally or administratively unsound if applied to the OCA. The OCA files a Notice of Intervention as a public representative under a statute. This contrasts with a Petition to Intervene filed by a party under caselaw. The OCA cites numerous times the Commission and the public benefited from their public advocacy interventions even if they occurred well after expiration of the established intervention date.

The Commission agrees with IRRC and the OCA. The final regulation at § 5.74(b)(4) and (c) reflect different intervention and participation rights between Statutory Advocates and private litigants. The Statutory Advocates, unlike private litigants, have distinct statutory provisions governing their rights and responsibilities. For example, the Office of Consumer Advocate has statutory authority to file a Notice of Intervention whereas the similar right provided to the other statutory advocates is not called a Notice of Intervention. Section 5.74(b)(4) reflects that difference and provides all Statutory Advocates with the right to file a Notice of Intervention or Right of Participation at any time. Section 5.74(c) provides that right to private litigants although the right is more limited. Finally, the revision provides that any party intervening after expiration of an established protest period takes the record as it exists absent exceptional circumstances. This limitation balances rights with due process, the short timeframe for decisions in rate cases and the need to identify and resolve issues in rate and nonrate proceedings.

Section 5.75. Notice, service and action on petitions to intervene. The proposed regulation revised language for clarity. The IRRC and the OSBA comments suggest that the word “permitted” be replaced by “prohibited” in § 5.75(d) consistent with the Commission’s wording changes in this section. We agree with IRRC and the OSBA. We also deleted the phrase “by the moving party” in § 5.75(c) for clarity and brevity. Finally, § 5.75(d) provides for permissive intervention following expiration of any established protest period under § 5.74(b). This provides a regulatory option to permit intervention past the expiration period in appropriate circumstances. For that reason, the final regulation for § 5.75(d) is phrased with the more permissive “may” as opposed to the more limiting “shall” in § 5.74(b).

Sections 5.91–5.94. Amendment and Withdrawal of Pleadings. The proposed regulation sets forth revisions intended to reflect the Pennsylvania Rules of Civil Procedure where possible and appropriate.

Section 5.91. Amendment of pleadings generally. The proposed regulation made minor language changes and inserted new § 5.91(b). The new provision addressed amendments in response to preliminary objections.

The IRRC comment suggests that the phrase “insofar as appropriate” in § 5.91(a) is redundant and wants the Commission to delete it. The Commission agrees with IRRC.

Section 5.92. Amendments to conform to the evidence. The proposed language made changes for clarity, brevity, and ease of reading. There are no substantive comments.

Section 5.93. Directed amendments. The proposed regulation made minor language changes for clarity and replaced “participant” with “party” as well. There are no substantive comments.

Section 5.94. Withdrawal of pleadings in a contested proceeding. The proposed regulation made minor changes for brevity and clarity. The word “participant” is replaced with the word “party” in the provision. The Utility Group suggests that the Commission differentiate between “active” and “inactive” parties. The final regulation uses the term party consistent with the revision in order to avoid differentiating between active and inactive parties.

Sections 5.101–5.103. Motions. The proposed rulemaking changed the term “preliminary motion” to “preliminary objection” consistent with the use of that term by practitioners elsewhere.

Section 5.101. Preliminary objections. The proposed rulemaking for § 5.101 contained several revisions.

Section 5.101(a). The current regulation specified what preliminary motions are available to parties. The proposed regulation replaced “preliminary motion” with “preliminary objection” where appropriate and rephrases the term “preliminary objection” to more closely model Pa.R.C.P. 1028.

The OSBA asks if the phrase “except motions and prior preliminary objections” should be deleted since the Commission replaces “preliminary motions” with “preliminary objections.”

The final rule retains the phrase. The phrase “except motions and preliminary objections” is retained to reflect the Commission’s long-standing prohibition against responding to a motion or prior preliminary objection with another preliminary objection. This is one place in the final regulations where the word is retained to emphasize the rule against answering a motion or prior preliminary objection with another preliminary objection. Unlike the courts where private parties typically bear litigation costs, the Commission is a regulatory agency whose costs are ultimately recovered in assessments and rates paid by ratepayers. Retention of this rule discourages additional costs attributable to dilatory litigation practices that such a rule could create at the Commission. The final rule also reorders and rephrases the available preliminary objections to more closely model the Pennsylvania Rules of Civil Procedure at Pa.R.C.P. No. 1028.

Section 5.101(b). The current regulation governs the filing of preliminary objections and specifies that all preliminary objections must be raised at one time. The proposed regulation allowed two or more preliminary objections to be raised at one time. There was considerable comment to the proposal to allow two or more preliminary objections to be raised at one time. The major concern, expressed in the IRRC comment and Utility Group comment, is that the revision could allow a party with significant resources to unreasonably delay a proceeding or cause unnecessary expenditure by not being required to raise all preliminary objections at once. IRRC and the Utility Group suggest revocation of this proposal.

The Commission recognizes the validity of these comments and requires that all preliminary objections be raised at one time in § 5.101(c).

Section 5.101(b) continues to require that a preliminary objection contain a notice to plead advising the recipient

of the option to file an answer within 10 days of the date of service. In turn, § 5.101(f)(1) specifies that an answer to a preliminary objection may be filed within 10 days and § 5.101(f)(2) addresses the form for such answers.

Section 5.101(c). The current regulation governs more specific pleadings. The proposed revision to § 5.101(b) governed the filing of an amended pleading in response to a more specific pleading filed under § 5.101(b).

The OCA comment notes that § 5.101(c) references § 5.61(b) although the proposed revision to § 5.61(b) does not expressly provide that preliminary objections and documents must be filed in 20 days. Section 5.101(d) of the final regulation sets forth a clear response time period.

The Commission agrees with IRRC, the Utility Group, and the OCA that § 5.101(c) must require a party to raise all preliminary objections at one time. In addition, this subsection now provides that the preliminary objections shall be set forth in numbered paragraphs and that the preliminary objection must state the legal and factual basis for each preliminary objection.

Section 5.101(d). The current regulations govern the filing of an answer to a preliminary objection. The proposed regulation retained the 10 day filing period and imposed an obligation to contain a notice to plead stating that any answer shall be filed within 10 days of date of service of the objection.

IRRC and OSBA comments express concern about the difference in response deadlines and general lack of clarity concerning preliminary objections. IRRC and the OSBA suggest a standard timeframe. IRRC and the OSBA note that the word "motion" should be changed to "objection" consistent with the Commission's proposed terminology throughout § 5.101.

The Commission agrees with IRRC. The final regulation at § 5.101(d) clarifies that preliminary objections must be filed as a separate document and within the same 20 day period relating to answers to complaints, petitions, and motions set forth in § 5.61. The filing of a preliminary objection does not eliminate the requirement to file an answer to the complaint or other initiating pleading within the 20 day period for answers set forth in § 5.61(a) except for preliminary objections regarding insufficient specificity in § 5.101(e). A § 5.101(e) preliminary objection alleging insufficient specificity does not require an answer until further directed by the presiding officer.

The Commission also agrees with IRRC and the OSBA that a uniform 10-day rule for filing an answer to a preliminary objection is appropriate. That agreement is reflected in the final regulation in § 5.101(f)(1) as discussed above.

The former Motion for a More Specific Pleading in § 5.101(a)(4) of our existing regulations is now rephrased as a Preliminary Objection for Insufficient Specificity in § 5.101(a)(3) of the final regulations. However, a litigant using the term Motion for a More Specific Pleading will not have that pleading rejected on procedural grounds when the motion properly refers to § 5.101(a)(3). The Commission is unwilling to elevate form over substance in regard to the regulations.

The Commission takes this approach for several reasons. This provides an opportunity for a respondent with counsel to inexpensively reply with something other than an answer or a preliminary motion when a respondent is unclear, and this is frequently the case with pro se

litigants, about the exact issue in a complaint. On the other hand, the requirement to raise all preliminary objections at once and the prohibition on filing preliminary motions or motions in response to a preliminary objection is particularly relevant when complainant and respondent have counsel.

These two procedural requirements avoid dilatory and expensive litigation before the Commission. The Commission takes this approach because, unlike the courts where litigation is largely a privately-financed matter, litigation before the Commission is borne by the public in the form of assessments and utility rates. Recognition of this crucial difference plays a considerable role in the Commission's procedural rules and practice.

The final regulation for § 5.101(d) also reflects the Commission's agreement with IRRC and the comments on the need for linguistic clarity and consistency. The revised regulation replaces "preliminary motion" with "preliminary objection" where appropriate.

Section 5.101(e). The current regulation at § 5.101(e) specifies a 30-day period a decision by the presiding officer. The proposed revision to § 5.101(e) required a decision on preliminary objections within 30 days of filing or termination of mediation. The final regulation adopts this proposal and requires a presiding officer to render a decision within 30 days of the assignment of the preliminary objection. That provision, however, is moved to a new § 5.101(g) for greater clarity and consistency.

Section 5.101(f). The current regulation at § 5.101(f) allows the submission of an amended pleading within 10 days by a party who pleading has been struck. The proposed revisions to § 5.101(f) specified what happened following a ruling.

The IRRC and OSBA comment note that a party who files a pleading that is stricken has 10 days to file an amended pleading whereas a party who filed an overruled preliminary objection has 20 days to plead over. The OSBA is also concerned about delineating the circumstances in the proposed regulation where a party has the right, but not the duty, to file a responsive pleading. The OSBA suggests that the regulation make clear that a party has the right but not duty to file a responsive pleading. The OCA supports the proposed revision despite the different response times.

The Commission agrees with IRRC. The Commission also disagrees with the OSBA. The final regulation retains a uniform 10 days for filing an amended pleading. This uniform period addresses the concern that disparate filing periods cause confusion. However, the Commission does not agree with the OSBA that the regulation must spell out the detailed circumstances when a party with no duty to file a responsive pleading can exercise their right to file an answer. That determination is better left to the party.

This final regulation is moved to a new § 5.101(h) for clarity and consistency.

Section 5.102. Motions for summary judgment and judgment on the pleadings. The proposed regulation combines a discussion of a Motion for Judgment on the Pleadings and a Motion for Summary Judgment. These are for clarity and brevity.

The Utility Group is concerned that the proposed revisions confuse Summary Judgments, which can be based on the pleadings and supplemental discovery responses and affidavits, with Judgments on the Pleadings, which are confined to the pleadings.

The Commission recognizes the potential for ambiguity. The final regulation at § 5.102(b) contains the added phrase “to a Motion for Summary Judgment.” This clarifies that a Motion for Summary Judgment can rely on supplemental pleadings and depositions, answers to interrogatories, further affidavits or verifications and admissions appended in support of, and the basis for, the motion.

Section 5.103. Motions. The proposed regulation replaced “participant” with “party” in the provision. The proposed regulation to § 5.103(b) required a written motion to contain a notice to plead stating that a responsive pleading is due within 20 days of service. There are no substantive comments. The final regulation retains the Notice to Plead requirements and adopts the proposed 20-day period for answering or objecting to a motion.

Subchapter B. Hearings

Section 5.201—5.203. General. The proposed regulation replaced “participant” with “party” in the provisions. There are no substantive comments.

Sections 5.211—5.212. Notice of Hearing. The proposed regulation replaced “participant” with “party” in the provisions. There are no substantive comments.

Sections 5.221—5.224. Prehearing and Other Conferences. The proposed revisions contained language changes for brevity and clarity. The Utility Group comments suggests that the final regulation contain an express statement requiring the parties to be prepared to cooperatively prepare a procedural schedule at the prehearing conference. The Commission reflects our agreement with this suggestion in § 5.222(d)(2)(A). Moreover, a violation could result in sanctions or other action consistent with § 5.371(a)(1).

Section 5.222. Initiation of prehearing conferences in nonrate cases. The final regulation for § 5.222(d)(1) and (e)(2) lists mandatory and permissive topics for prehearing conferences in nonrate proceedings.

Section 5.223. Authority of presiding officer at prehearing conferences. The final regulation for § 5.223(c) allows a presiding officer to participate in settlement discussion upon agreement of the parties given the importance of having a mediator or presiding officer familiar with a proceeding. However, in recognition of the fact that all parties may not always want the same mediator or presiding officer at a conference and any settlement, the final regulation allows a party to request that a different presiding officer or mediator be assigned upon the request of a party.

Section 5.224. Prehearing conference in rate proceedings. The final § 5.224(c) delineates the mandatory subjects of a rate proceeding. Section 5.224(e) provides the presiding officer with discretion to schedule additional prehearing conferences. The proposed § 5.224(f) is deleted in response to comments. The final § 5.224(f) language deletes the phrase “when justice so requires” as a redundant statement of the obvious.

Sections 5.231—5.235. Settlement And Stipulations.

Section 5.231. Offers of settlement. The proposed regulation for § 5.231 was changed to reflect a regulatory style that limited a section to one topic. The new § 5.231(d) provided that a proposal to settle a discovery dispute is not admissible against a counsel or party in response to prior comments.

The Ryan comment repeats an earlier concern that proposals intended to resolve a discovery dispute should be prohibited in any adjudication of the dispute.

The Commission denies the suggested revision. The proposed regulation reflects adoption of most of the previous Ryan comments on this provision. The proposed revision in § 5.231(d) effectively provides the relief requested. More language could prevent any discussion of any permutation whatsoever of any proposal even remotely related to a proposed resolution. The proposed language is not warranted given this draconian potential.

Section 5.232. Settlement petitions and stipulations of fact. The proposed revision to § 5.232 was changed to “Settlement petitions” and all mention of stipulations is removed. The revision also required filing with the Secretary. Section 5.232(b) required identification of the parties that agreed to the settlement or which did not respond to attempts to secure agreement. Section 5.232(d) provided for review by the presiding officer.

IRRC questions use of the phrase “in the public interest” in the proposed regulation for § 5.232(d).

The Ryan comment proposes substantial and detailed procedures governing partial, contested, or uncontested settlements. The Ryan comment proposes that an presiding officer receive a settlement if the parties do not want the pleadings withdrawn and that the settlement identify the parties opposing, supporting, or taking no position on the settlement. The Ryan comment also proposes that each party receive a complete copy of any settlement or stipulation and that a hearing be required and findings made on the settlement or stipulations for partial settlements. Finally, the Ryan comment proposes that the settlement come directly to the Commission if the parties waive exception rights.

The Utility Group opposes removal of stipulations as a possible settlement document. This is inconsistent with current practice wherein stipulations are sometimes included in partial and complete settlements. The Utility Group also states that § 5.232(d)(2) misstates the law by requiring a hearing on a settlement petition if a timely objection is filed and a hearing is necessary in the public interest. The Utility Group claims that hearings are not required if an objection to a settlement raises only questions of policy or law. In the Utility Group’s view, a hearing is required only when a timely objection raises issues of material fact.

The Commission disagrees with IRRC on the need to either eliminate or define the public interest. The presiding officer’s obligation to determine whether a settlement is in the public interest is a necessary corollary to the Commission’s fundamental statutory obligations under the Public Utility Code, particularly sections 501, 1301 and 1501. 66 Pa.C.S. §§ 501, 1301 and 1501. In evaluating any matter, the Commission is obligated to balance the interests of consumers in adequate, safe and reliable service at just and reasonable rates with the interests of utilities in a fair return on facilities devoted to public service. The particular balance struck, however, will always be dictated by the specific facts, circumstances, policy, and applicable law. To provide guidance in this area, the Commission has issued a proposed policy statement that sets forth the factors it will consider in evaluating the merits of a settlement involving violations of the Public Utility Code and Commission regulations.³ As such, crafting a finite definition for public interest in these regulations is not necessary.

Commission agrees with the Utility Group that the final regulation should retain stipulations, be they com-

³ Proposed Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations, Docket No. M-0005187 (Order adopted Aug. 11, 2005).

plete or partial, given the usefulness of partial, complete, or contested settlements. Settlements at the Commission frequently contain stipulations of fact by some or all of the parties. However, the Commission disagrees with the Ryan comment on mandating hearings when there are partial settlements or stipulations of fact.

The Commission must provide the fundamental due process rights of notice and an opportunity to be heard, and must render decision based on the record so the court can review the agency's determination. This does not always require the full panoply of trial-type formalities but, rather, notice and an opportunity to defend in an orderly proceeding adapted to the nature of the case. *Conestoga National Bank v. Patterson*, 442 Pa. 289, 275, A.2d 6 (1971). Accordingly, due process is a flexible concept and "calls for such procedural protections as the situation demands." *Pa. Coal Mining Assoc. v. Insurance Dept.*, 471 Pa. 370 A.2d 685, 690 (1977).

The Commission takes this approach to the issue of hearings in settlements. We decline to specify by regulation what due process is required for settlements and partial settlements. We believe that the appropriate use of a trial-type hearing, as opposed to some other procedure for being heard, such as the filing of written objections or comments, is a decision better made initially by a presiding officer under § 5.232(d) settlement review and in accordance with the requirements of Pennsylvania law.⁴ In addition, there are times, and section 332(g) rate case proceedings are a good example, where formal objection periods are abbreviated due to the press of time. Consequently, flexibility is the rule.

The Commission does, however, adopt much of the Ryan comment with some modifications. Section 5.232(a) restores stipulations, whole or partial, to the final regulation. Section 5.232(b) requires the settling parties to identify the parties to the settlement that support, oppose, take no position, or did not have an opportunity to enter into the settlement. Section 5.232(c) provides for service of the settlement on the parties with an opportunity for comment. Section 5.232(d) provides for review by a presiding officer. Sections 5.232(e), (f), and (g) provide for an opportunity to comment and review a settlement. Section 232(g) clarifies when, and how, objections to settlements are filed if a case is not assigned to a presiding officer. This balances the competing alternatives of an absolute requirement of hearings with the practical need for flexibility.

Section 5.233. Refusal to make admissions or stipulations. The proposed regulation made minor language. There are no substantive comments.

Section 5.234. Presentation and effect of stipulations. The proposed regulation made minor language changes. The OSBA comment suggests that stipulations in which only some, not all, of the parties stipulate be binding only on the parties to the stipulation. The Commission agrees with the OSBA. The final regulations clarify that in § 5.234(a).

Section 5.235. Restrictive amendments to applications for motor carrier of passenger and household goods in use authority. The proposed regulation clarifies the criteria to be addressed when stipulations are used for motor carrier cases. The IRRC and OSBA comments recommend that the word "shall" in § 5.235(a) not be bracketed.

⁴ See, e.g. *Chester Water Authority v. Pa. PUC*, 868 A.2d 384 (Pa. 2005)(constitutional procedural due process is a flexible concept, and thus, implicates procedural protections as each particular situation demands); *Lehigh Valley Power v. Pa. PUC*, 563 A.2d 548 (Pa. Cmwlth. 1989)(trial-type hearing necessary only to resolve disputed questions of fact).

The Commission agrees with IRRC and the OSBA. The final regulation reflects the need for an explanation for restrictive amendments as settlements. These restrictions can reduce, not increase, the number of carriers or even service quality in any given area. For these reasons, an explanation provides the Commission with a better understanding of the value, if any, of a restrictive covenant.

Sections 5.241—5.245. Hearings.

Section 5.241. Attendances. The proposed regulation contained language changes for brevity and clarity. There are no substantive comments.

Section 5.242. Order of procedure. The proposed regulation replaced the word "participant" with "party" throughout the provision. The OCA comment suggests that oral rejoinder, if any, occur before cross-examination is conducted since it is the last opportunity to present direct testimony. The Utility Group urges the Commission to provide more detail on this provision because parties sometimes abuse the opportunity by orally presenting new testimony, issues, and exhibits on the last day of a hearing with minimal opportunity to respond. The Utility Group suggests that the final regulation provide a right to respond if and when that occurs in a hearing.

The Commission understands the comments on this issue as it goes to the heart of procedural due process. The revision to the final regulation at § 5.242(a) limits the opportunities for abuse. The final revision requires that oral rejoinder by a party with the burden of proof shall be conducted before any cross-examination of the witness.

Section 5.243. Presentation by parties. The proposed regulation revised the presentation provisions by requiring an opportunity to respond in § 5.243(a). Limits are set forth in § 5.243(b). Section 5.243(f) addresses friendly cross-examination based on the definition set forth in § 1.8.

The Utility Group asks that friendly cross-examination be prohibited or discouraged because they believe it is repetitious and of minimal value. The final regulation retains the option for friendly cross-examination because that procedure is not always repetitious or of no value. The Commission believes that challenges to the inappropriate use or abuse of friendly cross-examination are better made on a case-by-case basis instead of a general rule. Moreover, § 5.243(e) reinforces a party's right to prevent the inappropriate or abuse of presentation rights.

Section 5.245. Failure to appear, proceed, or maintain order in a proceeding. The proposed regulation revised the language in the provision for clarity and brevity.

IRRC suggests that the final § 5.245 rule codify application of this provision to intervenors. The Utility Group states that the Commission should go further and allow a presiding officer to punish obstructive behavior by dismissing any complaint, application, petition, or intervenor. The Ryan comment suggests that the Commission address obstructive behavior in a new regulation at § 5.246, specifically noncompliance with prehearing orders and discovery, by granting a continuance until the exhibits become available or there is a complete response to the discovery.

We adopt IRRC's requested codification as § 5.245(c) in the final regulation. We decline to adopt the other suggestions. These issues are better presented to a presiding officer and not in a general rulemaking. Nothing in the current or final regulations prevents counsel from

requesting a continuance, seeking dismissal of an application, complaint, petition, or even intervenor.

Our final rules are general rules of future applicability. Final rules are intended to establish general parameters. The final rules should not adopt suggestions that could encourage interlocutory appeals or needlessly narrow a presiding officer's discretion to address failures to appear, determine the order of proceedings, or maintain order.

Sections 5.251—5.253. Transcript. The proposed regulation made language changes for brevity and clarity. The word "party" replaced the word "participant" in the provisions. The OCA suggests that the transcript correction period be shortened. The Commission agrees with the OCA. The final regulation at § 5.253(c) shortens the transcript correction period.

Subchapter C. Interlocutory Review

Interlocutory Review: Sections 5.301—5.306. The proposed regulation made language changes for brevity, clarity and consistency. The word "party" replaced "participant" throughout the provisions. Section 5.306 provided for transmission by telefacsimile when expedited notification proved necessary.

The IRRC comment suggests that Section 5.306 be revised to reflect the Commission's response to IRRC's opposition to electronic filing.

The Commission retains the § 5.306 language. Section 5.306's reference to electronic filing is not mandatory. The reference is intended for use in exceptional circumstances and is accompanied by a requirement to file a hard copy. Exigent circumstances of the type envisioned by this regulation may, of necessity, require electronic means to accomplish expedited notice. The Commission made ministerial corrections to the final regulatory provisions in § 5.304(e) and (f) without changing their meaning.

Subchapter D. Discovery

Sections 5.321—5.324. General.

Section 5.321. General. The proposed regulation replaced "participant" with "party" throughout the provision. There are no substantive comments. The final regulation adopts the proposed regulation. The final regulation clarifies that § 5.321(f)(5) applies to rate increase cases.

Section 5.322. Informal agreement regarding discovery or deposition procedure. The proposed regulation replaced "participant" with "party" throughout the provision. There are no substantive comments. The final regulation adds the ministerial phrase "authorized to administer oaths" and adopts the proposed regulation.

Section 5.323. Hearing preparation material. The proposed regulation replaced "participant" with "party" throughout the provision. The proposed regulation also added surety, indemnitor, and agent to the list. There are no substantive comments.

Section 5.324. Discovery of expert testimony. The proposed regulation replaced "participant" with "party" throughout the provision.

IRRC and the Utility Group identifies an alleged conflict between the language in this provision and the exclusionary language of § 5.323(a).

The Commission's final regulations at § 5.324(a) and 5.323(a) must be read in light of § 5.321 and Pa.R.C.P. 4003.3—4003.5, which formed the basis for these regulations. The apparent "allowance" language of § 5.324(a) contrasted with the apparent "preclusion" language in

§ 5.323(a) is resolved by reference to the Civil Rules and § 5.321(a). Section 5.321(c) allows discovery not otherwise privileged and identification is provided. These regulations allow the discovery of hearing preparation material and expert testimony so long as they are not privileged. Section 5.321(a) establishes the privilege exclusion, § 5.323(a) permits discovery so long as the material is not privileged or mental impressions for hearing preparation, and § 5.324(a) applies the rule for discovery but expands it to hearing preparation material. The rules when read together allow the discovery of opinions so long as they are not privileged. This explains the apparent preclusion in § 5.323(a) with the apparent inclusion in § 5.324(a).

Sections 5.331—5.332. Timing and Supplemental Responses. The proposed regulation replaced "participant" with "party" throughout the provision. There were no substantive comments.

Sections 5.341—5.351. Types of Discovery.

Section 5.341. Written interrogatories to a party. The proposed regulation replaced "participant" with "party" throughout the provision.

The Utility Group suggests that the final § 5.341(b) regulation require service only on "active" parties and a certificate of service with the Secretary. The OCA recommends that the Commission rescind the prohibition against multi-part interrogatories set forth in § 5.341(d) of the existing regulation.

The Commission does not agree with the Utility Group on the need to differentiate between "active" and "inactive" parties in these general regulations for the reasons discussed throughout this rulemaking. The Commission also rejects the request to rescind the prohibition against multi-part interrogatories. The Commission does so because multi-part interrogatories may seek information on multiple matters that may or may not relate to one specific issue. By prohibiting this approach, the Commission's rules require the parties to focus on one issue in each interrogatory. In addition, a multi-part interrogatory may produce responses or objections that are so general that it is difficult to identify exactly what part of what multi-part interrogatory the responding party is addressing.

Section 5.342. Answers or objections to written interrogatories by a party. The proposed regulation replaced "participant" with "party" throughout the provision. The rule clarified the process for answering or objecting to interrogatories. The proposed rulemaking differentiated between rate cases, subject to section 1308 of the Public Utility Code, and other proceedings.

