

# PENNSYLVANIA BULLETIN

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Pages 1949—2082

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Environmental Quality Board's  
proposed Clean Air Interstate Rule

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(Master Transmittal Sheet):**

**No. 389, April 2007**

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

## ***Pennsylvania Bulletin***

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

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

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

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

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

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

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

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

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

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

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

### ***Pennsylvania Code***

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

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

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

### **How to Find Documents**

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

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

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

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

### Fiscal Notes

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

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

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# List of Pa. Code Chapters Affected

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# THE GOVERNOR

## Proclamation of Disaster Emergency

April 13, 2007

*Whereas*, Ongoing monitoring and projections made by the National Weather Service and investigations made on my behalf are predicting that a severe winter storm with heavy accumulations of snow mixed with rain and high winds is going to strike the Commonwealth of Pennsylvania; and

*Whereas*, the predicted precipitation may result in extensive road closures, community public safety delays, property damage, and other adverse impacts upon the population of the Commonwealth of Pennsylvania; and

*Whereas*, heavy rains and tidal surges may cause widespread flooding further adversely impacting the state; and

*Whereas*, the emergency situation caused by this impending historical storm may be of such magnitude and severity as to render essential the Commonwealth's supplementation of county and municipal efforts and resources and the activation of all applicable state, county, and municipal emergency response plans; and

*Now Therefore*, pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code (35 Pa.C.S. §§ 7101 et seq.), I do hereby proclaim the existence of a disaster emergency in the Commonwealth of Pennsylvania and I direct all Commonwealth departments and agencies to utilize all available resources and personnel as is deemed necessary to cope with the magnitude and severity of this emergency situation.

*Further*, I hereby transfer up to \$1,000,000 in unused appropriated funds to the Pennsylvania Emergency Management Agency. The aforementioned funds shall be used for disaster-related expenses that may be incurred by various state agencies and departments. These funds shall be credited to a special account established by the Office of the Budget. All Commonwealth agencies purchasing supplies or services in response to this emergency are authorized to utilize the emergency procurement procedures set forth in Section 516 of the Commonwealth Procurement Code, 62 Pa.C.S. § 516. This Proclamation shall serve as the written determination of the basis for the emergency under Section 516; and

*Further*, I hereby direct the Pennsylvania Emergency Management Agency to activate and staff the State Emergency Operations Center for the duration of this emergency situation and to augment it with personnel from other state agencies and departments. I also authorize the Agency to coordinate and direct the emergency preparedness and response activities of other state agencies and departments as deemed necessary to deal with the exigencies of this impending emergency situation through implementation of the State Emergency Operations Plan; and

*Further*, I hereby authorize the Secretary of Transportation to use all available equipment, resources, and personnel of the Department, in whatever manner that he deems necessary, to ensure that all state highways in the areas that may be affected by the disaster are cleared of snow and debris and any other obstructions resulting from this severe storm, and to ensure that highways, bridges, roadbeds, and related facilities and structures, including federal-aid highways, that may sustain damage in the disaster affected areas are immediately repaired, maintained, reconstructed, or replaced, or that new construction is undertaken where necessary. In addition, I hereby waive any laws or regulations that would restrict the application and use of the Department's equipment, resources, and personnel to assist local jurisdictions in the repairs and clearing and removal of debris and other types of obstructions from non-state-owned highways. This assistance to local jurisdictions may be provided solely at the discretion of the Secretary of Transportation. This assistance, however,

## THE GOVERNOR

does not apply to privately owned highways, roads, streets, or other types of property; and I hereby authorize the Secretary of Transportation, in his sole discretion, to waive any provision of the Vehicle Code or any other law or regulation which he is authorized by law to administer or enforce as may be necessary to respond to this impending emergency; and

*Further*, I hereby