Section 5.342(a). The Utility Group and the OSBA comments oppose the verification requirement for interrogatories under § 5.342(a)(6). The Utility Group notes that interrogatories are answered by many persons, particularly in rate cases, and that it is unwieldy to impose verification. The Utility Group proposes an alternative requirement that a party answer each interrogatory fully, completely, and truthfully. The OSBA wonders whether the attorney or the experts must verify.

The Commission does not agree that verification should be rescinded. Verification is an inexpensive alternative to notarization, enhances the credibility and accountability of the responding party, and better identifies who says what in complex proceedings. Verification provides an incentive for counsel to be even more familiar with a client's responses than might be the case without verification.

Section 5.342(d). IRRC and the Utility Group note that § 5.342(d) and (d)(1) seems to be contradictory. Section (d) requires the filing of answers and objections on a 15-20 day difference in rate or nonrate proceedings. subsection (d)(1) states that objections are to be filed in 10 days for rate cases and 30 days for other cases. IRRC and the Utility Group urge the Commission to rectify the problem. The Utility Group urges the Commission to retain the current rule.

The Commission agrees with IRRC on revising § 5.342(d) and (d)(1). The final rule deletes substantial portions of the proposed regulation and provides that all objections are to be served within 10 days of service of the interrogatories under § 5.61(a)(2). A certificate of service must also be filed with the parties and the Secretary. The final rule also retains the difference between rate and nonrate cases whenever possible, in this case the 15—20 day rules for answers to interrogatories, given the statutory limits of section 332(g) of the Public Utility Code.

Section 5.343. Procedures in deposition by oral examination. The proposed rulemaking made ministerial language changes that do not affect the substantive provisions. There are no substantive comments. The Commission adopts the proposed rule as final.

Section 5.344. Approval by presiding officer. The proposed rulemaking substituted “party” for “participant” throughout the provision. There are no substantive changes. There are no comments.

Section 5.345. Procedure on depositions by written questions. The proposed rulemaking substituted “party” for “participant” throughout the provision. There are no substantive changes. There are no comments.

Section 5.347. Taking of depositions—objections. The proposed rulemaking substituted “party” for “participant” throughout the provision. There are no substantive changes. There are no comments.

Section 5.348. Transcript of deposition, objections, and filing. The proposed rulemaking substituted “party” for “participant” throughout the provision. There are no substantive changes. There are no comments. The Commission adopts the proposed rule as final.

Section 5.349. Requests for documents, entry for inspection and other purposes. The proposed rule replaced “participant” with “party” throughout the provision. The OSBA opposes the verification requirement since the responses are required to only state that inspection and related activities are permitted.

The Commission adopts a final rule by adding the phrase “or notarized, as permitted by § 1.36” in § 5.349(d) of the final regulation. Verification is retained in the final regulation given that § 5.349(b) provides a party with an option to provide copies at the requesting party’s expense or to permit inspection and copying. Verification ensures that the proffered inspection or copying happens in a reasonable and non-obstructive manner.

Section 5.350. Request for admission. The proposed rule replaced “participant” with “party” throughout the provision. There are no comments. The Commission adopts the proposed rule as final. The final regulation adds a phrase in § 5.350(d)(3) stating that “grounds for objections shall be specifically stated.”

Section 5.351. On the record data requests. The proposed regulation essentially clarified operation of the current rule. The OSBA comment urges the Commission to clarify that the option to make a request orally or in writing in § 5.351(a) applies only to the requesting party.

The Commission adopts a rephrased provision for § 5.351(a). The revision inserts a second sentence to clarify that the “party” making the request in the first sentence can do so orally or in writing. Other ministerial changes are made as well.

Sections 5.361—5.364. Limitations. The proposed rule replaced “participant” with “party” throughout the provision. There are no comments. The Commission adopts the proposed rule.

Sections 5.371—5.373. Sanctions. The proposed rule replaced “participant” with “party” throughout the provision. The proposed regulation also extended the deadline for § 5.371(c) decisions from 15 to 20 days. There are no comments. The Commission adopts the proposed rule.

Subchapter E. Evidence and Witnesses

Sections 5.401—5.409. Evidence. The proposed regulation replaced “participant” with “party” throughout the provisions. The proposed regulation also revised § 5.402(b).

The IRRC and OCA comments suggest deletion of the word “By” in § 5.401(b)(2)(iii) in the phrase “By considerations of undue delay or waste of time.” The Commission agrees.

Sections 5.411—5.414. Witnesses. The proposed regulation replaced “participant” with “party” throughout the provisions. Other ministerial language changes are made as well.

The OSBA suggests that § 5.412(f) contain a revision establishing a general process for developing the record in a proceeding. The OSBA suggests that when the utility has the burden of proof, the utility files its written testimony followed sequentially by intervenor direct testimony, rebuttal testimony by all the parties, and surrebuttal testimony by all parties.

The Commission appreciates the OSBA’s concerns about witness procedure. This concern varies from case to case and for that reason is better addressed by a presiding officer.

Sections 5.421—5.431. Subpoenas and Protective Orders. The proposed regulation replaced “participant” with “party” throughout the provisions. This proposed regulation is ministerial and does not impact the substantive meaning.

The OSBA reference to the word “answer” in their comment suggests that a party could file an answer to a subpoena in addition to appearing, objecting, or producing documents. The Utility Group suggests a provision be added to § 5.423 to include requests for a protective order for submittals in nonadversarial proceedings.

The Commission’s reference to “answer” is for timeframe and content only. The word should not be read to authorize an answer as an alternative to objecting, making an appearance, or producing documents set forth in § 5.421(b)(1). For that reason, the final regulation at § 5.421(b)(3) specifies that a “response” shall be filed with the Commission and presiding officer within 10 days of service. This avoids ambiguity and is consistent with the OSBA’s comment for a 10 day reply period.

The Commission agrees with the Utility Group. The final rule contains a new § 5.423(b) crafting a general rule for nonadversarial proceedings. The final regulation refers such requests to the Commission’s Law Bureau for a recommended disposition. The remaining sections are revised to reflect inclusion of this request.

Sections 5.431. Close of the Record. The proposed regulation revised the provision for clarity and brevity. No comments were filed. The final rule adopts the proposed regulation with some additional ministerial language that does not change the substantive provisions.

Subchapter F. Presiding Officers

Sections 5.481—5.486. Presiding Officers. The current regulation governs the authority of a presiding officer. The current regulation in § 5.485(a) authorizes a presiding officer to note on the record a participant or counsel of record's disregard of a presiding officer's rulings on matters of order and procedure. The presiding officer may also prepare a special written report to the Commission when necessary.

The proposed regulation revised the language without a substantive change. There are no comments.

The final regulation adopts the proposed revisions. The final regulation does not require the presiding officer to note noncompliance as is the case in the current regulation. Instead, the final regulation changes "shall" to "may" so that a presiding officer has the ability to distinguish between minor infractions compared to major infractions that are subject to the notation on the record rule.

Subchapter G. Briefs

Sections 5.501—5.502. Briefs. The proposed rulemaking intended to clarify the existing distinction between rate cases and nonrate cases. Rate cases are shortened proceedings subject to section 332(g) of the Public Utility Code. Nonrate cases are not. Consequently, the linguistic distinction and regulations often makes these distinctions throughout the regulations. Section 5.502(d) is one such place.

Main or Reply briefs are filed in rate cases. Initial or Response briefs are filed in nonrate cases. The Utility Group notes that the revision to § 5.502(d) inadvertently removes references to the filing of Initial Briefs. IRRC questions whether this is intentional. The OSBA comment requests insertion of language specifically referencing the number of copy obligation for parties in the final regulation. The OSBA also identified typographical errors.

The Commission agrees with IRRC, the Utility Group, and the OSBA. The final regulation for § 5.502(a) requires that copies be served in compliance with § 1.59(b)(1). Sections 5.502(b) and 5.502(c) are revised to reflect the continuing difference between nonrate and rate case filings. In response to the Utility Group comment in § 5.535 regarding the misuse of reply exceptions, § 5.502(d) now allows the filing of amicus curiae briefs. This will minimize any misuse of § 5.535 reply exceptions and maximizes due process opportunities to provide information on issues of interest to the Commission. Section 5.502(e) inserts the word "Initial" to include this brief as one of the briefs subject to filing deadlines.

Subchapter H. Exceptions, Appeals and Oral Argument

Section 5.532. Oral argument before presiding officer. The proposed regulation substituted "party" for "participant" throughout the provision. There are no comments.

Section 5.533. Procedure to except to initial, tentative, and recommended decisions. The proposed regulation substituted "party" for "participant" throughout the provision. IRRC suggests insertion of a bracket in the third sentence of § 5.533(c) wherein the existing word "shall"

appears after "exception" and before "exceptions shall" in the proposed regulation. The Commission agrees with IRRC and brackets the word. There are no other comments.

Section 5.535. Replies. The proposed regulation substituted "party" for "participant" throughout the provision. The IRRC comment suggests that the word "shall" be bracketed and the word "must" be in bold type in § 5.535(a). The Utility Group comment urges the Commission to insert language permitting a party to file a reply in support of a party's position and prohibit a party from raising new arguments in support thereof.

The OSBA comment notes that the current § 5.535(b) seems to conflict with § 5.533(e). Section 5.535(b) allows last-day filing of reply exceptions subject to the 3-day rule. Section 5.533(e) prohibits last-day filing of reply exceptions and the use of the 3-day rule.

The Commission agrees with IRRC. The final regulation deletes the word shall consistent with our agreement.

The Commission also recognizes the Utility Group's concern that due process should allow a party to respond to new supporting arguments not raised by a party let alone in another reply raising new issues or arguments in the guise of allegedly supporting a party's position. The final regulations address the Utility Group's concern about new material and due process in two ways. Section 5.535(a) expressly prohibits the raising of new arguments or issues in a reply by limiting a reply to arguments or issues identified in an exception. Section 5.502(d) allows the filing of amicus curiae briefs to facilitate the raising of views that might otherwise appear as new arguments or issues in § 5.535 replies. Any exception or replies that transgresses these prohibitions are subject to a Motion to Strike.

The Commission recognizes the OSBA's argument about possible contradiction between §§ 5.533(e) and 5.535. In response to this concern, the general rule in § 5.535(b) provides that the mailbox rule cannot be used for reply exceptions unless the Commission determines otherwise. This language now mirrors the language in § 5.533(e) of the existing regulation addressing replies. The Commission also recognizes that in appropriate circumstances, such as when the Commission suspends the normal exception and reply periods, the mailbox rule may be appropriate.

Section 5.538. Oral argument before the Commission. The proposed regulation contained no substantive revisions to this section.

The Ryan comment urges the Commission to insert a new § 5.538(d) on oral argument before the Commission. The Ryan comment requests a governing process for granting oral argument before the Commission given the evolving nature of utility regulation and issues. The Ryan comment recognizes the existing regulation at § 5.538 but notes that parties rarely request it and the Commission rarely orders it sua sponte. The Ryan comment recommends a process similar to the Act 294 process wherein two Commissioners can request oral argument.

The Commission declines to adopt this suggestion. It is not clear if only two should have the authority to compel three other Commissioners to participate in oral argument. It is also not clear if any oral argument granted can be revoked based on a majority vote, if only two Commissioners are required to grant review, or upon a majority vote of the majority voting to grant review. Is it really unclear if the majority or two that granted oral argument can then vote to rescind any oral argument

they originally supported. Finally, the infrequent use of the existing regulation undermines any professed need for an additional regulation.

Subpart I. Reopening, Reconsideration and Rehearing

Sections 5.571—5.572. The proposed regulation revised the language without substantive change to the provisions. There are no comments.

Appendix J. Reports of Compliance

Sections 5.591—5.592. The proposed regulation in § 5.591(a) required a party that had to do or perform an act to file a notice within 30 days of the effective date stating that the requirement has or has not been met. Section 5.592 deletes the existing reference to sections 1307 and 1308 of the Public Utility Code. Both provisions change “participant” to “party” as well.

The OCA comment suggests a revision to § 5.592(d) stating that rates cannot go into effect in a compliance tariff filing if an exception is filed. The OCA further suggests that the Commission should review and make a determination on the exceptions in order to avoid the additional cost and burden of permitting rates to go into effect and then issuing a subsequent order amending or denying portions of the compliance filing. The OSBA comment seeks a regulatory mandate that a clean and red-lined electronic copy be required so the parties can quickly identify the changes.

The Commission rejects these proposals. The Commission’s long-standing practice in cases wherein complex exceptions are filed to a voluminous rate case is to allow a rate to sometimes go into effect, depending on the circumstances, to avoid undue harm to the utility or the consumers. These determinations are fact and issue based. As with the Ryan comment seeking detailed provisions on obstructive behavior, the OCA seeks a general rule of uniform applicability when a case-by-case approach is better.

The OSBA’s suggestion about red-lined and original copies is a good idea in an electronic filing regulation. The Commission is reluctant to mandate a red-lined copy because many tariff filings are made by smaller companies that lack the technological means to inexpensively provide a red-lined copy. Moreover, the issue of a red-lined copy can be made to the presiding officer during the proceeding, requested in the exceptions as part of the Commission’s order, or ordered by the Commission in the Final Order. For these reasons, the Commission is not imposing this requirement.

Subchapter K. Appeals to Court

Sections 5.631—5.632. The proposed regulation revised the language without substantive change to the provisions. There are no comments.

Accordingly, under 66 Pa.C.S. §§ 501, 504—506, 1301 and 1501, and sections 201—204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1204) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1, 7.2 and 7.5, the Commission proposes adoption of the final regulations as revisions of the rules pertaining to practice and procedure before the Commission in Chapters 1, 3 and 5, as noted and set forth in Annex A; *Therefore,*

It Is Ordered That:

1. The regulations of the Commission, 52 Pa. Code Chapters 1, 3 and 5, are amended by amending §§ 1.2—1.4, 1.7, 1.8, 1.11, 1.15, 1.21—1.25, 1.31, 1.33, 1.35—1.37, 1.42, 1.43, 1.51, 1.53—1.56, 1.58, 1.59, 1.61, 1.71—1.73, 1.76, 1.81, 1.82, 1.86, 3.1—3.4, 3.6—3.8, 3.10, 3.111—3.113, 3.361, 3.363, 3.501, 3.502, 3.551, 3.601, 3.602, 5.1, 5.12—5.14, 5.22, 5.24, 5.31, 5.41—5.44, 5.51—5.53, 5.61—5.63, 5.65, 5.66, 5.73—5.75, 5.91—5.94, 5.101—5.103, 5.201—5.203, 5.212, 5.221—5.224, 5.231—5.235, 5.241—5.243, 5.245, 5.251—5.253, 5.302—5.306, 5.321—5.324, 5.331, 5.332, 5.341—5.345, 5.347—5.351, 5.361, 5.362, 5.364, 5.371—5.373, 5.401, 5.402, 5.404—5.409, 5.412, 5.421, 5.423, 5.431, 5.481—5.486, 5.501, 5.502, 5.532, 5.533, 5.535, 5.571, 5.572, 5.591, 5.592 and 5.631—5.633; by adding §§ 1.38, 3.6a and 5.32; and by deleting §§ 3.5, 3.9 and 5.54 to read as set forth in Annex A.

(Editor’s Note: The proposal to amend § 1.32 (relating to form of documents) has been withdrawn by the Commission.)

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

3. The Secretary shall submit this order and Annex A to the Governor’s Budget Office for review of fiscal impact.

4. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review by IRRC.

5. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. These regulations shall become effective upon publication in the *Pennsylvania Bulletin*.

7. The contact person for this final-form rulemaking is Joseph K. Witmer, (717) 787-3663; or Jaime M. McClintock, (717) 783-2811. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

8. A copy of this order shall be served upon all persons who submitted comments in this rulemaking proceeding.

JAMES J. MCNULTY,
Secretary

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 1555 (April 1, 2006).)

Fiscal Note: Fiscal Note 57-236 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 1. RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

Subchapter A. GENERAL PROVISIONS

§ 1.2. Liberal construction.

(a) This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or presiding officer at any stage of an action or

proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties.

(b) The singular includes the plural, and the plural, the singular. Words used in the masculine gender include the feminine and neuter. Words used in the past or present tense include the future.

(c) The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.

(d) These liberal construction provisions apply with particularity in proceedings involving pro se litigants.

(e) Subsection (a) supersedes 1 Pa. Code § 31.2 (relating to liberal construction).

§ 1.3. Information and special instructions.

(a) Information as to procedures under this subpart, and instructions supplementing this subpart in special instances, will be furnished upon application to:

(1) By first-class mail:

Secretary
 Pennsylvania Public Utility Commission
 Post Office Box 3265
 Harrisburg, Pennsylvania 17105-3265

(2) In person or by mail other than first-class:

Secretary
 Pennsylvania Public Utility Commission
 Commonwealth Keystone Building
 400 North Street
 Harrisburg, Pennsylvania 17120

(b) Subsection (a) is identical to 1 Pa. Code § 31.4 (relating to information and special instructions).

§ 1.4. Filing generally.

(a) Submittals, pleadings and other documents filed with the Commission should be addressed as follows:

(1) By first-class mail:

Secretary
 Pennsylvania Public Utility Commission
 Post Office Box 3265
 Harrisburg, Pennsylvania 17105-3265

(2) In person or by mail other than first-class:

Secretary
 Pennsylvania Public Utility Commission
 Commonwealth Keystone Building
 400 North Street
 Harrisburg, Pennsylvania 17120

(b) Submittals, pleadings and other documents filed with the Commission should clearly designate the docket number or similar identifying symbols, if any, employed by the Commission, and should set forth a short title. The identity of the individual making the submission, including name, mailing address and status (for example, party, attorney for a party, and the like) must appear on the document, along with any special instructions for communication by other than first class mail.

(c) Submittals and pleadings, including documents filed under Chapter 5 (relating to formal proceedings) must also comply with Subchapter D (relating to documentary filings).

(d) In a proceeding when, upon inspection, the Commission is of the opinion that a submittal or pleading tendered for filing does not comply with this subpart or

this title or, if it is an application or similar document, does not sufficiently set forth required material or is otherwise insufficient, the Commission may decline to accept the document for filing and may return it unfiled, or the Commission may accept it for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

(e) The Commission may order redundant, immaterial, impertinent or scandalous matter stricken from documents filed with it.

(f) Subsections (a)—(e) are identical to 1 Pa. Code § 31.5 (relating to communications and filings generally).

§ 1.7. Sessions of the Commission.

Public meetings of the Commission ordinarily will be held in its offices in the Commonwealth Keystone Building, Harrisburg. Schedules for public meetings can be obtained from the Commission Secretary or viewed on the Commission's website.

§ 1.8. Definitions.

(a) Subject to additional definitions contained in subsequent sections which are applicable to specific chapters or subchapters, the following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

Act—66 Pa.C.S. §§ 101—3315 (relating to the Public Utility Code).

Adjudication—An order, decree, decision, determination or ruling by the Commission affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of the parties to the proceeding in which the adjudication is made.

Applicants—In proceedings involving applications for permission or authorization which the Commission may give under statutory or other authority delegated to it, the parties on whose behalf the applications are made.

Adversarial proceeding—A proceeding initiated by a person to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by one or more other persons and which will be decided on the basis of a formal record.

Electronic mail—A means of dispatching or receiving a submittal in relation to a Commission matter through electronic means.

Formal complaint—A verified written document filed with the Commission under 66 Pa.C.S. § 701 (relating to complaints) requesting a legal proceeding before a presiding officer or a mediator.

Formal investigation—A matter initiated by the Commission or Commission staff that results in a formal record.

Formal proceeding—A matter intended to produce a formal record.

Formal record—The pleadings and submittals in a matter or proceeding, a notice or Commission order initiating the matter or proceeding, and if a hearing is held, the following: the designation of the presiding officer, transcript of hearing, exhibits received in evidence, offers of proof, motions, stipulations, subpoenas, proofs of service, references to the Commission and determinations made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based.

Friendly cross-examination—Cross-examination of a witness by a party who does not disagree with the witness' position on an issue.

Individual—A natural person.

Informal complaint—A document or communication to the Commission seeking action on a matter that lacks the legal or other requirements of a formal complaint under 66 Pa.C.S. § 701 and does not involve a legal proceeding before a presiding officer or mediator.

Informal investigation—A matter initiated by the Commission staff that may result in a formal complaint, a settlement or other resolution of the matter or termination by letter.

Informal proceeding—A matter not intended to produce a formal record.

Initial decision—A decision by a presiding officer which becomes final unless timely exceptions are filed by a participant, the Commission requests review upon its own motion or as otherwise established by the act.

Intervenor—A person intervening or petitioning to intervene as a party as provided by §§ 5.71–5.76 (relating to intervention).

Mediation—An informal, nonadjudicative Commission process through which a Commission-designated mediator assists the parties in an attempt to reach a mutually acceptable resolution.

Mediator—An individual designated to conduct a mediation.

Nonadversarial proceeding—A proceeding initiated by a person which is not contested or a proceeding initiated by the Commission or at the request of a person to develop regulations, policies, procedures, technical rules or interpretations of law.

Notarial officer—An officer authorized under § 5.346 (relating to persons before whom depositions may be taken) to take depositions for use before the Commission or presiding officer.

Party—A person who appears in a proceeding before the Commission.

Person—Except as otherwise provided in this subpart or in the act, the term includes individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities or other political subdivisions.

Petitioners—Persons seeking relief, not otherwise designated in this section.

Pleading—An application, complaint, petition, answer, motion, preliminary objection, protest, reply, order to show cause, new matter and reply to new matter or other similar document filed in a formal proceeding.

Presiding officer—A person designated by the Commission to preside over a matter.

Principal—A party with power to authorize its counsel to enter into stipulations or settlement agreements.

Proof of service—A certificate of service which complies with §§ 1.57 and 1.58 (relating to proof of service; and form of certificate of service).

Protestants—Persons objecting on the ground of private or public interest to the approval of an application or other matter which the Commission may have under consideration.

Rate proceeding—An on the record proceeding brought by or before the Commission, the purpose of which is to determine the justness and reasonableness of a proposed or present rate for utility service, including, but not limited to, proceedings initiated under sections 1307, 1308, 1310 and 1312 of the act.

Recommended decision—An opinion and order submitted for the approval of the Commission by the presiding officer.

Respondents—Persons subject to a statute or other delegated authority administered by the Commission, who are required to respond to an order or notice issued by the Commission instituting a proceeding or investigation on its own initiative or otherwise.

Secretary—The Secretary of the Commission, who is the Commission officer with whom pleadings and other documents are filed and by whom official records are kept.

Staff—The Commission's Office of Trial Staff prosecutor or Law Bureau staff counsel and other Commission employees participating in a proceeding before the agency.

Statutory advocate—The Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate.

Submittal—An application, amendment, exhibit or similar document involving matters filed in an adversarial or nonadversarial proceeding.

Telefacsimile transmittal—A means of dispatching or receiving a submittal in a Commission matter through electronic means that prints a hard copy facsimile of a document in a legible form at the recipient's machine.

Tentative decision—An order of the Commission which becomes final unless exceptions are filed by a party within the time period specified by statute or as set forth in the order.

Trade secret—A private formula, pattern, device, cost study or compilation of information which is used in a business and which, if disclosed, would provide the opportunity to obtain an advantage over competitors who do not know or use it.

Verification—When used in reference to a written statement of fact by the signer, means supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(b) Subsection (a) supersedes 1 Pa. Code § 31.3 (relating to definitions).

Subchapter B. TIME

§ 1.11. Date of filing.

(a) Whenever a pleading, submittal or other document is required or permitted to be filed under this title or by statute, it will be deemed to be filed on one of the following dates:

(1) On the date actually received in the office of the Secretary.

(2) On the date deposited with an overnight express delivery service as shown on the express delivery receipt attached to or included within the envelope containing the document.

(3) On the date deposited in the United States Mail as shown by the United States Postal Service stamp on the envelope or noted on a United States Postal Service Form 3817 certificate of mailing. A mailing envelope stamped by an in-house postage meter is insufficient proof of the date of mailing.

(b) Failure to include a legible delivery receipt with a document submitted in accordance with the methods specified in subsection (a)(2) or (3) may result in an untimely filing.

(c) A document transmitted by telefacsimile to the Commission will not be accepted for filing within the meaning of this section.

(d) Subsection (a) supersedes 1 Pa. Code § 31.11 (relating to timely filing required).

§ 1.15. Extensions of time and continuances.

(a) Extensions of time shall be governed by the following:

(1) Except as otherwise provided by statute, whenever under this title or by order of the Commission, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.

(2) Requests for the extension of time in which to file briefs shall be filed at least 5 days before the time fixed for filing the briefs unless the presiding officer, for good cause shown, allows a shorter time.

(b) Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Commission or the presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Commission or the presiding officer. Only for good cause shown will requests for continuance be considered. The requests for a continuance should be filed at least 5 days prior to the hearing date.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.15 (relating to extensions of time).

Subchapter C. REPRESENTATION BEFORE THE COMMISSION

§ 1.21. Appearance.

(a) Individuals may represent themselves.

(b) Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorneys and legal intern). For purposes of this section, any request for a general rate increase under § 1307(f) or § 1308(d) of the act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial proceeding.

(c) In nonadversarial proceedings, persons may be represented in the following manner:

- (1) A partner may represent the partnership.
- (2) A bona fide officer of a corporation, trust or association may represent the corporation, trust or association.
- (3) An officer or employee of an agency, political subdivision or government entity may represent the agency, political subdivision or government entity.

(d) In informal proceedings brought under Chapters 56 and 64 (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service) and Chapter 14 of the act (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service), parties may be represented by one of the following:

(1) A paralegal working under the direct supervision of an attorney admitted to the Pennsylvania Bar.

(2) An appropriate individual including a family member or other individual or entity with oral or written authority.

(e) Subsection (a) supersedes 1 Pa. Code § 31.21 (relating to appearance in person).

§ 1.22. Appearance by attorney or certified legal intern.

(a) Subject to § 1.21(a) (relating to appearance), an attorney at law admitted to practice before the Supreme Court of Pennsylvania shall represent persons in Commission proceedings.

(b) An attorney not licensed in this Commonwealth may appear before the Commission in accordance with the Pennsylvania Bar Admission Rules.

(c) A law student meeting the requirements of Pa.B.A.R. No. 321 (relating to requirements for formal participation in legal matters by law students) may appear in a Commission proceeding consistent with Pa.B.A.R. No. 322 (relating to authorized activities of certified legal interns).

(d) Subsection (a) supersedes 1 Pa. Code § 31.22 (relating to appearance by attorney).

§ 1.23. Other representation prohibited at hearings.

(a) Persons may not be represented at a hearing before the Commission or a presiding officer except as stated in § 1.21 or § 1.22 (relating to appearance; and appearance by attorney or certified legal intern).

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.23 (relating to other representation prohibited at hearings).

§ 1.24. Notice of appearance or withdrawal.

(a) *Individuals.* An individual appearing without legal representation before the Commission or a presiding officer shall file with the Secretary an address for service of a notice or other written communication. A change in address which occurs during the course of the proceeding shall be reported to the Secretary promptly.

(b) *Attorneys.*

(1) *Appearance by initial pleading.* An attorney who signs an initial pleading in a representative capacity shall be considered to have entered an appearance in that proceeding.

(2) *Appearance in all other instances.* An attorney shall file with the Secretary a written notice of appearance.

(i) *Content of notice.* Initial pleadings, entries of appearance and notices of withdrawal must include:

(A) The attorney's name, mailing address and electronic mailing address, if available.

(B) Pennsylvania attorney identification number or, if not licensed in this Commonwealth, identification of the jurisdictions in which the attorney is licensed to practice law.

(C) Telephone number and telefacsimile number, if applicable.

(D) The name and address of the person represented.

(ii) *Filing.*

(A) *Appearance.* The notice of appearance shall be served on the parties to the proceeding, and a certificate of service shall be filed with the Secretary.

(B) *Change in address.* A change in address which occurs during the course of the proceeding shall be reported to the Secretary and the parties promptly.

(3) *Withdrawal.* An attorney may withdraw an appearance by filing a written notice of withdrawal with the Secretary. The notice shall be served on the parties and the presiding officer, if one has been designated.

(c) *Supersession.* Subsections (a)—(e) supersede 1 Pa. Code § 31.24 (relating to notice of appearance).

§ 1.25. Form of notice of appearance.

(a) The form of notice of appearance is as follows:

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC
UTILITY COMMISSION

In the Matter of:

[File, Docket or other identifying No.:]

NOTICE OF APPEARANCE

Please enter my appearance in the above-designated matter on behalf of _____.

I am authorized to accept service on behalf of said party in this matter

[CHECK ONE]

[] On the basis of this notice, I request a copy of each document hereafter issued by the Commission in this matter.

[] I am already receiving or have access to a copy of each document issued by the Commission in this matter (alone, or in a consolidated proceeding) and do not on the basis of this notice require an additional copy.

Signature

Name (Printed)

P. O. address

City, state and zip code

Telephone Number
(including area code)

Telefacsimile Number
Including Area Code

Pennsylvania Attorney I.D. No./
Other Jurisdiction(s) Admitted

Electronic Mail Address
(Optional)

(b) Subsection (a) is identical to 1 Pa. Code § 31.25 (relating to form of notice of appearance).

Subchapter D. DOCUMENTARY FILINGS

§ 1.31. Requirements for documentary filings.

(a) *Form.* Pleadings must be divided into numbered paragraphs.

(b) *Attachments.* Copies of documents relied upon in the pleadings must be identified and attached. Copies of reported court decisions, writings or orders already of record with the Commission need not be attached to the pleading if reference by docket number is made to the proceeding in which they were filed in accordance with § 1.33 (referring to incorporation by reference).

(c) *Identifying information.* Documents filed with the Commission in a proceeding must clearly contain the following information:

(1) The docket number or similar identifying symbols, if any.

(2) The title or caption of the proceeding before the Commission.

(3) Within the title of the document, the name of the person on whose behalf the filing is made. If more than one person is involved, only a single name is necessary.

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code § 33.1 (relating to title).

§ 1.33. Incorporation by reference.

(a) Documents on file with the Commission may be incorporated by reference into a subsequent pleading, submittal or other document. A document may be so incorporated only by reference to the specific document and to the prior filing and docket number at which it was filed.

(b) Documents on file with the Commission for more than 20 years may not be incorporated by reference in a current document unless the person filing the current document first ascertains that the earlier document continues to be readily available in the active records of the Commission.

§ 1.35. Execution.

(a) *Signature.* A pleading, submittal or other document must be signed in ink by the party in interest, or by the party's attorney, as required by subsection (b), and show the office and mailing address of the party or attorney. An original hard copy must be signed, and other copies filed shall conform thereto unless otherwise ordered by the Commission.

(b) *Signatory.*

(1) A pleading, submittal or other document filed with the Commission must be signed by one of the following:

(i) The person filing the documents, and severally if there is more than one person so filing.

(ii) An officer if it is a corporation, trust, association or other organized group.

(iii) An officer or employee thereof if it is another agency, a political subdivision, or other governmental authority, agency or instrumentality.

(iv) An attorney having authority with respect thereto.

(2) A document filed by a corporation, trust, association or other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney signing the documents.

(c) *Effect.*

(1) The signature of the individual signing a document filed with the Commission constitutes a certificate by the individual that:

(i) The individual has read the document being signed and filed, and knows the contents thereof.

(ii) The document has been signed and executed in the capacity specified upon the document with full power and authority to do so, if executed in a representative capacity.

(iii) The document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, to the best of the individual's knowledge, information and belief formed after reasonable inquiry.

(iv) The document is not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a document is signed in violation of this subsection, the presiding officer or the Commission, upon motion or upon its own initiative, may impose upon the individual who signed it, a represented party, or both, an appropriate sanction, which may include striking the document, dismissal of the proceeding or the imposition of civil penalties under section 3301 of the act (relating to civil penalties for violations).

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code § 33.11 (relating to execution).

§ 1.36. Verification.

(a) Applications, petitions, formal complaints, motions and answers thereto containing an averment of fact not appearing of record in the action or containing a denial of fact must be personally verified by a party thereto or by an authorized officer or other authorized employee of the party if a corporation or association. Verification means a signed written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). When verification is permitted, notarization is not necessary.

(b) The verification form should comply substantially with the following:

VERIFICATION

I, _____, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: _____

 (Signature)

(c) When an affidavit is used, it must be notarized and the form should comply substantially with the following:

AFFIDAVIT

I, _____ (Affiant) being duly sworn (affirmed) according to law, depose and say that (I am authorized to make this affidavit on behalf of _____ corporation, being the holder of the office of with that corporation, and that, I am an employee or agent of

_____ and have been authorized to make this affidavit on its behalf and that) the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and (I or corporation) expect to be able to prove the same at any hearing hereof.

 (Signature of affiant)

Sworn and subscribed before me this _____ day of _____, 2____.

 (Signature of official administering oath)
 (My Commission Expires)

(d) An applicant for motor carrier rights shall include in the verification the following statement:

Applicant is not now engaged in intrastate transportation of property or passengers for compensation in this Commonwealth except as authorized by the Pennsylvania Public Utility Commission certificate or permit, and will not engage in the transportation for which approval is herein sought, unless and until the transportation is authorized by your Honorable Commission.

(e) An individual who executes a pleading, submittal or other document knowing that it contains a false statement and who causes it to be filed in the Commission shall be subject to prosecution for the Commission of a misdemeanor of the second degree in violation of 18 Pa.C.S. § 4904(a).

(f) Subsections (a)—(e) supersede 1 Pa. Code § 33.12 (relating to verification).

§ 1.37. Number of copies.

(a) *General rule.* When a pleading, submittal or document other than correspondence is submitted in hard copy, an original and three copies of each, including the cover letter, shall be furnished to the Commission at the time of filing.

(b) *Exceptions.*

(1) When the document is an application or petition, one copy may be filed without exhibits.

(2) When the document is a complaint or petition and more than one respondent is named, an additional copy of the complaint or petition must be filed for each additional respondent.

(3) When the document is subject to a statutory requirement or is otherwise ordered or requested by the Commission, a different number of copies may be designated.

(4) When the document is subject to § 5.409, § 5.502 or § 5.533 (relating to copies and form of documentary evidence; filing and service of briefs; and procedure to

except to initial, tentative and recommended decisions), the filing must conform to the requirements in the applicable section.

(c) Subsections (a)—(c) supersede 1 Pa. Code § 33.15 (relating to number of copies).

§ 1.38. Rejection of filings.

The Commission may reject a filing if it does not comply with any applicable statute, regulation or order of the Commission.

Subchapter E. FEES

§ 1.42. Mode of payment of fees.

(a) Fees shall be paid by money order or check made payable to the Commonwealth of Pennsylvania or by any method currently acceptable to the Commission. For payments other than money order or check, the Secretary's Bureau shall be contacted for prior approval before submitting payment in a form other than money order or check. Payments by cash are not accepted without prior Secretary approval and remain at the risk of the sender.

(b) Subsection (a) supersedes 1 Pa. Code § 33.22 (relating to mode of payment of fees).

§ 1.43. Schedule of fees payable to the Commission.

(a) *Fees for services.* The fees for services rendered by the Commission are as follows:

<i>Description</i>	<i>Fee (in dollars)</i>
Initial filing of Form A for intangible transition property notice.....	\$550
Subsequent filing of notice changes in intangible transition property notice on Form B	\$350
Chapter 74 public information requests relating to perfection of security interests.....	\$10 plus standard per page copying costs
Copies of papers, testimony, microfiche, records and computer printouts per sheet.....	\$.75
Copies of microfiche per sheet	\$1.50
Copies of microfilm per roll.....	\$80
Certifying copy of a paper, testimony or record.....	\$5
Filing each securities certificate.....	\$350
Filing each abbreviated securities certificate ..	\$25
Filing each application for a certificate, permit or license or amendment of a certificate, permit or license.....	\$350
Filing an application for a certificate of public convenience for a motor common carrier of property.....	\$100
Filing an application for emergency temporary authority as common carrier of passengers or household goods in use, contract carrier of passengers or household goods in use, or broker or for an extension thereof.....	\$100

*Fee
(in dollars)*

Description
Filing an application for temporary authority as common carrier of passengers or household goods in use, contract carrier of passengers or household goods in use, or broker

\$100

Filing an application for a certificate to discontinue intrastate common carrier passenger or household goods in use service ..

\$10

(b) *Supersession.* Subsection (a) supersedes 1 Pa. Code §§ 33.21(b) and 33.23 (relating to filing fees; and copy fees).

Subchapter F. SERVICE OF DOCUMENTS

§ 1.51. Instructions for service, notice and protest.

Upon receiving an application or petition, the Secretary will instruct the applicant or petitioner concerning the required service and public notice consistent with this section.

§ 1.53. Service by the Commission.

(a) *Applicability.* This section applies to service of an order, notice or other document originating with the Commission and other documents designated by the Commission, except when the Commission specifically requires a different form of service.

(b) *Forms of service.*

(1) *First class mail.* Service may be made by mailing a copy thereof to the person to be served, addressed to the person designated in the initial pleading, submittal or notice of appearance at the person's residence, principal office or place of business.

(2) *Personal.* Service may be made personally by anyone authorized by the Commission.

(c) *Registered or certified mail.* Service of a petition under § 3.391 (relating to arbitration of claims for billing and collecting services), and service of a complaint under section 702 of the act (relating to service of complaint on parties) must be by registered or certified mail, return receipt requested.

(d) *Change of address.* It is the duty of a party to apprise the Commission promptly of changes to the party's current address.

(e) *Alternative service.* If the Commission is unable to serve a party by mail at the party's last known address, the Commission may make service by publication in a newspaper of general circulation in the same area as the party's last known address. In the alternative, service may also be accomplished by publication in the *Pennsylvania Bulletin* or by service on the Secretary of the Commonwealth, if appropriate.

(f) *Supersession.* Subsections (a)—(e) supersede 1 Pa. Code § 33.31 (relating to service by the agency).

§ 1.54. Service by a party.

(a) Pleadings, submittals, briefs and other documents, filed in proceedings pending before the Commission shall be served upon parties in the proceeding and upon the presiding officer, if one has been assigned.

(b) Service may be made by one of the following methods:

(1) *First class mail.* Service may be made by mailing the requisite number of copies to each party as provided in § 1.59 (relating to number of copies to be served), properly addressed with postage prepaid.

(2) *Personal.* Service may be made personally.

(3) *Electronic.* Service may be made electronically, to those parties who have agreed to accept service in that manner. Documents served electronically need not be followed by service of a hard copy to the parties if the parties have so agreed. A final version in hard copy shall be stamped on the date due for filing with the Secretary regardless of any agreement among the parties. Any subsequent corrected version not otherwise substantively altering the final version in hard copy may be filed upon approval of the administrative law judge.

(4) *Telefacsimile.* Service may be made by telefacsimile to those parties who have agreed to accept service in that manner. Documents served electronically need not be followed by service of a hard copy if the parties have so agreed.

(c) In a proceeding in which only some of the parties participate, the parties, with the authorization of the presiding officer, may limit the service of documents to parties and persons or individuals which state on the record or request in writing that they wish to be served.

(d) Subsections (a) and (b) supersede 1 Pa. Code § 33.32 (relating to service by a party).

§ 1.55. Service on attorneys.

(a) When an attorney enters an appearance under § 1.24 (relating to notices of appearances or withdrawals), service must be directed to the attorney in the same manner as prescribed for his client.

(b) When a party is represented by an attorney, service upon the attorney shall be deemed service upon the party. Separate service on the party may be omitted.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.26 (relating to service on attorneys).

§ 1.56. Date of service.

(a) The date of service shall be the day when the document served meets one of the following conditions:

- (1) The document is deposited in the United States mail.
- (2) The document is deposited with an overnight express package delivery service.
- (3) The document is delivered in person.

(4) The document is transmitted by telefacsimile or electronic mail as provided in § 1.54(b) (relating to service by a party) prior to 4:30 p.m. local prevailing time.

(5) The document enters an information processing system designated by the recipient for the purpose of receiving service and from which the recipient is able to retrieve the served document in a form capable of being processed by the recipient's system prior to 4:30 p.m. local time.

(b) Unless otherwise prescribed by the Commission or presiding officer, whenever a party is required or permitted to do an act within a prescribed period after service of a document upon the party and the document is served by first-class mail by the United States Postal Service, 3 days shall be added to the prescribed period.

(c) Subsection (a) supersedes 1 Pa. Code § 33.34 (relating to date of service).

§ 1.58. Form of certificate of service.

(a) The form of certificate of service shall be as follows:

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

(List names and addresses of parties served.)

Dated this _____ day of _____, 2 ____.

(Signature)

Counsel for

(b) Subsection (a) supersedes 1 Pa. Code § 33.36 (relating to form of certificate of service).

§ 1.59. Number of copies to be served.

(a) One copy of a document shall be served on the presiding officer if one has been designated.

(b) The following number of copies of documents shall be served on other parties in a proceeding:

- (1) Briefs:
 - (i) Service of hard copies—two copies.
 - (ii) Service by telefacsimile or electronic mail, when permitted—one copy.
- (2) Other documents—one copy.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.37 (relating to number of copies).

Subchapter G. MATTERS BEFORE OTHER TRIBUNALS

§ 1.61. Notice and filing of copies of pleadings before other tribunals.

(a) When matters over which the Commission may have jurisdiction under the act are raised in proceedings filed with a court or other regulatory body by a person subject to the act, either an appropriate application or petition, or notice of the proceedings and copies of the material pleadings filed therein, shall be filed simultaneously with the Commission so that it may have sufficient notice and time for proper consideration of the matters within its jurisdiction.

(b) Upon filing of a petition for bankruptcy under the United States Bankruptcy Code (11 U.S.C.) by a jurisdictional utility or licensee or by a parent, affiliate, or direct or indirect subsidiary of a utility or licensee, the utility or licensee shall file a copy of the petition with the Commission, and serve the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate.

(c) An entity subject to the regulatory jurisdiction of the Commission, or its trustee in bankruptcy, shall file a copy of the reorganization plan for itself or for its bankrupt parent, subsidiary or affiliate for Commission review within 10 days after the debtor has filed the plan, its supplements and amendments, or has received notice that the plan has been filed with the court.

(d) If the reorganization plan submitted under subsection (c) contemplates the abandonment of service, the submittal must include an application under Chapter 11 of the act (relating to certificates of public convenience). If a licensee's reorganization plan includes the abandonment of the license, the submittal must include the appropriate pleading as required by the act.

Subchapter H. PUBLIC ACCESS TO COMMISSION RECORDS

§ 1.71. Statement of objectives.

The Commission's records maintenance system is intended to provide for the greatest degree of public access to Commission documents that is consistent with the exercise of the functions of the Commission under the act and other applicable laws. The Commission's system is designed to meet that objective and to give public notice of which classes of documents are available for inspection. The system provides a predictable standard, which nevertheless permits the Commission to take cognizance of the circumstances of individual requests for documents which may militate in favor of or against disclosure.

§ 1.72. Content and review of formal case files.

(a) *Format.* Format for filing records in formal cases will conform with the following:

(1) The files for formal cases initiated prior to May 15, 1977, will contain a records, correspondence and testimony folder.

(2) The files for formal cases initiated on or after May 15, 1977, will contain a document, report and testimony folder.

(b) *Contents.* Contents of folders in formal cases will conform with the following:

(1) Formal cases initiated prior to May 15, 1977, will conform with the following:

(i) *Testimony folder.* This folder will contain hearing transcripts and exhibits.

(ii) *Record folder.* This folder will contain formal filings in a case, including but not limited to, complaints, petitions, answers, replies, motions, briefs and requests for procedural or interim orders and opinions.

(iii) *Correspondence folder.* This folder will contain staff reports, acknowledgments, proofs of service and other documents not covered by subparagraphs (i) and (ii).

(2) Formal cases initiated on or after May 15, 1977, will conform with the following:

(i) *Testimony folder.* This folder will contain the same material as described in subparagraph (i).

(ii) *Document folder.* This folder will contain formal filings in a case, including but not limited to, complaints, petitions, answers, replies, motions, briefs and requests for procedural or interim orders and opinions. In addition, it will contain correspondence from or to the Commission except for staff reports, investigative materials and other material not subject to the disclosure requirements of the Commission.

(iii) *Report folder.* This folder will contain staff reports, investigative materials and other material not subject to the disclosure requirements of the Commission.

(c) *Access.* Access to files in formal cases will conform with the following:

(1) The record and testimony folders for cases initiated prior to May 15, 1977, will be available for inspection upon request made to file room personnel during normal Commission business hours.

(2) The document and testimony folders for cases initiated on or after May 15, 1977, will be available for inspection upon request made to file room personnel during normal Commission business hours.

(3) Material contained in the correspondence folders of formal cases initiated prior to May 15, 1977, will be available for inspection if the material would otherwise have qualified for placement in the document folder, as described in subsection (b)(2)(ii) of cases initiated on or after May 15, 1977. The inspection will be subject to the procedures outlined in subsection (d).

(4) The material contained in the report folder of cases initiated on or after May 15, 1977, will not be available for public inspection except as described in § 1.74 (relating to disclosure of other documents).

(d) *Procedures.* Procedures for review of correspondence and report folders will conform with the following:

(1) *Correspondence folders.* Review procedures for correspondence folders will be as follows:

(i) A person desiring access to a correspondence folder of a formal case may request file room personnel for a review of the file to determine which material contained therein may be released for inspection.

(ii) The review will be made and the requestor notified within 30 days.

(iii) If dissatisfied with the results of the first review, the requestor may ask that the documents removed from the correspondence folder before it was given to him be reviewed again.

(iv) A 30-day period applies to the second request for review.

(2) *Report folders.* Review procedures for report folders will be as follows:

(i) A person may request file room personnel for a review of particular documents or for a specifically defined portion of the report folder to determine which, if any, material contained in the folder may be released for inspection.

(ii) The review, except for good cause, will be made and the requestor notified within 30 days.

§ 1.73. Fiscal records.

(a) Except as provided in subsection (b), an account, voucher or contract dealing with the receipt or disbursement of funds by the Commission or its acquisition, use or disposal of services or supplies, materials, equipment or other property will be available during normal Commission business hours upon request made to the Commission fiscal office. Fiscal records are retained in accordance with time periods set by applicable statutory, regulatory and administrative requirements.

(b) No fiscal record, nor unseverable part thereof, which contains material exempted from the disclosure requirements provided in the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1—66.4) or which otherwise presents a substantial need for nondisclosure, will be available for public inspection.

§ 1.76. Tariffs, minutes of public meetings and annual reports.

Tariffs, minutes of public meetings and annual reports will be available for public inspection and copying upon request to the Secretary's Bureau during the Commission's office hours.

Subchapter I. AMENDMENTS OR WITHDRAWALS OF SUBMITTALS

§ 1.81. Amendments.

(a) An amendment to a submittal or pleading may be tendered for filing at any time and will be deemed filed in

accordance with § 1.11 (relating to date of filing) unless the Commission otherwise orders.

(b) Subsection (a) is identical to 1 Pa. Code § 33.41 (relating to amendments).

§ 1.82. Withdrawal or termination.

(a) A party that desires to terminate an uncontested matter or proceeding before final decision by the Commission or otherwise desires to withdraw a submittal or pleading, shall file a petition for leave to withdraw the appropriate document. If no party objects to the petition within 10 days of service, the matter may be stricken by the Commission or by the presiding officer. If upon review the presiding officer or the Commission determines that the public interest requires continuation of the proceedings, the petition will be denied and the staff may be directed to participate.

(b) Withdrawal of a pleading in a contested proceeding is governed by § 5.94 (relating to withdrawal of pleadings in a contested proceeding).

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.42 (relating to withdrawal or termination).

Subchapter J. DOCKET

§ 1.86. Docket.

(a) The Secretary will maintain a docket of all proceedings, and each proceeding as initiated will be assigned an appropriate designation. The docket will be available for inspection and copying by the public during the Commission's office hours.

(b) Subsection (a) is identical to 1 Pa. Code § 33.51 (relating to docket).

CHAPTER 3. SPECIAL PROVISIONS

Subchapter A. SPECIAL COMMISSION ACTIONS

EMERGENCY RELIEF

§ 3.1. Definitions.

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

Emergency—A situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.

Emergency order—An ex parte order issued by a single Commissioner, the Commission, the Commission's Director of Operations or the Commission's Secretary in response to an emergency.

Interim emergency order—An interlocutory order issued by a presiding officer which is immediately effective and grants or denies injunctive relief during the pendency of a proceeding.

EX PARTE EMERGENCY ORDERS

§ 3.2. Petitions for issuance of emergency orders.

(a) To the extent practicable, a petition for emergency order must be in the form of a petition as set forth in § 5.41 (relating to petitions generally) and shall be served on the persons directly affected by the application.

(b) A petition for emergency order must be supported by a verified statement of facts which establishes the existence of an emergency, including facts to support the following:

- (1) The petitioner's right to relief is clear.

(2) The need for relief is immediate.

(3) The injury would be irreparable if relief is not granted.

(4) The relief requested is not injurious to the public interest.

§ 3.3. Disposition of ex parte emergency orders.

(a) *Authority.* The Chairperson, a Commissioner, the Commission's Director of Operations and the Commission's Secretary have the authority to issue an emergency order.

(b) *Form.* An emergency order will be issued in writing and filed with the Secretary with copies to Commissioners and the Director of Operations.

(c) *Ratification.* An emergency order or the denial of a petition for emergency order issued by a single Commissioner or the Director of Operations or the Commission's Secretary will be ratified, modified or rescinded by the Commission at the next scheduled public meeting after issuance of the order.

(d) *Service.* An emergency order or the denial of a petition for emergency order will be served by the Secretary as expeditiously as practicable upon the persons directly affected by the decision with copies to the Commissioners and the Director of Operations.

§ 3.4. Hearings following issuance of emergency orders.

(a) A person against whom an emergency order is issued may file a petition for an expedited hearing to determine whether the emergency order will remain in effect. The petition must conform to the form and service requirements in §§ 5.41—5.44 (relating to petitions generally).

(b) The petition for expedited hearing shall be filed with the Secretary and a copy served upon the Chief Administrative Law Judge.

(c) The hearing will be held before a presiding officer within 10 days of receipt of the petition by the Secretary.

(d) If the emergency order is issued by a single Commissioner or the Director of Operations or by the Commission's Secretary, the presiding officer will have the authority to stay the effect of the order until the next scheduled public meeting.

(e) The decision of the presiding officer will constitute a recommended decision to be acted upon by the Commission at its next scheduled public meeting.

§ 3.5. (Reserved).

INTERIM EMERGENCY RELIEF

§ 3.6. Petitions for interim emergency orders.

(a) A party may submit a petition for an interim emergency order during the course of a proceeding. The petition shall be filed with the Secretary and served contemporaneously on the Chief Administrative Law Judge and on the parties.

(b) To the extent practicable, a petition for an interim emergency order must be in the form of a petition as set forth in § 5.41 (relating to petitions generally). A petition for an interim emergency order must be supported by a verified statement of facts which establishes the existence of the need for interim emergency relief, including facts to support the following:

- (1) The petitioner's right to relief is clear.
- (2) The need for relief is immediate.

(3) The injury would be irreparable if relief is not granted.

(4) The relief requested is not injurious to the public interest.

(c) Allegations set forth in the petition shall be deemed to have been denied by the opposing parties, and an answer is not required. A party may file an answer in the form set forth in § 5.61 (relating to answers to complaints, petitions and motions) no later than 5 days after service of a copy of the petition.

(d) Other pleadings, memoranda or briefs related to a petition for interim emergency order are not permitted unless specifically requested by the presiding officer.

§ 3.6a. Hearing on petitions for interim emergency orders.

An interim emergency order may not be issued until the presiding officer holds a hearing on the merits of the petition. The hearing must be held within 10 days of the filing of the petition.

§ 3.7. Issuance of interim emergency orders.

(a) A presiding officer will issue an order granting or denying interim emergency relief within 15 days of the filing of the petition.

(b) An order granting a petition for interim emergency relief will set forth the findings required by § 3.6(b) (relating to hearing on petitions for interim emergency orders).

(c) An interim emergency order or an order denying interim emergency relief will be served as expeditiously as practicable on the parties.

§ 3.8. Form of interim emergency orders.

(a) An order following a hearing on a petition for interim emergency relief will include:

- (1) A brief description of the evidence presented.
- (2) A grant or denial of the petition.

(b) An order following a hearing on a petition for interim emergency relief may require a bond to be filed in a form satisfactory to the Secretary and will specify the amount of the bond.

§ 3.9. (Reserved).

§ 3.10. Commission review of interim emergency orders.

(a) An order granting or denying interim emergency relief is immediately effective upon issuance by the presiding officer. No stay of the order will be permitted while the matter is being reviewed by the Commission.

(b) When the presiding officer rules upon the petition for an interim emergency order, the presiding officer will also certify the question of the grant or denial of relief to the Commission as a material question in the form set forth in § 5.305 (relating to interlocutory review of a material question submitted by a presiding officer). Thereafter, the parties and the Commission shall follow the procedures in § 5.305, if applicable.

**Subchapter B. INFORMAL PROCEEDINGS
GENERALLY**

INFORMAL COMPLAINTS AND INVESTIGATIONS

§ 3.111. Form and content of informal complaints.

(a) Informal complaints may be by letter or other writing. No form of informal complaint is suggested, except as set forth in §§ 56.162 and 64.152 (relating to

informal complaint filing procedures), but in substance the letter or other writing must contain the essential elements of a formal complaint as specified in § 5.22 (relating to contents of formal complaint).

(b) Informal complaints shall be submitted to the Secretary for referral to the appropriate bureau, addressed to the following: Pennsylvania Public Utility Commission, Post Office Box 3265, Harrisburg, Pennsylvania 17105-3265.

(c) Subsection (a) supersedes 1 Pa. Code § 35.5 (relating to form and content of informal complaints).

§ 3.112. Action on informal complaints.

(a) *Filing.* The Secretary will place a copy of an informal complaint related to a docketed matter in the official document folder.

(b) *Commission staff review.*

(1) Commission staff will review the informal complaint to determine whether the subject matter is within the Commission's jurisdiction, except as set forth in Chapters 56 and 64 (relating to standards and billing practices for residential utility service; and standards and billing practices for residential telephone service).

(2) Commission staff will evaluate the allegations of the complaint, and, if warranted, institute an informal investigation or informal proceeding.

(3) Commission staff may institute formal action with respect to the subject matter of the informal complaint.

(c) *Commission staff action.* Upon the completion of the Commission's investigation of an informal complaint, the Commission staff will notify the informal complainant of the results of its review and investigation. The submission or withdrawal of an informal complaint is without prejudice to the right of the complainant to file and prosecute a formal complaint.

(d) *Caveat.* The submission of an informal complaint does not entitle complainant to a formal hearing before the Commission.

(e) *Further action.* A staff determination made under this provision is appealable under § 5.44 (relating to petitions for appeal from actions of the staff).

(f) *Supersession.* Subsections (a)—(d) supersede 1 Pa. Code §§ 35.6 and 35.7 (relating to correspondence handling of informal complaints; and discontinuance of informal complaints without prejudice).

§ 3.113. Resolution of informal investigations.

(a) The Commission staff may conduct informal investigations or informal proceedings in appropriate circumstances regarding the condition and management of a public utility or other person subject to its jurisdiction. The informal investigations are typically undertaken to gather data or to substantiate allegations of potential violations of the act and may be conducted with or without hearing.

(b) Under 65 Pa.C.S. Chapter 7 (relating to Sunshine Act), the Commission's official actions resolving informal investigations will be as follows:

(1) When the Commission staff determines that no violation or potential violation of the act has occurred, the informal investigation will be terminated by letter.

(2) When the Commission staff determines that a violation or potential violation of the act has occurred and when formal action is deemed to be warranted, the

Commission staff will initiate a docketed on-the-record proceeding to resolve the issues.

(3) When the utility, or other person subject to the Commission's jurisdiction, has committed to undertake action to address or remedy a violation or potential violation of the act or to resolve another perceived deficiency at the utility, in the form of a settlement with the Commission staff or other resolution of the matter, the Commission's consideration of the settlement or approval of the utility's action will occur at public meeting. Except for staff reports and other documents covered by a specific legal privilege, documents relied upon by the Commission in reaching its determination shall be made part of the public record. Before the Commission makes a final decision to adopt the settlement or to approve the utility's action, the Commission will provide other potentially affected persons with the opportunity to submit exceptions thereon or to take other action provided for under law.

Subchapter D. CROSSING PROCEEDINGS

§ 3.361. Crossing complaints.

(a) Whenever a complaint is made under section 2702 of the act (relating to construction, relocation, suspension and abolition of crossings) that a crossing is dangerous or inadequate and requires reconstruction, relocation, alteration or abolition, public utilities, owners of the railroad right-of-way and municipal corporations concerned and, if applicable, the Department of Transportation, will be made parties respondent.

(b) In complaint proceedings under section 2702 of the act for the relocation, alteration or abolition of crossings, the complainant shall publish a concise statement of the proceeding which designates the crossing with sufficient particularity to be readily identifiable by owners of property adjacent thereto or affected thereby, with notice of time and place fixed by the Commission for hearing, once a week for 2 consecutive weeks immediately prior to the date of hearing in at least one newspaper of general circulation, in the county in which the crossing is located. Proof of the publication shall be filed with the Commission on or before the date of hearing.

§ 3.363. Claims for property damages from crossings.

(a) Claims for property damage for property taken, injured or destroyed must conform with the following requirements:

- (1) Be captioned " _____ , Plaintiffs, v. Defendants."
- (2) Follow, in general as to form and content, the form available from the Secretary.
- (3) Name as defendants those charged with the duty of paying the damages under the provisions of the order of the Commission.

(b) A prima facie claim shall first be filed with the Commission. After filing and service and opportunity to answer, the Commission may proceed to resolve the claim, or under section 2704 of the act (relating to compensation for damages occasioned by construction, relocation or abolition of crossings) may submit the matter to the court of common pleas of the proper county. In either case, notice will be given by the Commission to all parties to the claim.

Subchapter G. WATER OR WASTEWATER UTILITY PROCEEDINGS

§ 3.501. Certificate of public convenience as a water supplier or wastewater collection, treatment or disposal provider.

(a) *Applicant.* An applicant for a certificate of public convenience as a public water or wastewater collection, treatment or disposal provider, including noncertificated utilities, shall provide a copy of the business plan required by the Department of Environmental Protection (DEP) in 25 Pa. Code § 109.503(a)(3) (relating to public water system construction permits). The Commission may reject an application which fails to include the required information and documents. The following additional information, or documents, if not included in the business plan, shall also be included in the application, using the current forms and schedules specified by the Commission.

- (1) *Plant in service.*
 - (i) Proposed utilities shall provide:
 - (A) A full description of the proposed waterworks or wastewater collection, treatment and disposal facilities and the manner, including the timing, in which the proposed service area and utility will be constructed.
 - (B) A breakdown of the cost of construction, by major plant category, including the sources of funds used to construct the facilities.
 - (ii) Utilities that have been providing service shall provide:
 - (A) The original cost, by year and major plant category, of used and useful plant in service and related accrued depreciation calculations.
 - (B) A breakdown of the sources of funds used to finance the construction of the facilities.
- (2) *Map of service area.* A map or plan of suitable scale highlighting the boundaries of the proposed service area, including:
 - (i) A courses and distances or metes and bounds description.
 - (ii) The location or route of the proposed waterworks or wastewater collection, treatment or disposal facilities.
 - (iii) The approximate time schedule for installation of the various component facilities.
 - (iv) The elevations of major facilities and service areas.
 - (v) The DEP permitted productive or treatment capacity of sources or treatment facility and the pipe sizes and material used for construction for all transmission and distribution or collection facilities.
 - (vi) A copy of the county comprehensive plan, municipal comprehensive plan and applicable zoning designations, if requested.

- (3) *Customers.*
 - (i) Proposed utilities shall provide an estimate of the number of customer connections by class in the first, fifth and tenth years, and completed development anticipated, as well as estimated water usage or gallons of wastewater treated in each of those years.
 - (ii) Utilities that have been providing service shall submit the actual number of customers by class and related consumption or gallons treated in the current calendar year and future number of connections anticipated for the next 10 years.

(iii) Each utility shall demonstrate its ability to provide adequate water supply, treatment, storage and distribution or adequate wastewater collection, treatment or disposal capacity to meet present and future customer demands.

(4) *Rates.*

(i) Proposed utilities shall provide a proposed initial tariff which includes rates, proposed rules, and conditions of service in the format specified by the Commission (classified rate schedule).

(ii) Utilities which have been providing service shall provide a proposed initial tariff which includes rates, proposed rules, and conditions of service. The utility shall notify the customers of the utility of the filing of the application and the rates filed.

(5) *Cost of service.*

(i) Proposed utilities shall provide a 1, 5 and 10-year estimate of operating revenues, operation and maintenance expenses, annual depreciation and taxes. If operating income reflects a loss, proposed utilities shall provide a detailed explanation of the source of funds to be used to subsidize the estimated losses in support of future viability.

(ii) Utilities that have been providing service shall file the two most recent Federal Income Tax Returns (corporation) or related Schedule C forms (partnership or individual). If tax returns reflect an operating loss, utilities shall describe in detail how the operating losses are subsidized, supported by an analysis of the future viability of the utility.

(6) *Proof of compliance.* Proof of compliance with applicable design, construction and operation standards of DEP or of the county health department, or both, including:

(i) Copies of public water supply/water quality management or National Pollution Discharge Elimination System (NPDES) permits if applicable.

(ii) Valid certified operators' certificates appropriate to the facilities being operated.

(iii) Utilities that have been providing service, a 5-year compliance history with DEP with an explanation of each violation.

(iv) A DEP 5-year compliance history of other utilities owned or operated, or both, by the applicant, including affiliates, and their officers and parent corporations with regard to the provision of utility service.

(7) *Additional documentation.* In addition to a copy of the documents submitted under paragraphs (1)–(6), the applicant shall submit a letter addressing all the applicable requirements or mandates of the following governmental entities. The letter must also append copies of certification issued by the following governmental entities confirming that the applicant does or does not meet all the applicable requirements or mandates of the following:

(i) DEP.

(ii) The Delaware River Basin Commission, the Susquehanna River Basin Commission, the Ohio River Basin Commission and the Great Lakes Commission.

(iii) The requirements of any Statewide water plan, including any local watershed areas.

(iv) The requirements of any officially adopted county comprehensive plans, municipal comprehensive plans, and applicable zoning designations, including any necessary amendments.

(8) *Affected persons.* The identity of public utilities, municipalities, municipal authorities, cooperatives and associations which provide public water supply service or wastewater collection, treatment or disposal service within each municipality, or a municipality directly adjacent to the municipalities, in which the applicant seeks to provide service that abuts or is situated within 1 mile of the applicant's proposed facilities.

(9) *Other requirements.* Demonstrate compliance with DEP regulations in 25 Pa. Code § 109.503(a)(3) or section 5 of the Pennsylvania Sewage Facilities Act requirements (35 P. S. § 750.5), whichever is applicable; or whether the applicant has contacted each public water supplier or wastewater collection, treatment or disposal supplier in paragraph (8), and one of the following applies:

(i) Whether a supplier is willing and able to serve the area which the applicant seeks to serve either directly or through the bulk sale of water to the applicant, or treatment of wastewater to the applicant.

(ii) If one or more supplier is willing to serve the area (either directly or through the bulk sale of water to applicant), the applicant should demonstrate that, when considering both the cost of service and the quality of service, the ultimate consumer would be better served by the applicant than by the other water suppliers.

(10) *Verification.* A verification that the water sources and customers are metered in accordance with § 65.7 (relating to metered service). If unmetered water service is currently provided, the applicant shall provide a metering plan to the Commission.

(b) *Additional considerations.* The Commission will consider and may rely upon the comprehensive plans, multimunicipal plans, zoning ordinances and joint municipal zoning ordinances, consistent with the authority in sections 619.2 and 1105 of the Municipalities Planning Code (53 P. S. §§ 10619.2 and 11105), when reviewing applications for a certificate of public convenience as a public water supplier or wastewater collection, treatment or disposal provider.

(c) *Filing.* Applications under this section must conform to §§ 1.31 and 1.32 (relating to requirements for documentary filings; and form of documents), and include a mode of payment as prescribed by § 1.42 (relating to mode of payment of fees) and in the amount delineated in § 1.43 (relating to schedule of fees payable to the Commission). The applicant shall file with the Commission the original and three copies of the application. An application which fails to include the information and documents outlined in subsections (a) and (b), as specified by the Commission for water and wastewater collection, treatment or disposal companies, is subject to rejection by the Commission. The original and three copies must contain exhibits. An affidavit of service showing the identity of those served under subsection (f) shall accompany the original and the copies of the application filed with the Commission.

(d) *Notice.* The application will be docketed by the Secretary of the Commission and thereafter forwarded for publication in the *Pennsylvania Bulletin* with a 60-day protest period. The applicant shall also publish notice of application as supplied by the Secretary, daily for 2 consecutive weeks in one newspaper of general circulation located in the territory covered by the application and shall submit proof of publication to the Commission. In addition, the utility or applicant shall individually notify existing customers of the filing of the application.

(e) *Application form.* The Commission may provide a standard application form for use by an applicant for § 3.501 and will, to the extent practicable, provide the application form on the Commission's website.

(1) Any standard application form developed for purposes of § 3.501 that involves a matter of an interagency nature will be developed or revised only after notice is published in the *Pennsylvania Bulletin*, posted on the Commission's website to the extent practicable, and after consultation with interested persons or agencies is conducted.

(2) Any standard application form developed for purposes of § 3.501 that involves matters other than those governed by § 3.501(e)(1) will be developed or revised only after notice is published in the *Pennsylvania Bulletin*, posted on the Commission's website to the extent practicable, and after consultation with any interested persons or agencies is conducted.

(3) Any standard application form developed for purposes of § 3.501 will be developed by the Commission staff and may be subject to formal approval by the Commission. Any standard application form developed for purposes of § 3.501 not formally approved by the Commission shall be subject to § 5.44 (relating to petitions for appeal from actions of the staff).

(f) *Copies.* At the time of filing, the applicant shall cause a complete copy of the application with exhibits to be served by registered or certified mail, return receipt requested, upon:

(1) Each city, borough, town, township, county and related planning office which is included, in whole or in part, in the proposed service area.

(2) A water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment or disposal service to the public and whose service area abuts or is within 1 mile of the service area proposed in the application.

(3) The statutory advocates and DEP's central and regional offices.

(g) *References.* Subsection (a) supplements § 5.11 (relating to applications generally).

§ 3.502. Protests to applications for certificate of public convenience as a water supplier or wastewater collection, treatment or disposal provider.

(a) *Protests generally.* A person objecting to the application shall file with the Secretary and serve upon the applicant or applicant's attorney, if any, a written protest which must contain the following:

(1) The applicant's name and the docket number of the application.

(2) The name, business address and telephone number of the protestant.

(3) The name, business address, Pennsylvania attorney identification number and telephone number of the protestant's attorney or other representative.

(4) A statement of the nature of the protestant's interest in the application.

(b) *Participation in a proceeding.* Upon the filing of a timely protest the protestant will be allowed to participate in the proceeding as a party intervenor. Statutory advocates participate in any proceeding based on their statutory right of participation.

(c) *Motions.* A protest will be treated as a pleading; and the applicant may, within 20 days after the closing date for the filing of protests, file motions to strike, to dismiss, or for amplification as provided in § 5.101 (relating to preliminary motion).

(d) *Protests: time of filing.* A protest shall be filed within the time specified in the notice appearing in the *Pennsylvania Bulletin*, which shall be at least 60 days from the date of publication thereof except when the need for the proposed service or other exigent circumstances supports a request for a shorter protest period. Failure to file the protest in accordance with this subsection shall be a bar to subsequent participation in the proceeding, except if permitted by the Commission for good cause shown or as provided in § 5.71 (relating to initiation of intervention).

Subchapter H. FORMS

§ 3.551. Official forms.

Forms for applications, petitions, complaints and other matters are available on the Commission's website or from the Secretary of the Commission, P. O. Box 3265 Harrisburg, Pennsylvania, 17105-3265; (717) 772-7777.

Subchapter I. REGISTRATION OF SECURITIES

§ 3.601. General.

(a) *Scope.* A public utility shall file with the Commission and receive from it notice of registration of a securities certificate before the public utility issues or assumes securities.

(b) *Format.* A securities certificate must be in a form consistent with §§ 1.31 and 1.32 (relating to requirements for documentary filings; and form of documents), accompanied by payment in the amount provided in § 1.43 (relating to schedule of fees payable to the Commission) and in a payment mode provided for in § 1.31.

(c) *Form.* The securities certificate must provide information required by the Commission on a form available from the Commission or shown on its website as well as additional information required by the Commission. The securities certificate must contain the following information:

(1) The name and address of the public utility filing the securities certificate.

(2) The name and address of the public utility's attorney.

(3) A brief corporate history of the public utility, a general description of the territory in which it actually furnishes service to the public, and of the kind of service rendered.

(4) Whether the public utility is controlled by a corporation, and, if so:

(i) The name of the controlling corporation.

(ii) The form and manner of control.

(iii) The extent of control.

(iv) Whether control is direct or indirect.

(v) The names of intermediaries through which control, if indirect, is held. When control is in a holding company organization, show the chain of ownership of control to the main parent company.

(5) The following information regarding the securities which the public utility proposes to issue or assume:

(i) The exact title of security.

(ii) The aggregate par value, or if no par value then the number of shares, or the principal amount to be issued or assumed.

(iii) In the case of stock certificates, as applicable:

- (A) Par value.
- (B) Dividend rate and payment dates.
- (C) Redemption value.
- (D) Liquidation value.
- (E) Voting powers.
- (F) Preferences as to assets and dividends.
- (G) Cumulative and participating dividend provisions.
- (H) Callability and conversion provision.

(iv) In the case of evidences of indebtedness, as applicable:

- (A) Nominal date of issue.
- (B) Date of maturity.
- (C) Interest rate and payment dates.
- (D) Extent to which taxes on securities are assumed by the issuer.
- (E) Callability and conversion provisions.
- (F) Maintenance.
- (G) Depreciation and sinking or other fund provision.
- (H) Name and address of trustee and whether affiliated with the public utility.

(6) The method by which the public utility proposes to dispose of the securities, giving pertinent details as to date and manner of sale, exchange or other disposition. If sale, include minimum net price to the public utility, maximum commission or fee to be paid to investment bankers, brokers or others, and whether securities are to be sold on an underwriting or take-down basis. State whether or not those negotiating or arranging the sale are in any way affiliated with the utility. If a private sale, state whether the purchasers are in any way affiliated with the utility. Show in tabular form an estimate in reasonable detail of the expenses to be incurred in issuing the securities, including, by groups, legal fees, fees and documentary taxes to governmental authorities, printing expenses, underwriting or brokerage commission, duplicate interest and other expenses.

(7) The purpose for which the public utility proposes to issue or assume the securities.

(i) If the purpose is the acquisition of all or part of the assets of a going concern, state:

- (A) The name and address of the vendor and the docket number of Commission approval of the acquisition.
- (B) A brief description of property, and whether it is all or part of a completed system.
- (C) The full consideration to be paid, including any indebtedness to be assumed by the utility.
- (D) The manner of determining consideration.
- (E) The manner in which acquisition is to be recorded on the public utility's books.

(F) The original cost of physical property to be acquired, stated according to plant accounts prescribed by the classification of accounts applicable to the public utility.

(G) The depreciation applicable thereto as recorded on the books of the vendor.

(H) The manner of determining the original cost and depreciation.

(I) An income statement for the latest available 12 months applicable to the operation of the property being acquired.

(ii) If the purpose is the purchase or construction of new facilities, or the betterment of existing facilities, give:

(A) A brief description of the new facilities or betterments.

(B) A list of plant accounts prescribed by the classification of accounts applicable to the utility to be charged with the new facilities or betterments, showing opposite each account the estimated cost to be charged.

(C) A list of the accounts and the amounts to be credited thereto for the retirements of any property resulting from the purchase or construction of new facilities or betterments.

(D) The manner of determining amounts at which retired property is to be credited.

(E) The date when it is expected that the purchase or construction or betterment will be completed.

(iii) If the purpose is to obtain working capital, explain any unusual condition which exists, or will exist, in the public utility's current assets or current liabilities, stating:

(A) The approximate cost of average materials and supplies inventory which the public utility expects to carry.

(B) The average time elapsing between the date when the public utility furnishes or begins a period of furnishing service to customers and the date when collection is made from customers for the service.

(C) The minimum bank balance requirements.

(D) A statement, by accounts, of the operating expenses for the latest available 12 months.

(iv) If the purpose is to refund obligations, describe obligations in detail.

(A) Explain the purpose for which obligations were issued, or refer to number of securities certificate, securities application or certificate of notification in which the purpose appears.

(B) State the date of last disposition of obligation, the amount disposed of and the price received.

(C) State whether refunding is to meet maturity, or to effect saving in interest or other annual charges; if to effect saving, state date when, and price at which obligations are to be called, and submit statement showing saving to be effected as a result of refunding.

(D) State disposition to be made of any discount or expense remaining unamortized on the obligations to be refunded and of any premium included in the call price.

(E) State whether any unamortized debt discount and expense was originally incurred in connection with securities not now outstanding, and if so, give amount applicable to each issue.

(v) If the purpose is reimbursement for moneys already expended, state the purpose for which the moneys were expended in as complete detail as if the securities now being issued were for that purpose as required by this subsection and by subsections (a), (b) and (d).

(A) List the names and principal amounts of any securities already issued against the expenditures.

(B) State the dates upon or between which the expenditures were made.

(8) State whether a registration statement, application or declaration has been filed or will be filed with the Securities and Exchange Commission in respect to the securities herein proposed to be issued or assumed. If so, state:

- (i) The date filed.
- (ii) The nature of the application or declaration.
- (iii) The closing date before the Securities and Exchange Commission.

(9) The public utility shall attach to each securities certificate:

(i) A balance sheet of the public utility set up by ledger accounts and not by groupings dated within at least 3 months of the date of securities certificate, including any transactions which have occurred between the date of the balance sheet and the date of filing the securities certificate and an explanation of any major contingent liabilities faced by the public utility.

(ii) An income account of the public utility set up by general ledger accounts, not by groupings, showing in detail the other credits and charges made to surplus during the year, for the 12-month period ending by the date of the balance sheet.

(iii) A statement with respect to the plant accounts appearing on the balance sheet showing the following:

(A) A summary by the detailed plant accounts prescribed in the system of accounts applicable to the public utility.

(B) The portion of the plant account balance representing increments in plant book values resulting from the acquisition of property through purchase, merger and consolidation or reorganization.

(C) The portion of the plant account balance representing increases in plant book values resulting from the recording of appraised values by the public utility unless the public utility has filed with the Commission an original cost study.

(iv) A statement of securities of other corporations owned by the public utility, including:

- (A) The name of the issuer.
- (B) The exact title of the security.
- (C) The amount owned.
- (D) The date acquired.
- (E) The price paid.
- (F) The book value.
- (G) The market value.

(H) The cost to the affiliate, if acquired from an affiliate.

(V) A statement showing the status of the funded debt of the public utility outstanding at the date of the balance sheet, plus particulars of any important changes in the funded debt outstanding which have taken place since that date. The statement must be in the form available from the Commission.

(vi) A statement showing the status of outstanding capital stock of the public utility as of the date of the

balance sheet, including any important changes in the capital stock outstanding which have taken place since the date of the balance sheet according to the form available from the Commission.

(vii) A copy of the registration statement filed by the public utility with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C.A. §§ 77A—77aa) with respect to the proposed issuance or assumption of securities.

(viii) Copies of applications and declarations filed by the public utility with the Securities and Exchange Commission with respect to the proposed issuance or assumption of securities, under the Public Utility Holding Company Act of 1935 (15 U.S.C.A. §§ 79—79z-6).

(ix) A copy of the resolution of the board of directors of the public utility authorizing the proposed issuance or assumption of securities.

(x) A copy of the stock certificate or other security proposed to be issued or assumed. Bonds or other evidences of indebtedness secured by mortgage, collateral trust agreement or other underlying instrument. This exhibit must be a copy of the underlying instrument, rather than of the evidence of indebtedness itself.

(xi) A statement showing, in journal entry form, the charges and credits to be made on the books of account of the public utility as a result of the proposed issuance or assumption of securities.

(xii) An affidavit in the form prescribed by §§ 1.35 and 1.36 (relating to execution; and verification).

(d) *Format form.* The Commission may provide a standard format form for use by an applicant for this section and will, to the extent practicable, provide the format form on the Commission's website.

(1) Any standard format form developed for purposes of this section that involves a matter of an interagency nature will be developed or revised only after notice is published in the *Pennsylvania Bulletin*, posted on the Commission's website to the extent practicable, and after consultation with an interested agency is conducted.

(2) Any standard format form developed for purposes of this section that involves matters other than those governed by paragraph (1) will be developed or revised only after notice is published in the *Pennsylvania Bulletin*, posted on the Commission's website to the extent practicable, and after consultation with an interested agency is conducted.

(3) Any standard format form developed for purposes of this section will be developed by staff and may be subject to formal approval by the Commission. Any standard format form developed for purposes of this section not otherwise subject to formal approval by the Commission will be subject to §§ 5.41—5.44 (relating to petitions).

§ 3.602. Abbreviated securities certificate.

(a) *Scope of rule.* The abbreviated procedure of subsections (b) and (c) applies to an issuance or assumption of a security which meets one of the following requirements:

(1) The issuance or assumption of securities has been authorized by another state commission having primary jurisdiction.

(2) The financing is provided by an agency of a state or the United States government.

(3) The issuance or assumption of securities is by a utility having a presence in this Commonwealth of less than 10% as measured by either:

(i) The ratio of gross investment within this Commonwealth to the utility's total gross investment.

(ii) The ratio of gross operating revenues from service rendered during the immediately preceding fiscal year under tariffs filed with the Commission for intra-State service to the total gross operating revenues of the public utility during the fiscal year from all service, wherever rendered, of the type described in section 102 of the act (relating to definitions).

(4) The declaration by a utility of a stock split if there is no impact on the control of the utility or negative impact attributable to commingling of competitive enterprises with noncompetitive enterprises.

(5) The issuance of a dividend by a utility in the form of the utility's stock if there is no impact on the control of the utility or negative impact attributable to commingling of competitive enterprises with noncompetitive enterprises.

(b) *Form.* At the election of the issuing public utility, a securities certificate relating to an issuance of securities within the scope of this rule may consist of two copies of a letter addressed to the Secretary and setting forth the following information:

- (1) The name and address of the public utility.
 - (2) The title or capacity of the representative of the public utility executing the letter.
 - (3) The designation of the securities to be issued or assumed and the approximate number of shares, principal amount, or other units proposed to be issued or assumed.
 - (4) A statement setting forth the specific subsections that qualifies the issuance of the abbreviated procedure together with the underlying calculations, when applicable.
 - (5) A verification or affidavit conforming to § 1.36 (relating to verifications and affidavits) in compliance with section 1902 of the act (relating to contents of securities certificate).
- (c) *Filing and registration.* An abbreviated securities certificate under this section, together with the filing fee specified in § 1.43 (relating to schedule of fees payable to the Commission), shall be filed with the Secretary.
- (1) The certificate will be deemed, in fact and in law, to have been registered if no order of rejection has been entered after 20 days from the filing of a securities certificate.
 - (2) Prior to the expiration of the 20-day period, the Secretary may extend the 20-day consideration period to not more than a total of 40 days upon notification of the public utility served. Further extension to the period will be by the order of the Commission.

(d) *Exemption.* The filing of a securities certificate with the Commission under Chapter 19 of the act (relating to securities and obligations), relating to an issuance or assumption of securities is not required of a public utility which owns or operates facilities within this Commonwealth, but which has received no gross operating revenues for service rendered during the immediately preceding fiscal year and 12-month period under tariffs filed with the Commission for intrastate service within this Commonwealth.

CHAPTER 5. FORMAL PROCEEDINGS

Subchapter A. PLEADINGS AND OTHER PRELIMINARY MATTERS

GENERAL PROVISIONS

§ 5.1 Pleadings allowed.

(a) The pleadings in an action before the Commission include the following:

- (1) Application and protest.
- (2) Formal complaint, answer, new matter and reply to new matter.
- (3) Order to show cause and answer.
- (4) Petition and answer.
- (5) Preliminary objections.
- (6) Motions.

(b) A pleading except a preliminary objection may be subject to a preliminary objection as set forth in § 5.101 (relating to preliminary objections).

APPLICATIONS

§ 5.12. Contents of applications.

(a) Applications must conform to this section unless a form or other specific requirements are provided in Chapter 3 (relating to special provisions). Applications must :

- (1) Be in writing.
- (2) State clearly and concisely the authorization or permission sought.
- (3) Cite by appropriate reference the statutory provisions, regulations or other authority under which the Commission authorization or permission is sought.
- (4) Set forth, in the order indicated, the following—unless otherwise provided by this chapter or in Chapter 3 for the specific type of application involved:
 - (i) The exact legal name of the applicant.
 - (ii) The jurisdiction under the statutes of which the applicant was created or organized and the location of the principal place of business of the applicant, when the applicant is a corporation, trust, association or other entity.
 - (iii) The name, title, mailing address, telephone number and electronic mail address, if available, of the person to whom correspondence or communication in regard to the application is to be addressed. The Commission will serve, when required, notices, orders and other papers upon the person named, and service will be deemed to be service upon the applicant.

(b) Subsection (a) supersedes 1 Pa. Code § 35.2 (relating to contents of applications).

(c) Subsection (a) supersedes 1 Pa. Code § 35.2 (relating to contents of applications).

(d) Subsection (a) supersedes 1 Pa. Code § 35.2 (relating to contents of applications).

§ 5.13. Applications for construction or alteration of crossings.

(a) Applications for construction, relocation, alteration, protection or abolition of a crossing under section 2702 of the act (relating to construction, relocation, suspension, and abolition of crossings) must comply substantially with the requirements as to crossing complaints as set forth in § 3.361 (relating to crossing complaints).

(b) Plans submitted for the construction, relocation, alteration, protection or abolition of a crossing complained against shall be accompanied by the names and post office addresses of the record owners of all property

necessary to be acquired in the execution thereof, and shall, when directed by the Commission, be supplemented by a description by metes and bounds of all property necessary to be acquired.

§ 5.14. Applications requiring notice.

(a) *General rule.* Notice of applications to the Commission for authority under the act must be published in the *Pennsylvania Bulletin* and as may otherwise be required by the Commission.

(b) *Supplemental requirements.* The Secretary may require additional publication or notification in one or more of the following ways:

(1) Publication in a newspaper of general circulation serving the geographical territory affected by the application.

(2) Actual notification to the parties affected by the application.

(3) Another form of actual or constructive notification, including service of the application on interested persons.

(c) *Protest deadlines.* The time for filing protests to applications is governed by § 5.53 (relating to time of filing of protests).

(d) *Publication of application.* Except as set forth in §§ 3.361—3.363, 3.501 and 57.71—57.77 as relating to the 60-day protest period, or as otherwise provided by the Secretary, application to the Commission for the following types of authority will be published in the *Pennsylvania Bulletin* and, as directed by the Secretary, in a newspaper of general circulation serving the geographical territory affected by the application and shall be subject to a 15-day protest period.

(1) To initiate fixed utility service to the public, including the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(2) To initiate, in a different nature or to a different territory than is currently authorized, fixed utility service to the public, including the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.
- (vi) Pipeline.
- (vii) Radio-telephone common carrier service.

(3) To abandon, in whole or in part, fixed utility service to the public, including to the following:

- (i) Electric.
- (ii) Gas.
- (iii) Telephone.
- (iv) Water.
- (v) Wastewater.

(vi) Pipeline.

(vii) Radio-telephone common carrier service.

(4) To initiate rail utility service to the public.

(5) To initiate, in a different nature or to a different territory than is currently authorized, rail utility service to the public.

(6) To abandon, in whole or in part, rail utility service to the public.

(7) To acquire or transfer tangible or intangible utility property through sale, merger, consolidation, lease or transfer of stock.

(8) To acquire 5% or more of the voting stock of another corporation.

(9) To secure exemption under section 619 of the Pennsylvania Municipalities Planning Code (53 P. S. § 10619).

(10) To construct, alter or abandon, in whole or in part, or to change the status of a rail utility agency station or team track.

FORMAL COMPLAINTS

§ 5.22. Content of formal complaint.

(a) A formal complaint must set forth the following:

(1) The name, mailing address, telephone number, telefacsimile number and electronic mailing address, if applicable, of the complainant.

(2) If the complainant is represented by an attorney, the name, mailing address, telephone number, telefacsimile number and Pennsylvania Supreme Court identification number of the attorney and, if available, the electronic mailing address.

(3) The name, mailing address and certificate or license number of the respondent complained against, if known, and the nature and character of its business.

(4) The interest of the complainant in the subject matter—for example, customer, competitor, and the like.

(5) A clear and concise statement of the act or omission being complained of including the result of any informal complaint or informal investigation.

(6) A clear and concise statement of the relief sought.

(7) Except for a document referenced within § 5.21(b) (relating to formal complaints generally), a document, or the material part thereof, or a copy must be attached when a claim is based upon the document, the material part thereof, or a copy. If the document, the material part thereof, or a copy is not accessible, the complaint must set forth that the document, the material part thereof, or the copy is not accessible and the reason, and set forth the substance of the document or material part thereof.

(b) A verification executed in accordance with § 1.36 (relating to verification) shall be attached to the formal complaint.

(c) A complaint brought by a public utility or other person licensed by the Commission regarding the act, a regulation or order of the Commission must be substantially in the form prescribed by subsection (a). The complaint must reference the act, the regulation or order and shall quote the pertinent portions thereof.

(d) Subsections (a) and (c) supersede 1 Pa. Code § 35.10 (relating to form and content of formal complaints).

§ 5.24. Satisfaction of formal complaints.

(a) If the respondent satisfies a formal complaint either before or after a hearing, the complainant shall file with the Commission a certified statement to that effect. The certified statement must set forth that the complaint is satisfied and that the complaint docket should be marked closed. The presiding officer is not required to render a decision upon submission of the certified statement concerning the satisfaction of a complaint unless the parties request one for good cause.

(b) In lieu of the certified statement required by subsection (a), the respondent may provide a certified writing to the Commission that it has addressed the complaint and at least one of the following:

(1) That the complainant has acknowledged satisfaction to the respondent.

(2) That the complainant has acknowledged to the respondent that the complainant no longer wishes to pursue the complaint.

(c) In the case of certification of satisfaction under subsection (b), the respondent shall simultaneously serve a copy of the respondent's certified writing, including a statement informing the complainant of the complainant's right to object in writing within 10 days, upon the complainant. Unless the complainant objects, in writing, to the certification within 10 days of its filing, the complaint docket will be marked closed.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.41 (relating to satisfaction of complaints).

§ 5.31. Staff-initiated complaints.

(a) A Commission bureau may commence a proceeding pursuant to statutory or regulatory authority or pursuant to delegation by the Commission by filing a complaint in accordance with § 5.22 (relating to content of formal complaint). The complaint will contain a statement of the particular matter about which the bureau is complaining or inquiring, and the complaint will require that the respondent named file a written answer in the form required by § 5.61 (relating to answers to complaints, petitions and motions).

(b) A Commission bureau filing a complaint under this section involving a fixed utility or licensee will provide a copy to the Office of Trial Staff, the Chief Counsel, the Office of Consumer Advocate, and the Office of Small Business Advocate.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.14 (relating to orders to show cause).

§ 5.32. Complaints in rate proceedings.

(a) *Prior to suspension.* A person may file a complaint against a general rate increase within the meaning of section 1308(d) of the act (relating to voluntary changes in rates) within the time period specified in the notice provided to customers of the tariff filing.

(b) *After suspension.* A person filing a complaint during the suspension of a proposed general rate increase shall take the record of the suspended rate proceeding as it stands at the time of the complaint's filing.

PETITIONS**§ 5.41. Petitions generally.**

(a) *General requirements.* Petitions for relief under the act or other statute that the Commission administers, must be in writing, state clearly and concisely the interest of the petitioner in the subject matter, the facts

and law relied upon, and the relief sought. Petitions for relief must comply with § 1.51 (relating to Instructions for service, notice, and protest).

(b) *Service.* A copy of the petition shall be served on all persons directly affected and on other parties whom petitioner believes will be affected by the petition. Copies of the petition shall be served upon the office of trial staff, the Office of Consumer Advocate and the Office of Small Business Advocate. Service shall be evidenced with a certificate of service filed with the petition.

(c) *Copies.* Copies shall also be served as directed by the Commission.

(d) Subsection (a) supersedes 1 Pa. Code § 35.17 (relating to petitions generally).

§ 5.42. Petitions for declaratory orders.

(a) Petitions for the issuance of a declaratory order to terminate a controversy or remove uncertainty must:

(1) State clearly and concisely the controversy or uncertainty which is the subject of the petition.

(2) Cite the statutory provision or other authority involved.

(3) Include a complete statement of the facts and grounds prompting the petition.

(4) Include a full disclosure of the interest of the petitioner.

(b) The petitioner shall serve a copy of the petition on the Office of Trial Staff, Office of Consumer Advocate, Office of Small Business Advocate, all persons directly affected and on other parties who petitioner believes will be affected by the petition. Service shall be evidenced with a certificate of service filed with the petition.

(c) Copies shall also be served in compliance with Commission direction.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.19 (relating to petitions for declaratory orders).

§ 5.43. Petitions for issuance, amendment, repeal, or waiver of Commission regulations.

(a) A petition to the Commission for the issuance, amendment, waiver or repeal of a regulation must set forth clearly and concisely the interest of the petitioner in the subject matter, the specific regulation, amendment, waiver or repeal requested, and cite by appropriate reference the statutory provision or other authority involved. The petition must set forth the purpose of, and the facts claimed to constitute the grounds requiring the regulation, amendment, waiver or repeal. Petitions for the issuance or amendment of a regulation shall incorporate the proposed regulation or amendment.

(b) A copy of the petition shall be served on all persons directly affected and on other parties who petitioner believes will be affected by the petition. Copies of the petition shall be served on the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate. Service shall be evidenced with a certificate of service filed with the petition.

(c) Copies shall also be served in compliance with Commission direction.

(d) Subsection (a) is identical to 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or repeal of regulations).

§ 5.44. Petitions for appeal from actions of the staff.

(a) Actions taken by staff, other than a presiding officer, under authority delegated by the Commission, will be deemed to be the final action of the Commission unless appealed to the Commission within 20 days after service of notice of the action, unless a different time period is specified in this chapter or in the act.

(b) An action taken by staff under delegated authority will note the parties' right to appeal the action under this section.

(c) Petitions for appeal from the actions of the staff will be addressed by the Commission at public meeting.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

PROTESTS

§ 5.51. Protest to an application.

(a) A person objecting to the approval of an application filed with the Commission may file a protest to the application.

(b) Protests to motor carrier property applications are not permitted. See § 3.381(c) (relating to applications for transportation of property, household goods in use and persons).

(c) Subsection (a) supersedes 1 Pa. Code § 35.23 (relating to protest generally).

§ 5.52. Content of a protest to an application.

(a) *Form.* A protest to an application must:

(1) Set out clearly and concisely the facts from which the alleged interest or right of the protestant can be determined.

(2) State the grounds of the protest .

(3) Set forth the facts establishing the protestant's standing to protest.

(b) *Motor carrier.* Protests in motor carrier cases must conform with § 3.381(c)(1) (relating to applications for transportation of property and persons).

(c) *Filing and service.* A protest shall be filed with the Secretary and served upon the applicant or the applicant's attorney, if any.

§ 5.53. Time of filing.

A protest shall be filed within the time specified in the published notice of the application. If no protest time is specified, the protest shall be filed within 60 days of publication of the notice.

§ 5.54. (Reserved).

ANSWERS

§ 5.61. Answers to complaints, petitions, motions, and preliminary objections.

(a) *Time for filing.* Unless a different time is prescribed by statute, the Commission, or the presiding officer, answers to complaints and petitions shall be filed with the Commission within 20 days after the date of service.

(1) Answers to motions shall be filed within the 20 days provided by §§ 5.102 and 5.103 (relating to motions for summary judgment and judgment on the pleadings; and motions).

(2) Answers to preliminary objections shall be filed within the 10 days provided by § 5.101 (relating to preliminary objections).

(b) *Form of answers to complaints.* The answer must be in writing and:

(1) Set forth in paragraphs numbered to correspond with the complaint.

(2) Advise the parties and the Commission as to the nature of the defense.

(3) Admit or deny specifically all material allegations of the complaint.

(4) State concisely the facts and matters of law relied upon.

(5) Include a copy of a document, or the material part of a document when relied upon in the answer. If the writing or a copy is not available, the answer must set forth that the document is not available and the reason, and set forth the substance of the document.

(c) *Failure to file an answer to a complaint.* A respondent failing to file an answer within the applicable period may be deemed in default, and relevant facts stated in the pleadings may be deemed admitted.

(d) *Answers to complaints in rate proceedings.* For complaints which are docketed with Commission-instituted rate proceedings, an answer may be filed within 10 days of date of service. However, an answer is not required, except as may be directed by the Commission or the presiding officer.

(e) *Form of answers to petitions.* The answer must be in writing and:

(1) Advise the parties and the Commission of the parties' position on the issues raised in the petition.

(2) State the parties' standing to participate in any Commission proceeding resulting from the petition.

(3) State concisely the facts and matters of law relied upon.

(4) Include a copy of a document, or the material part of a document when relied upon in the answer. If the writing or a copy is not available, the answer must set forth that the document is not available and the reason, and set forth the substance of the document.

(f) *Supersession.* Subsections (b)—(e) supersede 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

§ 5.62. Answers seeking affirmative relief or raising new matter.

(a) *Answers seeking affirmative relief.* In its answer, a respondent may seek relief against other parties in a proceeding if common questions of law or fact are present. The answer must conform to this chapter for answers generally and set forth:

(1) The facts constituting the grounds of complaint.

(2) The provisions of the statutes, rules, regulations or orders relied upon.

(3) The injury complained of.

(4) The relief sought.

(b) *Answers raising new matter.* An affirmative defense shall be pleaded in an answer or other responsive pleading under the heading of "New Matter." A party may set forth as new matter another material fact which is not merely a denial of the averments of the preceding pleading.

§ 5.63. Replies to answers seeking affirmative relief or new matter.

(a) Unless otherwise ordered by the Commission, replies to answers seeking affirmative relief or to new matter shall be filed with the Commission and served within 20 days after date of service of the answer, but not later than 5 days prior to the date set for the commencement of the hearing.

(b) Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.39 (relating to replies to respondents seeking affirmative relief).

§ 5.65. Answers to amendments of pleadings.

(a) Except as provided under § 5.101 (referring to preliminary objections), an answer to an amendment, modification or supplement to an application, complaint, petition or other pleading set forth under § 5.91 (referring to amendments of pleadings generally) shall be filed with the Commission within 20 days after the date of service of the amendment, modification or supplement, unless for cause the Commission or presiding officer with or without motion prescribes a different time.

(b) Subsection (a) supersedes 1 Pa. Code § 35.40 (relating to answers to amendments of pleadings).

§ 5.66. Answers to petitions to intervene.

(a) A party may file an answer to a petition to intervene within 20 days of service, and in default thereof, may be deemed to have waived objection to the granting of the petition. Answers shall be served upon all other parties.

(b) Subsection (a) supersedes 1 Pa. Code § 35.36 (relating to answers to petitions to intervene).

INTERVENTION

§ 5.73. Form and content of petitions to intervene.

(a) Petitions to intervene must set out clearly and concisely the following:

(1) The facts from which the alleged intervention right or interest of the petitioner can be determined.

(2) The grounds of the proposed intervention.

(3) The petitioner's position regarding the issues in the proceeding.

(b) When the circumstances warrant, petitions to intervene filed on behalf of more than one person may be required to list those persons and entities comprising the represented group.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.29 (relating to form and contents of petitions to intervene).

§ 5.74. Filing of petitions to intervene.

(a) Petitions to intervene may be filed following the filing of an application, petition, complaint or other document seeking Commission action.

(b) Petitions to intervene shall be filed:

(1) No later than the date fixed for the filing of responsive pleadings in an order or notice with respect to the proceedings but not less than the notice and protest period established under §§ 5.14 and 5.53 (relating to applications requiring notice; and time of filing) absent good cause shown.

(2) No later than the date fixed for filing protests as published in the *Pennsylvania Bulletin* except for good cause shown.

(3) In accordance with § 5.53 if no deadline is set in an order or notice with respect to the proceedings.

(4) A statutory advocate may exercise a right of participation or file a notice of intervention consistent with law at any time in a proceeding. A statutory advocate exercising a right of participation or filing a notice of intervention following expiration of any protest or intervention period shall take the record as developed unless determined otherwise in exceptional circumstances for good cause shown.

(c) Except with regard to statutory advocates under subsection (b)(4), intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.

(d) The Commission or presiding officer may, when the circumstances warrant, permit the waiver of the requirements of § 5.409 (relating to copies and form of documentary evidence) with respect to copies of exhibits for the intervenor.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.30 (relating to filing of petitions to intervene).

§ 5.75. Notice, service and action on petitions to intervene.

(a) *Notice and service.* Petitions to intervene, when tendered to the Commission for filing, must show service thereof upon all parties to the proceeding in conformity with § 1.54 (relating to service by a party).

(b) *Action on petitions.* As soon as practicable after the expiration of the time for filing answers to petitions as provided in § 5.66 (relating to answers to petitions to intervene), the Commission or presiding officer will grant or deny the petition in whole or in part or may, if found to be appropriate, authorize limited participation.

(c) *Rights upon grant of petition.* Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding. Intervenors are granted no rights which survive discontinuance of a case.

(d) *Actions on petitions filed after a hearing has commenced.* Except with regard to statutory advocates under § 5.74(b)(4) (relating to filing of petitions to intervene), petitions to intervene may be filed or will be acted upon during a hearing unless prohibited by the Commission or presiding officer after opportunity for all parties to object.

(e) *Supersession.* Subsections (a)—(d) supersede 1 Pa. Code § 35.31 (relating to notice and action on petitions to intervene).

AMENDMENT AND WITHDRAWAL OF PLEADINGS

§ 5.91. Amendments of pleadings generally.

(a) *Generally.* A modification of or supplement to an application, complaint, petition or other pleading shall be deemed as an amendment to the pleading, and must comply with the requirements of this subchapter relating to the pleading amended.

(b) *Amendments in response to preliminary objections.* A party may file an amended pleading as of course within 20 days after service of a copy of a preliminary objection filed under § 5.101 (referring to preliminary objec-

tions). If a party has filed an amended pleading as of course, the preliminary objections to the original pleading shall be deemed moot.

(c) *Limitation.* Except as otherwise provided in this subchapter, no amendment to a pleading may be filed within 5 days preceding the commencement of or during a hearing unless directed or permitted by the Commission or the presiding officer after opportunity for all parties to be heard thereon.

(d) *Exception in rate cases.* This section does not apply to an increase in the aggregate amount of a general rate increase request.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.48 (relating to amendments of pleadings generally).

§ 5.92. Amendments to conform to the evidence.

(a) *Amendment by consent.* When the parties introduce issues at a hearing not raised by the pleadings whether by express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings.

(b) *Amendments by motion.* Amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise new issues may be made upon motion of a party at any time during the hearing as set forth in § 5.102 (relating to motions for summary judgment and judgment on the pleadings).

(c) *Amendment following objection.* If evidence upon new issues is objected to on the ground that it is not within the issues raised by the pleadings, the Commission or the presiding officer may allow the pleadings to be amended and the evidence to be received, when it appears that the presentation of the merits of the proceedings will be served thereby without prejudicing the public interest or the rights of a party.

(d) *Continuance following objection.* A continuance may be granted by the Commission or the presiding officer under § 1.15 (relating to extensions of time and continuances) when necessary to allow the objecting party to address new issues and evidence.

(e) *Notice of amendment.* If an amendment adopted under this section has the effect of broadening the issues in the proceeding, notice of the amendment shall be given in the same manner as notice was given at the commencement of the proceeding and to the same persons who received the notice.

(f) *Supersession.* Subsections (a)—(e) supersede 1 Pa. Code § 35.49 (relating to amendments to conform to the evidence).

§ 5.93. Directed amendments.

(a) The Commission may at any time, or during a hearing, presiding officers may on their own motion or the motion of a party, direct parties to state their case by way of amendment more fully or in more detail. The amendment shall be reduced to writing and filed within the time fixed by the Commission or the presiding officer.

(b) Subsection (a) is identical to 1 Pa. Code § 35.50 (relating to directed amendments).

§ 5.94. Withdrawal of pleadings in a contested proceeding.

(a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for

the withdrawal. A party may object to the petition within 20 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

(b) A protest to an application may be withdrawn by filing a notice of withdrawal directed to the Commission or the presiding officer. The notice must state that the protest is withdrawn and provide the reasons for the withdrawal.

(c) Withdrawal or termination of an uncontested proceeding is governed by § 1.82 (relating to withdrawal or termination).

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.51 (relating to withdrawal of pleadings).

PRELIMINARY OBJECTIONS

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

(b) *Notice to plead.* A preliminary objection must contain a notice to plead which states that an answer to the objection shall be filed within 10 days of the date of service of the objection.

(c) *General rule.* Preliminary objections shall be raised at one time. The preliminary objections must be set forth in numbered paragraphs, state with specificity the legal and factual grounds relied upon, and may be inconsistent. Two or more preliminary objections may be raised in one pleading.

(d) *Time for filing and form.* Preliminary objections shall be filed as a separate document and within the same 20 days provided for in § 5.61 (relating to answers to complaints, petitions, and motions). Except as provided for in subsection (e), the filing of preliminary objections may not eliminate the requirement to file an answer to the complaint or other initiating pleading.

(e) *Preliminary objection regarding insufficient specificity.*

(1) If a preliminary objection regarding insufficient specificity in a pleading is filed, an answer is not required until further directed by the presiding officer or the Commission.

(2) When an amended pleading is filed in response to a preliminary objection alleging insufficient specificity in a pleading, the preliminary motion will be deemed to be moot in accordance with § 5.91 (relating to amendment of pleadings generally).

(f) *Answer to a preliminary objection.*

(1) *Time for filing.* An answer to a preliminary objection may be filed within 10 days of date of service.

(2) *Form.* The answer must be in writing and in numbered paragraphs to correspond with the preliminary objection, and address the legal and factual grounds relied on in the preliminary objection.

(g) *Decision by presiding officer.* A preliminary objection will be decided within 30 days of the assignment of the preliminary objection to the presiding officer.

(h) *Amended pleading.* If a preliminary objection is granted, the party who submitted the stricken pleading has the right to file an amended pleading within 10 days of service of the order.

(i) *Supersession.* Subsections (a)—(h) supersede 1 Pa. Code §§ 35.54 and 35.55 (relating to motions as to complaint; and motions as to answer).

§ 5.102. Motions for summary judgment and judgment on the pleadings.

(a) *Generally.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

(b) *Answers.* An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion. The answer to a motion for summary judgment may be supplemented by depositions, answers to interrogatories or further affidavits and admissions.

(c) *Motion for summary judgment.* A motion for summary judgment must be based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits. Documents not already filed with the Commission shall be filed with the motion.

(d) *Decisions on motions.*

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) *Standard for grant or denial in part.* The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

(3) *Form of decision.* The presiding officer will grant, in whole or in part, the motion in the form of an initial or recommended decision which shall be subject to exceptions as set forth in § 5.533 (relating to exceptions). Denial of a motion will be in the form of a written order.

§ 5.103. Motions.

(a) *Scope and content.* A request may be made by motion for relief desired, except as may be otherwise expressly provided in this chapter and Chapters 1 and 3

(relating to rules of administrative practice and procedure; and special provisions). A motion must set forth the ruling or relief sought, and state the grounds therefor and the statutory or other authority upon which it relies.

(b) *Presentation of motions.* A motion may be made in writing at any time, and a motion made during a hearing may be stated orally upon the record, or the presiding officer may require that an oral motion be reduced to writing and filed separately. Written motions must contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the motion.

(c) *Response to motions.* A party has 20 days from the date of service within which to answer or object to a motion, unless the period of time is otherwise fixed by the Commission or the presiding officer.

(d) *Rulings on motions.*

(1) The presiding officer is authorized to rule and will rule upon motions:

(i) Not formerly acted upon by the Commission prior to the commencement of the hearing where an immediate ruling is essential in order to proceed with the hearing.

(ii) Filed or made after the commencement of the hearing and prior to the submission of a decision in the proceeding.

(2) A motion made during the course of hearing, which if granted would otherwise dispose of parties' rights, should be acted upon by the presiding officer prior to taking further testimony if, in the opinion of the presiding officer, the action is warranted.

(3) If a motion involves a question of jurisdiction, the establishment of a prima facie case or standing, the presiding officer may render a final determination with regard to a motion prior to the termination of hearings by issuing an initial or recommended decision.

(e) *Supersession.* Subsection (a) is identical to 1 Pa. Code § 35.177 (relating to scope and contents of motions). Subsection (b) is identical to 1 Pa. Code § 35.178 (relating to presentation of motions). Subsection (c) supersedes 1 Pa. Code § 35.179 (relating to objections to motions). Subsection (d) supersedes 1 Pa. Code § 35.180 (relating to action on motions).

Subchapter B. HEARINGS

GENERAL

§ 5.201. Notice of proceeding; hearing; waiver of hearing.

(a) When notice and hearing are required under the act, publication in the *Pennsylvania Bulletin* of a notice of application or other initial pleading is sufficient to provide notice of the proceeding. Service on interested persons is also sufficient to provide notice. The notice must fix a reasonable period of time, but not less than 15 days, within which a person desiring to be heard may file a petition to intervene, a protest, complaint or other appropriate pleading. Hearings will be held upon the filing of the pleading, unless waived by the parties.

(b) If the appropriate pleading is not filed within the set period of time, or when the parties have waived hearings, the Commission may dispose of the matter without a hearing upon the basis of the pleadings or submittals and the studies and recommendations of the staff.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.101, 35.103 and 35.121 (relating to waiver of hearing; preliminary notice to Department of Justice; and initiation of hearings).

§ 5.202. Scheduling of hearing.

(a) The Commission will schedule hearings other than those involving the lawfulness of rates and will maintain a hearing calendar of all proceedings set for hearing.

(b) Proceedings pending on the calendar will be heard so far as practicable, in their order of assignment to the calendar at the times and places fixed by the Commission or presiding officer, giving regard to the convenience and necessity of the parties and their attorneys.

(c) The Commission or the presiding officer in the exercise of discretion, for cause, may advance or postpone proceedings on the hearing calendar with notice to the parties.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.102 (relating to hearing calendar).

§ 5.203. Hearing in rate proceedings.

(a) Hearing dates in rate proceedings will be fixed by the presiding officer.

(b) The presiding officer will be guided by the requirement of section 315 of the act (relating to burden of proof) that rate cases are to be given preference over all other proceedings, and are to be decided as speedily as possible.

(c) The presiding officer may continue a scheduled hearing upon his own motion or upon the request of a party for good cause shown. Mere convenience or other engagements of counsel will not ordinarily constitute grounds for continuance.

(d) Subsections (a)—(c) supersede 1 Pa. Code §§ 35.121 and 35.123 (relating to initiation of hearings; and conduct of hearings).

NOTICE OF HEARING

§ 5.212. Notice of nonrulemaking proceedings.

(a) The presiding officer, the Office of Administrative Law Judge or the Commission is authorized to schedule prehearing conferences and hearings. Parties shall be given reasonable notice of the time and place of the prehearing conference or hearing. In fixing the time and place of conferences and hearings, regard will be given to the convenience and necessity of the parties or their attorneys so far as time and the proper execution of the functions of the Commission permit.

(b) A protestant in a motor carrier case shall attend the initial hearing or prehearing conference, if one has been scheduled. Failure to attend may result in the dismissal of the protest by the Commission or presiding officer.

(c) Subsection (a) supersedes 1 Pa. Code §§ 35.105 and 35.106 (relating to notice of nonrulemaking proceedings; and contents of notice of nonrulemaking proceedings).

PREHEARING AND OTHER CONFERENCES

§ 5.221. Conferences to adjust, settle or expedite proceedings.

(a) To provide opportunity for the submission and consideration of facts, arguments, offers of settlement or proposals of adjustment, for settlement of a proceeding, or the issues therein, or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the

parties may be held at any time prior to or during hearings as time, the nature of the proceeding, and the public interest permit.

(b) Subsection (a) is identical to 1 Pa. Code § 35.111 (relating to conferences to adjust, settle or expedite proceedings).

§ 5.222. Initiation of prehearing conferences in nonrate proceedings.

(a) To make possible a more effective use of hearing time in formal proceedings, other than rate proceedings which are governed by § 5.224 (relating to prehearing conference in rate proceedings), to otherwise expedite the orderly conduct and disposition of the proceedings and to serve the ends of justice and the public interest, it is the policy of the Commission to arrange for conferences between parties to the proceedings prior to the commencement of hearings.

(b) The Commission, or the presiding office may direct that a prehearing conference be held, and direct the parties to the proceeding to appear to consider the matters enumerated in subsection (c). Notice of the time and place of the conference shall be given to all parties to the proceeding. The conferences may be conducted telephonically.

(c) The following matters shall be considered at prehearing conference:

(1) The possibilities for settlement of the proceeding, subject to the approval of the Commission.

(2) The amount of hearing time which will be required to dispose of the proceeding and the establishment of a schedule of hearing dates.

(3) Arrangements for the submission of direct testimony of witnesses in writing in advance of hearing to the extent practicable, and for the submission in advance of hearing or written requests for information which a party contemplates asking another party to present at hearing.

(4) Other matters that may aid in expediting the orderly conduct and disposition of the proceeding and the furtherance of justice, including the following:

(i) The simplification of the issues.

(ii) The exchange and acceptance of service of exhibits proposed to be offered in evidence.

(iii) The obtaining of admissions as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.

(iv) The limitation of the number of witnesses.

(v) A proposed plan and schedule of discovery which may include specific limitations on the number of written interrogatories and requests for admissions a party may propound on another party.

(d) Parties and counsel will be expected to attend the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto.

(1) The preparation must include submission of a prehearing memorandum and list:

(i) The presently identified issues.

(ii) The names and addresses of the witnesses.

(iii) The proposed area of testimony of each witness.

(2) The preparation may include:

- (i) Development of a proposed procedural schedule.
- (ii) Advance study of all relevant materials.
- (iii) Advance informal communication between the parties, including requests for additional data and information, to the extent it appears feasible and desirable.
- (e) Failure of a party to attend the conference, after being served with notice of the time and place thereof, without good cause shown, shall constitute a waiver of all objections to the agreements reached and to an order or ruling with respect thereto.
- (e) Subsections (a)—(c) supersede 1 Pa. Code § 35.112 (relating to conferences to expedite hearings). Subsection (d) is identical to 1 Pa. Code § 35.113 (relating to initiation of conferences).

§ 5.223. Authority of presiding officer at conferences.

(a) The presiding officer at a conference may dispose of procedural matters which he is authorized to rule upon during the course of the proceeding. When it appears that the proceeding would be substantially expedited by distribution of proposed exhibits and written prepared testimony reasonably in advance of the hearing session, the presiding officer, at his discretion, and with regard for the convenience and necessity of the parties, may direct advance distribution by a prescribed date. The rulings of the presiding officer made at the conference will control the subsequent course of the hearing, unless modified for good cause shown.

(b) The presiding officer will have authority to participate in the discussions, to arrange for recording stipulations or agreements reached at conference, to fix the date of initial hearing and the date for additional hearings which may be required to dispose of the proceeding, and otherwise to assist the parties to reach agreement that will expedite the proceeding and serve the ends of justice.

(c) The presiding officer may participate in settlement discussions upon agreement of all parties. A different presiding officer or a mediator, if appropriate, will be assigned by the Chief Administrative Law Judge to participate in settlement discussions upon the request of a party.

(d) Subsection (a) is identical to 1 Pa. Code § 35.114 (relating to authority of presiding officer at conference) and subsection (b) supplements § 35.114.

§ 5.224. Prehearing conference in rate proceedings.

(a) In a rate proceeding, the presiding officer may schedule the following:

(1) A first prehearing conference to establish a schedule for discovery and tentative hearing dates, as well as the matters in § 5.222 (relating to initiation of prehearing conferences in nonrate proceedings).

(2) Other conferences as deemed necessary.

(3) A conference held telephonically, upon agreement of the parties.

(b) The first prehearing conference shall be held as soon as practicable after the entry of the order of investigation. The parties shall come to the first prehearing conference prepared to discuss the following:

(1) A proposed plan and schedule of discovery, which may include specific limitations on the number of written interrogatories and requests for admissions a party may propound on another party.

(2) Other proposed orders with respect to discovery, including the establishment of sanctions (in addition to those provided by §§ 5.371 and 5.372 (relating to sanctions-general; and sanctions-types)) against any party failing to respond to discovery in a timely manner.

(3) Tentative scheduling of evidentiary hearings, close of the record, filing of briefs and other matters deemed appropriate.

(c) At the first prehearing conference, parties may submit a written statement addressing the issues in subsection (b) and shall list:

(1) The presently identified issues.

(2) The names and addresses of the witnesses.

(3) The proposed area of testimony of each witness.

(d) Following the first prehearing conference, the presiding officer will enter an order establishing a tentative set of hearing dates, establishing a plan and schedule for discovery, determining whether a public input hearing will be held, if that decision has not already been made, and addressing other matters deemed necessary.

(e) Further prehearing conferences may be scheduled at the discretion of the presiding officer.

(f) The presiding officer, or the Commission will have the authority to amend the requirements of this section either sua sponte or upon motion of a party.

(g) The rules applicable to prehearing and other conferences in §§ 5.221—5.223 (relating to conferences to adjust, settle or expedite proceedings; initiation of prehearing conferences in nonrate proceedings; and authority of presiding officer at conferences) are applicable to prehearing conferences in rate cases except to the extent they are inconsistent with this section.

SETTLEMENTS

§ 5.231. Offers of settlement.

(a) It is the policy of the Commission to encourage settlements.

(b) Nothing contained in this chapter or Chapter 1 or 3 (relating to rules of administrative practice and procedure; and special provisions) preclude a party in a proceeding from submitting, at any time, offers of settlement or proposals of adjustment, or from requesting conferences for that purpose.

(c) Parties may request that the presiding officer participate in the settlement conferences or that an additional presiding officer or mediator be designated to participate in the settlement conferences.

(d) Offers of settlement, of adjustment, or of procedure to be followed, and proposed stipulations not agreed to by every party, including proposals intended to resolve discovery disputes, will not be admissible in evidence against a counsel or party claiming the privilege.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.115 (relating to offers of settlement).

§ 5.232. Settlement petitions and stipulations of fact.

(a) *Generally.* A settlement petition, which may contain stipulations of fact by all or some of the parties, shall be filed with the Secretary in accordance with § 5.41 (relating to petitions generally).

(b) *Positions of the parties.* A settlement agreement must specifically identify the parties:

(1) Supporting the settlement.

- (2) Opposing the settlement.
- (3) Taking no position on the settlement.
- (4) Denied an opportunity to enter into the settlement.

(c) *Service.* A copy of each settlement petition, which may contain stipulations of fact by all or some of the parties, shall be served upon each party to the proceeding, and each party shall have the opportunity to comment on the proposed settlement unless otherwise ordered by the presiding officer.

(d) *Review of settlement by the presiding officer.* The settlement petition will be reviewed by the presiding officer, if one has been assigned. If the presiding officer rules on the petition, the ruling will be made in the form of an initial or recommended decision, subject to § 5.537 (relating to rate case settlements), if approved, or in the form of an order, if disapproved. The presiding officer will determine if the settlement is in the public interest.

(e) *Waiver of exceptions.* The exception period may be waived upon agreement of the parties.

(f) *Disposition of exceptions.* If timely exceptions are filed, they will be considered in a ruling made on the settlement petition.

(g) *Review of a settlement petition by the Commission.* When no presiding officer has been assigned, the Commission will review the settlement. Parties not joining in the settlement may submit objections to the Commission within 20 days of the filing of the petition unless another time period is set by the Commission.

§ 5.233. Refusal to make admissions or stipulations.

(a) *Generally.* A party may move for sanctions under subsection (b) when the following conditions are satisfied:

(1) A party refuses to admit or stipulate to the genuineness of documents or the truth of matters of fact during a conference convened under this chapter and Chapter 1 or 3 (relating to rules of administrative practice and procedure; and special provisions).

(2) The party requesting the admissions or stipulations thereafter proves the genuineness of the document or the truth of a matter of fact.

(b) *Sanctions.* The requesting party may apply to the presiding officer for an order requiring the other party to pay the reasonable expenses incurred in making the proof, including reasonable attorney's fees. The presiding officer will grant an order for sanctions unless the presiding officer finds that there were good reasons for the refusal to admit or stipulate or that the admissions or stipulations sought were of no substantial importance.

(c) *Appeal.* An interlocutory appeal may be taken to the Commission immediately from the order made by a presiding officer under Subchapter C (relating to interlocutory review).

(d) *Compliance.* If a party refuses to comply with the order after it becomes final, the Commission or presiding officer may strike all or part of the pleadings of the party or limit or deny further participation by the party.

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.116 (relating to refusal to make admissions or stipulate).

§ 5.234. Presentation and effect of stipulations.

(a) Parties may stipulate to relevant matters of fact or the authenticity of relevant documents. The stipulations may be received in evidence at a hearing, and when so received shall be binding on the parties to the stipulation with respect to the matters therein stipulated.

(b) The parties may make stipulations independently of orders or rulings issued under §§ 5.221—5.224 (relating to prehearing and other conferences).

(c) The Commission may disregard in whole or in part a stipulation of facts under this section but may grant further hearing if requested by a party to the stipulation within 15 days after issuance of a Commission order disregarding the stipulation of fact.

(d) Subsections (a)—(b) supersede 1 Pa. Code § 35.155 (relating to presentation and effect of stipulations). Subsection (c) supplements 1 Pa. Code § 35.155.

§ 5.235. Restrictive amendments to applications for motor carrier of passenger and household goods in use authority.

(a) Parties to motor carrier applications for passenger and household goods in use authority may stipulate as to restrictions or modifications to proposed motor carrier rights. Stipulations in the form of restrictive amendments or modifications must:

- (1) Be in writing.
- (2) Explain why the stipulation is in the public interest.
- (3) Be signed by each party to the stipulation.
- (4) Be submitted to the Secretary for insertion into the document folder.

(b) Restrictive amendments shall be binding on the parties but not on the Commission if it is determined they are not in the public interest. If a restrictive amendment is not accepted by the Commission, it may remand the matter for appropriate proceedings.

HEARINGS

§ 5.241. Attendance.

(a) The presiding officer before whom the hearing is held will enter upon the record all parties in attendance.

(b) Subsection (a) supersedes 1 Pa. Code § 35.124 (relating to appearances).

§ 5.242. Order of procedure.

(a) In a proceeding, the party having the burden of proof, shall open and close unless otherwise directed by the presiding officer. In a hearing on investigations and in proceedings which have been consolidated for hearing, the presiding officer may direct who will open and close. Oral rejoinder, if proposed by the party with the burden of proof, shall be completed before any cross-examination of the witness is conducted.

(b) Intervenors shall follow the party on whose behalf the intervention is made. If the intervention is not in support of an original party, the presiding officer will designate at what stage the intervenor will be heard.

(c) In proceedings when the evidence is peculiarly within the knowledge or control of another party, the order of presentation set forth in subsections (a) and (b) may be varied by the presiding officer.

(d) The presiding officer may direct the order of parties for purposes of cross-examination, subject to § 5.243(f) (relating to presentation by parties).

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.125 (relating to order of procedure).

§ 5.243. Presentation by parties.

(a) A party, has the right of presentation of evidence, cross-examination, objection, motion and argument subject to the limitations in §§ 5.75 and 5.76 (relating to notice, service and action on petitions to intervene; and limitation of participation in hearings). The taking of evidence and subsequent proceedings shall proceed with reasonable diligence and with the least practicable delay.

(b) When an objection to the admission or exclusion of evidence before the Commission or the presiding officer is made, the ground relied upon shall be stated briefly. A formal exception is unnecessary and may not be taken to rulings thereon.

(c) The presiding officer may require or allow a factual statement of the scope of a pleading or the position of a party in the proceeding. Facts admitted on the record by a party or by testimony, exhibits or in writing, need not be further proved.

(d) The Commission or the presiding officer may limit appropriately the number of witnesses who may be heard upon an issue.

(e) A party will not be permitted to introduce evidence during a rebuttal phase which:

- (1) Is repetitive.
- (2) Should have been included in the party's case-in-chief .
- (3) Substantially varies from the party's case-in-chief.
- (f) If a party conducts friendly cross-examination of a witness, the presiding officer may permit the other parties a second opportunity to cross-examine after friendly cross-examination is completed. The recross-examination shall be limited to the issues on which there was friendly cross-examination.

(g) Subsections (a)—(f) supersede 1 Pa. Code § 35.126 (relating to presentation by the parties).

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

- (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
- (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
- (3) Not be permitted to recall witnesses who were excused for further examination.

(b) Subsection (a)(1)—(3) does not apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination. Counsel shall be expected to go forward with the examination of witnesses at the hearing under § 5.242 (relating to order of procedure), or as has been otherwise stipulated or has been directed by the presiding officer.

(c) If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, including an intervenor, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including

dismissal of the complaint, application, or petition, if the action is that of complainant, applicant, or petitioner.

TRANSCRIPT**§ 5.251. Recording of proceedings.**

(a) If required by law, hearings will be stenographically reported by the Commission's official reporter.

(b) Notwithstanding the review provisions of § 5.252 (relating to review of testimony), the hearing transcript will be a part of the record and the sole official transcript of the proceeding.

(c) The transcripts will include a verbatim report of the hearings and nothing will be omitted therefrom except as is directed by the presiding officer. Changes in the transcript must be made as provided in § 5.253 (relating to transcript corrections).

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.131 (relating to recording of proceedings).

§ 5.252. Review of testimony.

(a) In proceedings when testimony was electronically recorded and subsequently transcribed, a party may review the recording to ensure it was transcribed accurately.

(b) Review will not be permitted except upon written request within 20 days after the transcript has been filed with the Commission.

(c) Upon request for review, the Office of Administrative Law Judge will schedule a time and place for the review which shall be open to all parties. The court reporting firm shall submit the tapes and equipment necessary for the review and shall arrange for the court reporter responsible for transcribing the tapes to be present at the review.

(d) Actual costs associated with making the tapes available for review, including the time of the court reporter, shall be paid by the party requesting review.

(e) Nothing in this section requires the electronic recording of testimony.

§ 5.253. Transcript corrections.

(a) A correction in the official transcript may be made only to make it accurately reflect the evidence presented at the hearing and to speak the truth.

(b) Proposed corrections of a transcript may be submitted by either of the following means:

- (1) By written stipulation by the parties of record who were present when the transcription was taken.
- (2) Upon written request of one or more parties of record present when the transcription was taken.

(c) Proposed corrections shall be filed as follows:

- (1) Within 10 days after the transcript has been filed with the Commission.
- (2) Within 10 days after the electronically recorded testimony has been reviewed.
- (3) Upon permission of the presiding officer granted prior to the closing of the record.

(d) Objections or other comments to the proposed corrections shall be filed within 10 days of service of the proposed corrections.

(e) Proposed corrections and objections or other comments shall be served upon the parties of record present when the original transcription was taken.

(f) The presiding officer will rule upon a proposed correction of a transcript within 20 days of its receipt. A request for corrections not acted upon within 20 days is deemed to be:

- (1) Denied if opposed in a timely manner.
- (2) Granted if unopposed.

(g) Subsections (a)—(f) supersede 1 Pa. Code § 35.132 (relating to transcript corrections).

Subchapter C. INTERLOCUTORY REVIEW

§ 5.302. Petition for interlocutory Commission review and answer to a material question.

(a) During the course of a proceeding, a party may file a timely petition directed to the Commission requesting review and answer to a material question which has arisen or is likely to arise. The petition must be in writing with copies served on all parties and the presiding officer and state, in not more than three pages, the question to be answered and the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding.

(b) Within 10 days of service of the petition, each party may submit a brief directed to the Commission supporting or opposing the petition and addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the substantial rights of a party. The brief may not exceed 15 pages.

(c) The petitioning party shall also provide with the brief rulings on its question and extracts from the record as will assist the Commission in reaching a decision.

(d) Additional briefs are not permitted unless directed by the Commission.

§ 5.303. Commission action on petition for interlocutory review and answer.

(a) Within 30 days of receipt of the petition, the Commission will, without permitting oral argument, do one of the following:

- (1) Continue, revoke or grant a stay of proceedings if necessary to protect the substantial rights of the parties.
- (2) Determine that the petition was improper and return the matter to the presiding officer.
- (3) Decline to answer the question.
- (4) Answer the question.

(b) The Commission will act promptly on petitions. Petitions for Commission review and answer which are not granted within 30 days of filing will be deemed to be denied.

§ 5.304. Interlocutory review of discovery matters.

(a) *General.* Rulings of presiding officers on discovery are not subject to interlocutory review unless one or more of the following apply:

- (1) Interlocutory review is ordered by the Commission.
- (2) Interlocutory review is certified by the presiding officer.
- (3) The ruling has as its subject matter the deposing of a Commissioner or Commission employee.

(b) *Standard for certification.* A presiding officer may certify that a discovery ruling is appropriate for interlocutory review when the ruling involves an important question of law or policy that should be resolved immediately by the Commission.

(c) *Petition for certification.* A petition for interlocutory review of a presiding officer's ruling on discovery must:

- (1) Be filed within 3 days of the ruling.
- (2) Be in writing.
- (3) State the question to be certified and the reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceedings.
- (4) Be no more than 3 pages in length.
- (5) Be filed with the Secretary and served on all parties and the presiding officer.

(d) *Responsive brief.* A party may file a responsive brief within 7 days of a request for certification, which:

- (1) Either supports or opposes certification.
- (2) Addresses the merits of the question for which certification is requested.
- (3) Addresses whether a stay of proceedings is required to protect the substantial rights of a party.
- (4) Does not exceed 15 pages.

(e) *Presiding officer's decision.* The presiding officer will announce the decision in writing or orally on the record within 5 days of the deadline for filing responsive briefs. The presiding officer's decision will include the reasons why certification has been granted or denied and whether a stay of the proceedings has been granted.

(1) If the presiding officer denies the request for certification, no further action is required of the presiding officer.

(2) If the presiding officer's decision is to grant the request for certification, the presiding officer will serve to each Commissioner the certified question within 5 days of the announcement of the decision. The presiding officer will include the reasons justifying certification, rulings on the certified question and extracts from the record that will assist the Commission in reaching a decision.

(f) *Brief to the Commission following certification.* Parties may submit a brief to the Commission and no other briefs are permitted unless directed by the Commission. A brief may not exceed 15 pages and must address:

- (1) The issue of certification.
- (2) The merits of the certified question.
- (3) The stay of proceedings, when appropriate.

(g) *Scheduling of certified question.* Upon the expiration of the time provided for filing briefs, the Secretary will schedule the certified question for consideration at the next meeting of the Commission.

(h) *Action by the Commission.* Within 30 days of receipt of the certified question by the Secretary, the Commission will, without permitting oral argument, do one of the following:

- (1) Continue, revoke or grant a stay of proceedings.
- (2) Determine that the certification was improper and return the matter to the presiding officer for resolution.
- (3) Answer the certified question.

(i) *Failure to act.* Failure of the Commission to act on a certified question within 30 days of its receipt will be deemed to be an affirmance of the decision of the presiding officer.

(j) *Effect on proceedings.* An interlocutory appeal from the ruling of the presiding officer on discovery will not result in a stay of the proceedings except upon a finding

by the presiding officer or the Commission that extraordinary circumstances exist, or to protect the substantial rights of the parties.

§ 5.305. Interlocutory review of a material question submitted by a presiding officer.

(a) During the course of a proceeding, a presiding officer may certify to the Commission for review and answer a material question which has arisen or is likely to arise. The question will be accompanied by the following:

(1) An explanation of the compelling reasons why interlocutory review will prevent prejudice or expedite the conduct of the proceeding.

(2) A statement as to whether a stay of the proceedings has been placed in effect.

(3) An extract from the record that will assist the Commission.

(b) A copy of the question certified and the accompanying information will be served on the parties at the same time it is submitted to the Commission.

(c) Within 7 days of service of the certification, each party may submit a brief directed to the Commission addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the substantial rights of a party. The brief may not exceed 15 pages.

(d) Additional briefs will not be permitted unless directed by the Commission.

(e) Within 30 days of receipt of the certified question, the Commission will, without permitting oral argument, do one of the following:

(1) Continue, revoke or grant a stay of proceedings.

(2) Determine that the certification was improper and return the matter to the presiding officer for resolution.

(3) Answer the certified question.

(f) Failure of the Commission to act upon a certified question within 30 days of its receipt will be deemed to be an affirmance of the decision of the presiding officer.

§ 5.306. Expedited notification.

A presiding officer may order notification of parties by telephone, telefacsimile or other electronic means when time periods are short and delivery by mail may not prove adequate. Notification by means other than by mail will be confirmed by the presiding officer by service in writing and a filing will be made with the Secretary regarding confirmation.

**Subchapter D. DISCOVERY
GENERAL**

§ 5.321. Scope.

(a) *Applicability.* This subchapter applies to a proceeding in which:

(1) A complaint, protest or other adverse pleading has been filed.

(2) The Commission institutes an investigation.

(3) The Commission institutes an on-the-record proceeding.

(b) *Discretion.* The presiding officer may vary provisions of this subchapter as justice requires.

(c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged,

which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(d) *Exceptions.* This subchapter does not apply to discovery sought of Commissioners or Commission staff serving in an advisory or adjudicatory capacity.

(e) *Commission staff.* This subchapter applies equally to Commission staff serving in a prosecutory or party capacity in proceedings before the Commission, with no exceptions other than as specifically set forth in this chapter.

(f) *Purpose and methods.* A party may obtain discovery for the purpose of preparation of pleadings, or for preparation or trial of a case, or for use at a proceeding initiated by petition or motion, or for any combination of these purposes, by one or more of the following methods:

(1) Deposition upon oral examination or written questions.

(2) Written interrogatories to a party.

(5) On the record data requests in rate cases.

(g) *Supersession.* Subsections (a)—(e) supersede 1 Pa. Code § 35.145 (relating to depositions).

§ 5.322. Informal agreement regarding discovery or deposition procedure.

The parties may by agreement provide that depositions may be taken before a person authorized to administer oaths, at any time or place, upon any notice, and in any manner, and when so taken may be used like other depositions. The parties may modify the procedures provided by this chapter for methods of discovery and, notwithstanding any provisions of this subchapter, parties are encouraged to exchange information on an informal basis.

§ 5.323. Hearing preparation material.

(a) *Generally.* Subject to this subchapter and consistent with Pa. R.C.P. 4003.3 (relating to scope of discovery trial preparation material generally), a party may obtain discovery of any matter discoverable under § 5.321(b) (relating to scope) even though prepared in anticipation of litigation or hearing by or for another party or by or for that other party's representative, including his attorney, consultant, surety, indemnitor, insurer or agent. The discovery may not include disclosure of the mental impressions of a party's attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories. With respect to the representative of a party other than the party's attorney, discovery may not include disclosure of his mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting strategy, tactics or preliminary or draft versions of written testimony or exhibits, whether or not final versions of the testimony or exhibits are offered into evidence.

(b) *Statements.* Upon written request, a party is entitled to immediate receipt of a photostatic copy or like reproduction of a statement concerning the action or its subject matter previously made by that party, another

party or a witness. If the statement is not provided, the party may move for an order from the presiding officer. For purposes of this subsection, a statement previously made is one of the following:

(1) A written statement signed or otherwise adopted or approved by the person making it.

(2) A stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

§ 5.324. Discovery of expert testimony.

(a) Consistent with Pa.R.C.P. 4003.5 (relating to discovery of expert testimony trial preparation material), discovery of facts known and opinions held by an expert, otherwise discoverable under § 5.321 (relating to scope), including that acquired or developed in anticipation of litigation or for hearing, may be obtained as follows:

(1) A party may through interrogatories require both of the following:

(i) That the other party identify each person whom the party expects to call as an expert witness at hearing and to state the subject matter on which the expert is expected to testify.

(ii) That the other party have each expert so identified state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. The party answering the interrogatories may file as the answer a report of the expert, have the interrogatories answered by the expert or provide written direct testimony of the expert. The answer, separate report or testimony shall be signed by the expert and shall be deemed to be provided under oath in accordance with section 333(d) of the act (relating to prehearing procedures).

(2) If the party against whom discovery is sought, under paragraph (1)(ii), responds by the filing of written direct testimony, the response shall be considered timely, regardless of § 5.342 (relating to answers or objections to written interrogatories by a party), if the written direct testimony is served on all parties at least 20 days prior to the date on which the expert is scheduled to testify or in accordance with the schedule for the submission of written testimony established by the presiding officer. However, the party shall still comply with paragraph (1)(i) within the time otherwise applicable.

(3) Upon cause shown, the presiding officer may order further discovery by other means, subject to restrictions as to scope and provisions concerning fees and expenses as he may deem appropriate.

(b) An expert witness whose identity is not disclosed in compliance with subsection (a)(1) will not be permitted to testify on behalf of the defaulting party at hearing. If the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting party, the presiding officer may grant a continuance or other appropriate relief.

(c) To the extent that the facts known or opinions held by an expert have been developed in discovery proceedings under subsection (a), the expert's direct testimony at hearing may not be inconsistent with or go beyond the fair scope of his testimony in the discovery proceedings as set forth in his deposition, answer to an interrogatory, separate report, written direct testimony or supplement thereto. The expert will not be prevented from testifying as to facts or opinions on matters on which he has not been interrogated in the discovery proceedings.

(d) The answering party may supplement answers only to the extent that facts, or opinions based on those facts, can reasonably be shown to have changed after preparation of the answer or when additional facts or information have become known to the answering party or when the interest of justice otherwise requires.

(e) Subsections (a)–(d) supersede 1 Pa. Code § 35.152 (relating to fees of officers and deponents).

TIMING AND SUPPLEMENTAL RESPONSES

§ 5.331. Sequence and timing of discovery.

(a) A party to the Commission proceeding may conduct discovery.

(b) A party shall initiate discovery as early in the proceedings as reasonably possible. In a proceeding, the right to discovery commences when a complaint, protest or other adverse pleading is filed or when the Commission institutes an investigation or on the record proceeding, whichever is earlier.

(c) Commission staff may initiate discovery at an earlier time. Commission staff discovery prior to formal Commission action to initiate a proceeding shall be designated as "Staff data requests" and shall be answered fully and completely by the utility within the time periods specified in § 5.342(d) (relating to answers or objections to written interrogatories by a party). Unless a presiding officer has been designated, objections and motions to compel shall be ruled upon by the Chief Administrative Law Judge.

(d) In a rate proceeding, initial discovery directed to data or information supplied by the public utility at the time of the initiation of the proceeding shall be submitted to the utility within 10 working days following the first prehearing conference. The presiding officer may establish reasonable limitations upon the timing of discovery.

(e) Unless the presiding officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery will not operate to delay another party's discovery.

§ 5.332. Supplementing responses.

A party or an expert witness who has responded to a request for discovery with a response that was complete when made is under a duty to supplement a response to include information thereafter acquired, as follows:

(1) A party is under a continuing duty to supplement responses with respect to a question directly addressed to the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called as an expert witness at hearing, the subject matter on which the expert is expected to testify and the substance of the testimony as provided in § 5.324(a)(1) (relating to discovery of expert testimony).

(2) A party or an expert witness is under a continuing duty to amend a prior response upon discovering that the response is incorrect or incomplete.

(3) A duty to supplement responses may be imposed by order of the presiding officer, agreement of the parties, or at a time prior to hearing through new requests to supplement prior responses.

TYPES OF DISCOVERY

§ 5.341. Written interrogatories to a party.

(a) Subject to the limitations provided by § 5.361 (relating to limitation of scope of discovery and deposition), a

party may serve upon another party written interrogatories to be answered by the party served or, if the party served is a public or private corporation, similar entity or a partnership or association, by an officer or agent, who shall furnish the information as is available to the party.

(b) The party propounding interrogatories shall serve a copy on the parties and shall file a certificate of service with the Secretary. Interrogatories may not be filed with the Commission.

(c) Interrogatories may relate to matters which can be inquired into under §§ 5.321, 5.323 and 5.324 (relating to scope; hearing preparation material; and discovery of expert testimony) and may include requests that the answering party provide copies of documents without making a separate request for the production of documents under § 5.349 (relating to requests for documents, entry for inspection and other purposes).

(d) Each interrogatory should be limited to a single question or request for information.

(e) A party should use a logical and sequential numbering system for interrogatories.

§ 5.342. Answers or objections to written interrogatories by a party.

(a) *Form.* Answers to interrogatories must:

- (1) Be in writing.
- (2) Identify the name and position of the individual who provided the answer.
- (3) Be submitted as an answer and may not be submitted as an exhibit or in another form.
- (4) Answer each interrogatory fully and completely unless an objection is made.
- (5) Restate the interrogatory which is being answered or be inserted in the spaces provided in the interrogatories.
- (6) Be verified in accordance with § 1.36 (relating to verification).

(b) *Use.* An answer may be used by a party for an appropriate purpose, if admissible under the applicable rules of evidence. An answer may not be offered into evidence by the party who provided it, except through the sworn oral testimony of the person who provided the answer.

(c) *Objections.* An objection shall be prepared, filed and served in the same manner provided for an answer, except that an objection shall be contained in a document separate from an answer as required by the time provisions of subsection

(d) An objection must:

- (1) Restate the interrogatory or part thereof deemed objectionable and the specific ground for the objection.
- (2) Include a description of the facts and circumstances purporting to justify the objection.
- (3) Be signed by the attorney making it.
- (4) Not be valid if based solely on the claim that an answer will involve an opinion or contention that is related to a fact or the application of law to fact.
- (5) Not excuse the answering party from answering the remaining interrogatories or subparts of interrogatories to which no objection is stated.

(d) *Service of answer.* The answering party shall serve answers on the parties within 15 days for rate proceed-

ings, and 20 days after service of the interrogatories for other cases. Time periods may be modified by the presiding officer, on motion or by agreement of the parties.

(e) *Service of objections.* The objecting party shall serve objections within 10 days of service of the interrogatories.

(1) The objecting party shall serve copies of the objection on the parties, along with a certificate of service, which specifically identifies the objectionable interrogatories.

(2) The objecting party shall file a copy of the certificate of service with the Secretary.

(f) *Continuing obligation.* The objecting party shall remain under an obligation to timely provide answers to interrogatories or subparts of interrogatories that were not objected to.

(g) *Motion to compel.* Within 10 days of service of an objection to interrogatories, the party submitting the interrogatories may file a motion requesting the presiding officer to dismiss an objection and compel that the interrogatory be answered. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn.

(1) The party against whom the motion to compel is directed shall file an answer within 5 days of service of the motion absent good cause or, in the alternative, respond orally at the hearing if a timely hearing has been scheduled within the same 5-day period.

(2) The presiding officer will rule on the motion as soon as practicable. The motion should be decided within 15 days of its presentation, unless the motion presents complex or novel issues. If it does have complex or novel issues, the presiding officer will, upon notice to the parties, rule in no more than 20 days of its presentation.

§ 5.343. Procedures in deposition by oral examination.

(a) A party desiring to take the deposition of a person upon oral examination, other than under § 5.322 (relating to informal agreement regarding discovery or deposition procedure), shall give 20 days notice in writing to the active party and to the presiding officer. A party noticed to be deposed is required to appear without subpoena. A person who is not a party is not required to appear unless subpoenaed.

(b) The notice must conform with subsections (c)–(f) and § 5.344 (relating to approval by presiding officer) and state the time and place of taking the deposition and the name and address of each person to be examined if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

(c) The notice must include a brief statement of the matters for which inquiry is being made.

(d) If the person to be examined is a party, the notice may include a request made in compliance with § 5.349 (relating to requests for documents, entry for inspection and other purposes) for the production of documents and tangible things at the taking of the deposition. If the person to be examined is not a party, and is to be served with a subpoena duces tecum to provide designated materials, the notice shall specify the materials to be produced.

(e) A party may in his notice and in a subpoena, if issued, name as the deponent a public or private corporation, a partnership or association or a governmental agency. In that event, the organization named shall file

within 10 days of service a designation of one or more officers, directors or managing agents, or other persons who consent to testify on its behalf, and may set forth, for the persons designated, the matters on which he will testify. A subpoena shall advise a nonparty organization of its duty to make a designation. The person designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by other procedures authorized in this chapter.

(f) An objection to the notice of deposition may be filed within 10 days of service of the notice. A copy of the objection shall be served upon the presiding officer and the parties. A notice of deposition which is served upon a nonparty must state that the nonparty may file objections within 10 days of service and identify the persons—names and addresses—to whom the objections shall be sent.

(g) Subsections (a)—(f) supersede 1 Pa. Code §§ 35.142, 35.145 and 35.146 (relating to subpoenas; depositions; and notice and application).

§ 5.344. Approval by presiding officer.

(a) Notice of the deposition served upon the presiding officer, under § 5.343(a) (relating to procedures in deposition by oral examination), constitutes an application for an order to take a deposition under section 333(b) of the act (relating to prehearing procedures). The copy served on the presiding officer shall have attached a proposed order containing the following language: “Application granted. So Ordered this ___ day of _____. ” and bear a signature line for the presiding officer.

(b) The application will be granted by the presiding officer, except as provided in § 5.324(a)(3) (relating to discovery of expert testimony), or for failure to comply with § 5.343 or subsection (c), or if objected to within 10 days. The presiding officer will consider a timely filed objection and §§ 5.324(a)(3), 5.343 and subsection (c) before ruling upon the application.

(c) If a party provides notice scheduling the taking of a deposition prior to an expiration of 20 days after initiation of the proceedings, the party shall set forth the facts requiring the expedited discovery, and the presiding officer will consider whether expedited discovery is warranted.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 35.147 (relating to authorization of taking deposition).

§ 5.345. Procedure on depositions by written questions.

(a) A party taking a deposition by written questions shall serve the questions upon the deponent and serve a copy upon each other party or his attorney of record. Within 30 days thereafter the party served and other parties may serve cross questions upon the deposing party and upon each other party or the attorney of record. Reply questions shall be similarly served by a party within 10 days of the service of cross questions.

(b) The questions must contain a notice stating the name and address of each person to be examined if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. A deposition upon written questions may be taken of a public or private corporation, a partnership or association, or a governmental agency in accordance with § 5.343(e) (relating to procedures in deposition by oral examination).

(c) Objections to the form of questions are waived unless filed and served upon the party propounding them within the time allowed for serving the succeeding cross or other questions or within 10 days after service of the last questions. Other objections may be made at the hearing except as otherwise provided by §§ 5.346—5.348 (relating to persons before whom depositions may be taken; taking of depositions-objections; and transcript of deposition, objections and filing).

(d) A copy of questions for the taking of a deposition, as well as a signature page and envelope bearing the caption and marked “Deposition of _____” (name of witness), shall be transmitted to the person being deposed who shall complete, certify and return the completed deposition to the sender.

(e) After the service of questions and prior to the taking of the testimony of the deponent, the presiding officer, on motion promptly made by a party or a deponent, may make an order in accordance with § 5.362 (relating to protective orders) or an order that the deposition may not be taken except upon oral examination.

§ 5.347. Taking of depositions-objections.

(a) Objection to taking a deposition because of the disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(b) Objections to the competency of a witness or to the competency, relevancy or materiality of the testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground for the objection is one which was known to the objecting party and which might have been obviated or removed if made at that time.

(c) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of oral questions or answers, in the oath or affirmation or in the conduct of parties and errors which might have been obviated, removed or cured if objections had been promptly made, are waived unless reasonable objection is made at the taking of the deposition.

(d) Errors and irregularities in the notice for taking a deposition are waived unless written objection is served upon the party giving the notice under § 5.344 (relating to approval by presiding officer).

(e) Subsections (a)—(d) supersede 1 Pa. Code § 35.151 (relating to status of deposition as part of record).

§ 5.348. Transcript of deposition, objections and filing.

(a) The person before whom the deposition is taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness.

(b) The testimony of the witness shall be transcribed. Objections to the manner of preparation or the correctness of the transcript are waived unless they are filed in writing with the presiding officer promptly after the grounds of objection become known or could have been discovered with reasonable diligence.

(c) When the testimony is fully transcribed, a copy of the deposition with the original signature page shall be submitted to the witness for inspection and signing and shall be read to or by him and shall be signed by him

unless the witness is ill or cannot be found or refuses to sign. Changes which the witness desires to make shall be entered upon the deposition by the person before whom it was taken with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness within 30 days of its submission to him, the person before whom the deposition was taken shall sign it and state on the record why it was not signed. The deposition may then be used as fully as though signed, unless the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(d) The person before whom the deposition is taken shall certify on the deposition that the witness was sworn by the person and the deposition is a true record of the testimony given by the witness.

(e) In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written questions to the person taking the deposition, who shall propound them to the witness and record the answers verbatim.

(f) Upon payment of reasonable charges, the person before whom the deposition was taken shall furnish a copy thereof to parties or to the deponent.

(g) Subsections (a)—(f) supersede 1 Pa. Code § 35.149 (relating to oath and reduction to writing).

§ 5.349. Requests for documents, entry for inspection and other purposes.

(a) A party may serve on another party a request for either of the following:

(1) To produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy designated documents—including writings, drawings, graphs, charts, photographs, computer records and other compilations of data from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonable usable form—or to inspect a copy, test or sample tangible things which constitute or contain matters within the scope of §§ 5.321(b), 5.323 and 5.324 (relating to scope; hearing preparation material; and discovery of expert testimony) and which are in the possession, custody or control of the party upon whom the request is served.

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing or sampling the property or a designated object or operation thereon, within the scope of §§ 5.321(b), 5.323 and 5.324.

(b) As an alternative to permission to inspect and copy, and if requested by the party seeking discovery, the party against whom discovery is sought shall reproduce the designated documents at the requesting party's expense. Regulated utilities shall provide copies of requested materials to Commission staff, which includes the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate at no charge.

(c) The request must set forth the items to be inspected either by individual item or by category, describe items and categories with reasonable particularity, and specify a reasonable time, place and manner of making the inspection and performing the related acts.

(d) The party upon whom the request is served shall serve a written response within 10 days for rate proceedings, and 20 days after service of the request for all other

cases. Time periods may be modified by the presiding officer or by agreement of the parties. The response shall be verified or notarized, as permitted by § 1.36 (relating to verification), and state that inspection and related activities will be permitted as requested. If the request is objected to, the objection shall be made in the manner described in § 5.342 (relating to answers or objections to written interrogatories by a party). A party may request another party to produce or inspect documents as part of interrogatories filed under § 5.341 (relating to written interrogatories to a party). The party submitting the request may move for an order under § 5.342(e) with respect to an objection or to other failure to respond to the request or any part thereof, or failure to permit inspection as requested.

(e) This section does not apply to official files of the Commission, or materials which are the product of or within the control of Commission advisory or adjudicatory staff, but applies only to materials within the control of staff as may be participating in the action as a party. Access to official files of the Commission shall be as prescribed in §§ 1.71—1.77 (relating to public access to Commission records).

§ 5.350. Request for admissions.

(a) *General.* A party may serve upon another party a written request for the admission of the truth of any matters, within the scope of §§ 5.321—5.324 (relating to general discovery), set forth in the request, that relate to statements or opinions of fact or of the application of law to fact, including the genuineness, authenticity, correctness, execution, signing, delivery, mailing or receipt of a document described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or available for inspection and copying.

(b) *Form.* Each matter of which an admission is requested shall be separately set forth.

(c) *Failure to admit.* The matter is admitted unless, within 20 days after service of the request, the party to whom the request is directed answers or makes an objection to the matter, signed by the party or by his attorney.

(d) *Response.*

(1) *Answer.* The answer must admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully do so.

(2) *Denial.* A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

(3) *Objection.* Grounds for objections must be specifically stated. A party who considers that a matter of which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request.

(e) *Motion to determine sufficiency of response.* The party who has requested the admission may move to determine the sufficiency of the answer or objection. Unless the presiding officer determines that an objection is justified, the presiding officer will order that an answer

be served. If the presiding officer determines that an answer does not comply with this section, the presiding officer may order either that the matter is admitted or may determine that final disposition of the request be made at a prehearing conference or at a designated time prior to hearing.

(f) *Effect of admission.* A matter admitted under this section is conclusively established unless the presiding officer on motion permits withdrawal or amendment of the admission. An admission by a party under this section is for the purpose of the pending action only and is not an admission by him for another purpose. An admission may not be used against a party in another proceeding.

§ 5.351. On the record data requests.

(a) A party may request that a witness provide information or documents at a later time as part of the witness' response to a question posed during cross-examination in the course of a rate proceeding. The request may be made orally or in writing.

(b) Answers shall be supplied as directed by the presiding officer. If no time period is set, the response period may be no later than 10 days after the request is made.

(c) Objections to a request shall be made at the time that the request is made.

LIMITATIONS

§ 5.361. Limitation of scope of discovery and deposition.

(a) Discovery or deposition is not permitted which:

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
- (3) Relates to matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

(b) In rate proceedings, discovery is not limited under subsection (a) solely because the discovery request requires the compilation of data or information which the answering party does not maintain in the format requested, in the normal course of business, or because the discovery request requires that the answering party make a special study or analysis, if the study or analysis cannot reasonably be conducted by the party making the request.

(c) If the information requested has been previously provided, the answering party shall specify the location of the information.

§ 5.362. Protective orders.

(a) Upon motion by a party or by the person from whom discovery or deposition is sought, and for good cause shown, the presiding officer may make an order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden or expense, including one or more of the following:

- (1) The discovery or deposition shall be prohibited.
- (2) The discovery or deposition shall be only on specified terms and conditions, including a designation of the method, time or place.
- (3) The scope of discovery or deposition shall be limited and that certain matters may not be inquired into.
- (4) Discovery or deposition shall be conducted with no one present except persons designated by the presiding officer.

(5) A deposition shall be sealed and shall be opened only by order of the presiding officer.

(6) The parties simultaneously shall file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

(7) A trade secret or other confidential research, development or commercial information may not be disclosed or be disclosed only in a designated way. Protective orders to protect or limit this type of information shall be issued under § 5.423 (relating to orders to limit availability of proprietary information).

(b) If the motion for a protective order is denied in whole or in part, the presiding officer may order that a party or person provide or permit discovery.

(c) During the taking of a deposition on motion of a party or of the deponent, the presiding officer or other administrative law judge may order the officer conducting the examination to cease from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subsection (a). Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order and to obtain the presiding officer's ruling.

§ 5.364. Use of depositions at hearing.

(a) At hearing, part or all of a deposition, so far as admissible under 42 Pa.C.S. §§ 6101—6112 (relating to rules of evidence), may be used against a party who was present or represented at the taking of the deposition or who had notice thereof if required, in accordance with one of the following provisions:

- (1) A deposition may be used by a party for the purpose of contradicting or impeaching the testimony of deponent as a witness.
- (2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent of a party or a person designated under §§ 5.343(e) or 5.345(a)(2) (relating to procedures in deposition by oral examination; and procedure on depositions by written questions) to testify on behalf of a public or private corporation, partnership, association or governmental agency which is a party, may be used by an adverse party for any purpose.

(3) The deposition of a witness may be used by a party for a purpose if the presiding officer finds one of the following:

- (i) The witness is dead.
- (ii) The witness is outside this Commonwealth, unless it appears that the absence of the witness was procured by the party offering the deposition.
- (iii) The witness is unable to attend or testify because of age, sickness, infirmity or imprisonment.

(iv) The party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(v) Upon application and notice that exceptional circumstances exist to make it desirable, in the interest of justice and with regard to the importance of presenting the witnesses in hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, another party may require him to introduce all of it which is relevant to the part introduced, and a party may introduce other parts.

(b) Subject to § 5.347(b) (relating to taking of depositions-objections), objection may be made at the hearing to receiving in evidence deposition for reasons which would require the exclusion of the evidence if the witness were then present and testifying.

(c) A party may not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or a part thereof for a purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition. This does not apply to the use by an adverse party of a deposition as described in subsection (a)(2). At the hearing, a party may rebut relevant evidence contained in a deposition whether introduced by him or by another party.

SANCTIONS

§ 5.371. Sanctions—general.

(a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:

(1) A party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.

(2) A party deponent or an officer or managing agent of a party refuses to obey or induces another to refuse to obey an order of a presiding officer respecting discovery, or induces another not to appear.

(b) A motion for sanctions may be answered within 5 days of service or, in the alternative, the motion may be answered orally at a hearing if a timely hearing has been scheduled within the same 5-day period.

(c) The presiding officer will rule on the motion as soon as practicable. The motion should be decided within 20 days of its presentation.

(d) A failure to act described in subsection (a) may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order.

(e) If a deponent refuses to be sworn or to answer a question, the deposition shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to persons affected thereby, the proponent may apply to the presiding officer for an order compelling the witness to be sworn or to answer.

§ 5.372. Sanctions—types.

(a) The presiding officer, when acting under § 5.371 (relating to sanctions—general) may make one of the following:

(1) An order that the matters regarding which the questions were asked, the character or description of the thing or land, the contents of the paper, or other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony.

(3) An order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient party or individual advising the disobedience.

(4) An order with regard to the failure to make discovery as is just.

(b) In addition to the sanctions described in subsection (a), in rate proceedings, when a party fails to answer discovery requests on the date due, the presiding officer may issue an order that the hearing schedule be modified, that the deadline for the filing of other parties' written testimony be extended, or that provides other relief that will allow the other parties a sufficient and reasonable opportunity to prepare their cases.

(c) A witness whose identity has not been revealed as provided in this chapter will not be permitted to testify on behalf of the defaulting party at hearing on the action. If the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting party, the presiding officer may grant a continuance or other appropriate relief.

§ 5.373. Subpoenas.

(a) If issuance of a subpoena is required by operation of this chapter, or because a party or witness has not otherwise appeared, issuance of the subpoena shall be in accordance with § 5.421 (relating to subpoenas).

(b) Subsection (a) supersedes 1 Pa. Code § 35.142 (relating to subpoenas).

Subchapter E. EVIDENCE AND WITNESSES

EVIDENCE

§ 5.401. Admissibility of evidence.

(a) Relevant and material evidence is admissible subject to objections on other grounds.

(b) Evidence will be excluded if:

(1) It is repetitious or cumulative.

(2) Its probative value is outweighed by:

(i) The danger of unfair prejudice.

(ii) Confusion of the issues.

(iii) Considerations of undue delay or waste of time.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.161 (relating to form and admissibility of evidence).

§ 5.402. Admission of evidence.

(a) A party shall move the admission of evidence into the record upon presentation of the sponsoring witness, and after opportunity for other parties to examine the witness.

(b) For an exhibit to be received into evidence, it shall be marked for identification and moved into evidence.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.162 (relating to reception and ruling on evidence).

§ 5.404. Additional evidence.

(a) At any stage of the hearing or thereafter the Commission or the presiding officer may call for further admissible evidence upon an issue and require that the evidence be presented by the parties concerned, either at the hearing or at the adjournment thereof.

(b) Subsection (a) supersedes 1 Pa. Code § 35.128 (relating to additional evidence).

§ 5.405. Effect of pleadings.

(a) Pleadings listed in § 5.1 (relating to pleadings allowed) shall, without further action, be considered as part of the record as pleadings.

(b) Except as provided in subsection (c) and in the case of a noncontested proceeding, a pleading, or any part thereof may not be considered as evidence of a fact other than that of filing thereof unless offered and received into evidence.

(c) A fact admitted by a party in an answer, filed under oath, to a numbered allegation in a pleading may be considered as evidence of the fact without the pleading and answer being offered and received into evidence.

(d) Subsections (a) and (b) supersede 1 Pa. Code § 35.125(d) (relating to order of procedure). Subsection (c) supersedes 1 Pa. Code § 35.35 (relating to answers to complaints and petitions).

§ 5.406. Public documents.

(a) A report, decision, opinion or other document or part thereof, need not be produced or marked for identification, but may be offered in evidence as a public document by specifying the document or part thereof and where it may be found, if the document is one of the following:

(1) A report or other document on file with the Commission.

(2) An official report, decision, opinion, published scientific or economic statistical data or similar public document which is issued by a governmental department, agency, committee, commission or similar entity which is shown by the offeror to be reasonably available to the public.

(b) Upon the request of a party and at the direction of the presiding officer or the Commission, a party who incorporates by reference a pleading shall provide a copy of the pleading to the party requesting one.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.165 and 35.166 (relating to public documents; and prepared expert testimony).

§ 5.407. Records of other proceedings.

(a) When a portion of the record in another proceeding before the Commission is offered in evidence and shown to be relevant and material to the instant proceeding, a true copy of the record shall be presented in the form of an exhibit, together with additional copies as provided in § 5.409 (relating to copies and form of documentary evidence), unless both of the following occur:

(1) The party offering the record agrees to supply, within a period of time specified by the Commission or the presiding officer, the copies at his own expense, if any, when so required.

(2) The portion is specified with particularity so as to be readily identified, and upon motion is admitted into evidence by reference to the records of the other proceedings.

(b) Subsection (a) is identical to 1 Pa. Code § 35.167 (relating to records in other proceedings).

§ 5.408. Official and judicial notice of fact.

(a) Official notice or judicial notice of facts may be taken by the Commission or the presiding officer.

(b) When the decision of the Commission or the presiding officer rests on official notice or judicial notice of a

material fact not appearing in the evidence in the record, the parties will be so notified.

(c) Upon notification that facts are about to be or have been noticed, a party adversely affected shall have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed.

(d) The Commission or the presiding officer in its discretion will determine whether written presentations suffice, or whether oral argument, oral evidence or cross-examination is appropriate in the circumstances.

(e) The Commission or presiding officer may also give official notice as the term is defined in section 331(g) of the act (relating to powers of commission and administrative law judges).

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.173 (relating to official notice of facts).

§ 5.409. Copies and form of documentary evidence.

(a) Except as otherwise provided in this chapter, Chapters 1 and 3 (relating to rules of administrative practice and procedure; and special provisions), when exhibits of a documentary character are offered in evidence, copies shall be furnished to the presiding officer and to the parties present at the hearing, unless the presiding officer otherwise directs. Two copies of each exhibit of documentary character shall be furnished for the use of the Commission unless otherwise directed by the presiding officer.

(b) Whenever practicable, all exhibits of a documentary character received in evidence must be on paper of good quality and so prepared as to be plainly legible and durable, whether printed, typewritten or otherwise reproduced, and conform to Chapter 1, Subchapter D (relating to documentary filings) whenever practicable.

(c) Subsection (a) is identical to 1 Pa. Code § 35.169 (relating to copies to parties and agency). Subsection (b) is identical to 1 Pa. Code § 35.168 (relating to form and size of documentary evidence).

WITNESSES

§ 5.412. Written testimony.

(a) *General.* Use of written testimony in Commission proceedings is encouraged, especially in connection with the testimony of expert witnesses. Written direct testimony is required of expert witnesses testifying in rate cases.

(b) *Use.* The presiding officer may direct that expert testimony to be given upon direct examination be submitted as prepared written testimony. A reasonable period of time will be allowed to prepare written testimony.

(c) *Rules regarding use.* Written testimony is subject to the same rules of admissibility and cross-examination of the sponsoring witness as if it were presented orally in the usual manner.

(d) *Cross-examination.* Cross-examination of the witness presenting written testimony shall proceed at the hearing at which testimony is authenticated if service of the written testimony is made upon each party of record at least 20 days prior to the hearing, unless the presiding officer for good cause otherwise directs. In a rate proceeding, the presiding officer or the Commission will establish the schedule for the filing and authentication of written testimony, and for cross-examination by other parties.

(e) *Form.* Written testimony must normally be prepared in question and answer form, include a statement of the qualifications of the witness and be accompanied by exhibits to which it relates. A party offering prepared written testimony shall insert line numbers in the left-hand margin on each page. A party should also use a logical and sequential numbering system to identify the written testimony of individual witnesses.

(f) *Service.* Written testimony shall be served upon the presiding officer and parties in the proceeding in accordance with the schedule established by this chapter. At the same time the testimony is served, a certificate of service for the testimony shall be filed with the Secretary.

(g) *Copies.* At the hearing at which the testimony is authenticated, counsel for the witness shall provide two copies of the testimony to the court reporter.

(h) *Supersession.* Subsections (a)—(g) supersede 1 Pa. Code §§ 35.138, 35.150 and 35.166 (relating to expert witnesses; scope and conduct of examination; and prepared expert testimony).

SUBPOENAS AND PROTECTIVE ORDERS

§ 5.421. Subpoenas.

(a) *Issuance.*

(1) A subpoena may be issued by the Commission upon its own motion.

(2) Other than under paragraph (1), a subpoena will issue only upon application in writing to the presiding officer, except that during a hearing in a proceeding, the application may be made orally on the record before the presiding officer, who will determine the necessity of issuing the subpoena.

(b) *Form.* The written application:

(1) Must specify as nearly as possible the general relevance, materiality and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as possible of the documents desired.

(2) Must list the facts to be proved by the documents in sufficient detail to indicate the necessity of the documents.

(3) Must contain a notice that a response or objection to the application shall be filed with the Commission and presiding officer within 10 days of service of the application.

(4) Must include a certificate of service.

(5) May attach the proposed subpoena to the application.

(c) *Service.* An application for a subpoena shall be filed with the Commission and copies served by the petitioner upon:

(1) The party, person or individual to be subpoenaed.

(2) The presiding officer.

(3) The parties.

(4) The Commission's Law Bureau, if the subpoena is directed to a Commission employee.

(5) The person or individual for whom the subpoena is sought when the person is not a party to the case. When the person or individual for whom a subpoena is sought is not a party to the case, the application must identify the persons—names and addresses—including the Secretary and presiding officer, to whom the answer or objection shall be sent.

(d) *Service and return.*

(1) *Personal service.* If service of the subpoena is made by a sheriff, like officer or deputy, service shall be evidenced by the return thereof. If made by another person, the person shall make affidavit thereof, describing the manner in which service was made, and return the affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service, a copy of the subpoena shall be exhibited to and left with the person to be served. The original subpoena, bearing or accompanied by the authorized return, affidavit or statement, shall be returned to the Secretary, or, if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.

(2) *Service by mail.* Service of a subpoena upon a party, person or individual may also be accomplished by mail under §§ 1.54 and 1.55 (relating to service by a party; and service on attorneys), or by a form of mail requiring a return receipt, postage prepaid, restricted delivery. Service is complete upon delivery of the mail to the party or the persons referred to in Pa.R.C.P. No. 402(a)(2) (relating to manner of service acceptance of service).

(e) *Fees of witnesses.* A witness subpoenaed by the Commission will be paid the same fees and mileage as paid for the like services in the courts of common pleas. A witness subpoenaed by a party shall be paid the same fees by the party. The Commission, before issuing a subpoena as provided in this section, may require a deposit of an amount adequate to cover the fees and mileage involved or require reasonable surety consistent with § 3.8 (relating to form of interim emergency orders).

(f) *Objections and decision.* A party, person or individual objecting to an application for a subpoena under this section may do so within 10 days in accordance with subsection (b)(3). The administrative law judge will address an objection within 10 days of the assignment of any objection filed under this section.

(g) *Supersession.* Subsections (a)—(e) supersede 1 Pa. Code § 35.142 (relating to subpoenas).

§ 5.423. Orders to limit availability of proprietary information.

(a) *General rule for adversarial proceedings.* A petition for protective order to limit the disclosure of a trade secret or other confidential information on the public record will be granted only when a party demonstrates that the potential harm to the party of providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process. A protective order to protect trade secrets or other confidential information will apply the least restrictive means of limitation which will provide the necessary protections from disclosure. In considering whether a protective order to limit the availability of proprietary information should issue, the Commission or the presiding officer should consider, along with other relevant factors, the following:

(1) The extent to which the disclosure would cause unfair economic or competitive damage.

(2) The extent to which the information is known by others and used in similar activities.

(3) The worth or value of the information to the party and to the party's competitors.

(4) The degree of difficulty and cost of developing the information.

(5) Other statutes or regulations dealing specifically with disclosure of the information.

(b) *General rule for nonadversarial proceedings.* A petition for protective order limiting the disclosure of a trade secret or other confidential information in a nonadversarial proceeding shall be referred to the Law Bureau for recommended disposition by the Commission. The Commission will not disclose any material that is the subject of a protective order under this provision during the pendency of such a request.

(c) *Restrictions.*

(1) A protective order to restrict disclosure of proprietary information may require that a party receive, use or disclose proprietary information only for the purposes of preparing or presenting evidence, cross-examination or argument in the proceeding, or may restrict its inclusion in the public record.

(2) A protective order may require that parts of the record of a proceeding which contain proprietary information including, but not limited to, exhibits, writings, direct testimony, cross-examination, argument and responses to discovery, will be sealed and remain sealed unless the proprietary information is released from the restrictions of the protective order by agreement of the parties, or pursuant to an order of the presiding officer or the Commission.

(3) A public reference to proprietary information by the Commission or by a party afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the proprietary information to fully understand the reference and not more. The proprietary information shall remain a part of the record, to the extent admitted, for purposes of administrative or judicial review.

(4) Prior to the issuance of a protective order, a party may not refuse to provide information which the party reasonably believes to be proprietary to a party who agrees to treat the information as if it were covered by a protective order until the presiding officer or the Commission issues the order or determines that issuance of the order would not be appropriate. The party claiming the privilege shall file a petition for protective order under subsection (a) within 14 days of the date the request for information was received.

(5) A party receiving proprietary information under this section retains the right, either before or after receipt of the information, to challenge the legitimacy of the claim that the information is proprietary, and to challenge the admissibility of the proprietary information.

(d) *Access to representatives of parties.* Proprietary information provided to a party under this section shall be released to the counsel and eligible outside experts of the receiving party unless the party who is releasing the information demonstrates that the experts or counsel previously violated the terms of a recent protective order issued by the Commission. To be eligible to receive proprietary information, the expert, subject to the following exception, may not be an officer, director, stockholder, partner, owner or employee of a competitor of the producing party. An expert will not be ineligible on account of being a stockholder, partner or owner of a competitor or affiliate unless the ownership interest is valued at more than \$10,000 or constitutes a more than 1% interest, or both. No other persons may have access to the proprietary information except as authorized by order of the Commission or of the presiding officer.

(e) *Special restrictions.* A protective order which totally prohibits the disclosure of a trade secret or other confidential information, limits the disclosure to particular parties or representatives of parties—except as permitted by subsection (c)—or which provides for more restrictive rules than those permitted in subsections (b) and (c), will be issued only in extraordinary circumstances and only when the party from whom the information is sought demonstrates that a greater restriction is necessary to avoid severe and extreme prejudice.

(f) *Return of proprietary information.* A party providing proprietary information under this section may request that the parties receiving the information return the information and the copies thereof to the party at the conclusion of the proceeding, including appeals taken.

CLOSE OF THE RECORD

§ 5.431. Close of the record.

(a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.

(b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.231 and 35.232 (relating to reopening on application of party; and reopening by presiding officer).

Subchapter F. PRESIDING OFFICERS

§ 5.481. Designation of presiding officer.

(a) When evidence is to be taken in a proceeding, either the Commission or its representative appointed according to law, may preside at the hearing.

(b) Subsection (a) is identical to 1 Pa. Code § 35.185 (relating to designation of presiding officers).

§ 5.482. Disqualification of a presiding officer.

(a) A party may file a motion for disqualification of a presiding officer which shall be accompanied by affidavits alleging personal bias or other disqualification.

(b) A presiding officer may withdraw from a proceeding when deemed disqualified in accordance with law.

(c) A motion for disqualification shall be served on the presiding officer and the parties to the proceeding.

(d) The presiding officer will rule upon a motion for disqualification within 30 days of receipt. Failure to rule upon a motion for disqualification within 30 days of its receipt will be deemed to be a denial of the motion.

(e) The ruling of the presiding officer on a motion for disqualification is subject to the interlocutory appeal procedure in § 5.303 (relating to Commission action on petition for interlocutory review and answer).

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.186 (relating to disqualification of a presiding officer).

§ 5.483. Authority of presiding officer.

(a) The presiding officer will have the authority specified in the act, subject to this title. This authority includes, but is not limited to, the power to exclude irrelevant, immaterial or unduly repetitive evidence, to prevent excessive examination of witnesses, to schedule and impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding.

(b) Subsection (a) supersedes 1 Pa. Code § 35.187 (relating to authority delegated to presiding officers).

§ 5.484. Restrictions on duties and activities.

(a) Presiding officers will perform no duties inconsistent with the act, the rules of the Commission, or with their duties and responsibilities.

(b) Except as required for the disposition of ex parte matters not prohibited by the act, no presiding officer will consult a person or party on a fact in issue unless upon notice and opportunity for all parties to participate.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 35.188 (relating to restrictions on duties and activities).

§ 5.485. Manner of conduct of hearings.

(a) The presiding officer will conduct a fair and impartial hearing and maintain order.

(b) The presiding officer may note on the record a party's disregard of a ruling. When necessary, the presiding officer may submit a report to the Commission recommending suspension and disbarment of the offending person as provided by § 1.27 (referring to suspension and disbarment).

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.189 (relating to manner of conduct of hearings).

§ 5.486. Unavailability of presiding officer.

(a) If a presiding officer becomes unavailable, the Chief Administrative Law Judge may either designate another qualified officer to prepare the initial or recommended decision or cause the record to be certified to the Commission for decision.

(b) Subsection (a) is identical to 1 Pa. Code § 35.203 (relating to unavailability of presiding officer).

Subchapter G. BRIEFS**§ 5.501. Content and form of briefs.**

(a) Briefs must contain the following:

(1) A concise statement or counter-statement of the case.

(2) Reference to the pages of the record or exhibits where the evidence relied upon by the filing party appears.

(3) An argument preceded by a summary. The party with the burden of proof shall, in its main or initial brief, completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.

(4) A conclusion with requested relief.

(b) Briefs must also contain the following, if and as directed by the presiding officer:

(1) A statement of the questions involved.

(2) Proposed findings of fact with references to transcript pages or exhibits where evidence appears, together with proposed conclusions of law.

(3) Proposed ordering paragraphs specifically identifying the relief sought.

(c) Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in an appendix to the brief.

(d) Briefs of more than 20 pages must contain on their front leaves a table of contents with page references and a table of citations, which may be prepared without pagination.

(e) Briefs must be as concise as possible and, except for briefs in rate cases, be limited to 60 pages in length, unless some other limitation is imposed or allowed by the

presiding officer. The length of briefs in rate cases will be controlled by the presiding officer.

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.192 (relating to content and form of briefs).

§ 5.502. Filing and service of briefs.

(a) *Number of copies.* An original and nine copies of a brief shall be filed with the Commission under § 1.4 (relating to filing generally). Copies shall be served on the parties in accordance with § 1.59(b)(1) (relating to number of copies to be served).

(b) *Filing of briefs in nonrate proceedings.*

(1) *Initial brief.* An initial brief shall be filed by the party with the burden of proof except as provided by agreement or by direction of the presiding officer.

(2) *Response brief.* A party may file a response brief to the initial brief.

(c) *Filing of briefs in rate proceedings.*

(1) *Main brief.* A main brief may be filed by a party except as provided by agreement or by direction of the presiding officer.

(2) *Reply brief.* A party may file a reply brief to a main brief regardless of whether the party filed a main brief.

(d) *Filing of amicus curiae briefs.* A person interested in the issues involved in a Commission proceeding, although not a party, may, without applying for leave to do so, file amicus curiae briefs in regard to those issues. Unless otherwise ordered, amicus curiae briefs shall be filed and served in the manner and number required and within the time allowed by this section, absent good cause.

(e) *Deadlines.* Initial briefs, main briefs, responsive briefs and reply briefs shall be filed and served within the time fixed by the presiding officer. If no specific times are fixed, initial briefs or main briefs shall be filed and served within 20 days after the date of service of notice of the filing of the transcript and responsive briefs or reply briefs shall be filed within 40 days after date of service of the notice of the filing of the transcript.

(f) Briefs not filed and served on or before the dates fixed therefore will not be accepted, except by special permission of the Commission or the presiding officer as permitted under § 1.15 (referring to extensions of time and continuances).

(g) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.191 and 35.193 (relating to proceedings in which briefs are to be filed; and filing and service of briefs).

Subchapter H. EXCEPTIONS, APPEALS AND ORAL ARGUMENT**§ 5.532. Oral argument before presiding officer.**

(a) When, in the opinion of the presiding officer, time permits and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrant, the presiding officer may, either on the presiding officer's own motion or at the request of a party, allow and fix a time for the presentation of oral argument, imposing limits on the argument that are deemed appropriate.

(b) Subsection (a) supersedes 1 Pa. Code § 35.204 (relating to oral argument before presiding officer).

§ 5.533. Procedure to except to initial, tentative and recommended decisions.

(a) In a proceeding, exceptions may be filed by a party and served within 20 days after the initial, tentative or

recommended decision is issued unless some other exception period is provided. Exceptions may not be filed with respect to an interlocutory decision.

(b) Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception.

(c) The exceptions must be concise. The exceptions and supporting reasons must be limited to 40 pages in length. Statements of reasons supporting exceptions must, insofar as practicable, incorporate by reference and citation, relevant portions of the record and passages in previously filed briefs. A separate brief in support of or in reply to exceptions may not be filed with the Secretary under § 1.4 (relating to filing generally).

(d) An original and nine copies of the exceptions shall be filed with the Secretary under § 1.4.

(e) Unless otherwise ordered by the Commission, the provisions of §§ 1.11(a)(2) and (3) and 1.56(b) (relating to date of filing; and date of service) will not be available to extend the time periods for filing exceptions.

(f) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.211 and 35.212 (relating to procedure to except to proposed report; and content and form of briefs on exceptions).

§ 5.535. Replies.

(a) A party has the right to file a reply to an exception in proceedings before the Commission. Unless otherwise directed by the presiding officer or Commission, a reply shall be filed within 10 days of the date that an exception is due and be limited to 25 pages in length and in paragraph form. A reply must be concise and incorporate by reference relevant passages in previously filed briefs. A reply may not raise new arguments or issues, but be limited to responding to the arguments or issues in the exception.

(b) Unless otherwise ordered by the Commission, the provisions of §§ 1.11(a)(2) and (3) and 1.56(b) (relating to date of filing; and date of service) will not be available to extend the time periods for filing replies to an exception.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.211 (relating to procedure to except to proposed report).

Subchapter I. REOPENING, RECONSIDERATION AND REHEARING

§ 5.571. Reopening prior to a final decision.

(a) At any time after the record is closed but before a final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence.

(b) A petition to reopen must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

(c) Within 10 days following the service of the petition, another party may file an answer thereto.

(d) The record may be reopened upon notification to the parties in a proceeding for the reception of further evidence if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding.

(1) The presiding officer may reopen the record if the presiding officer has not issued a decision or has not certified the record to the Commission.

(2) The Commission may reopen the record after the presiding officer has issued a decision or certified the record to the Commission.

(e) Subsections (a)—(e) supersede 1 Pa. Code §§ 35.231—35.233 (relating to reopening of record).

§ 5.572. Petitions for relief.

(a) Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like must be in writing and specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired.

(b) A copy of every petition covered by subsection (a) shall be served upon each party to the proceeding.

(c) Petitions for reconsideration, rehearing, reargument, clarification, supersedeas or others shall be filed within 15 days after the Commission order involved is entered or otherwise becomes final.

(d) Petitions for rescission or amendment may be filed at any time according to the requirements of section 703(g) of the act (relating to fixing of hearings).

(e) Answers to a petition covered by subsection (a) shall be filed and served within 10 days after service of a petition.

(f) Subsections (a)—(e) supersede 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

Subchapter J. REPORTS OF COMPLIANCE

§ 5.591. Reports of compliance.

(a) A person subject to the jurisdiction of the Commission who is required to do or perform an act by a Commission order, permit or license provision shall file with the Secretary a notice stating that the requirement has or has not been met or complied with.

(b) The notice shall be filed within 30 days following the date when the requirement becomes effective, unless the Commission, by regulation, by order or by making specific provision thereof in a license or permit, provides otherwise for compliance or proof of compliance. The notice shall be accompanied by a verification in accordance with § 1.36 (relating to verification and affidavit).

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.251 (relating to reports of compliance).

§ 5.592. Compliance with orders prescribing rates.

(a) When the Commission makes a final decision concerning a rate filing and permits or requires the adoption of rates other than the rates originally filed, the public utility affected shall file, within 20 days of entry of the final order, a tariff revision consistent with the Commission's decision together with a proof of revenues and supporting calculations. The utility shall simultaneously serve copies of the tariff revision, along with the proof of revenues and supporting calculations, on the parties in the proceeding. A utility may also be required to provide an electronic, red-lined copy of any filing made to assist the parties in promptly identifying and analyzing the filing.

(b) Unless otherwise specified in the order, the tariff revision shall be effective upon statutory notice to the Commission and to the public and, whether made effec-

tive on statutory notice or under authority granted in the order, shall bear under the effective date on the title page the following notation: "Filed in compliance with the order of Pennsylvania Public Utility Commission, entered _____, 2 ____ at _____."

(c) Exceptions to a tariff revision under this section may be filed by a party to the proceeding within 10 days of the date of service of the compliance filing, and shall be strictly limited in scope to the factual issue of alleged deviation from requirements of the Commission order. The utility making the compliance filing may respond to exceptions within 5 days. No further pleadings will be permitted.

(d) No rates contained in a tariff revision filed in compliance with a Commission order may be imposed prior to entry of a subsequent order by the Commission approving the compliance filing. Notwithstanding the filing of an exception, the Commission may allow the compliance rates to become effective.

Subchapter K. APPEALS TO COURT

§ 5.631. Notice of taking appeal.

When an appeal is taken from an order of the Commission to the Commonwealth Court, the appellant shall immediately give notice of the appeal to all parties to the Commission proceeding as provided by § 1.54 (relating to service by a party).

§ 5.632. Preparation and certification of records.

A record will not be certified as complete until copies of exhibits or other papers have been furnished when neces-

sary to complete the Commission file. Copies will be requested by the Commission.

§ 5.633. Certification of interlocutory orders.

(a) When the Commission has made an order which is not a final order, a party may by motion request that the Commission find, and include the findings in the order by amendment, that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal to Commonwealth Court from the order may materially advance the ultimate termination of the matter. The motion shall be filed within 10 days after service of the order, and is procedurally governed by § 5.103(a)—(c) (relating to hearing motions). Unless the Commission acts within 30 days after the filing of the motion, the motion will be deemed denied.

(b) Neither the filing of a motion under subsection (a), nor the adoption of an amended order containing the requested finding, will stay a proceeding unless otherwise ordered by the Commission or Commonwealth Court.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.225 (relating to interlocutory orders).

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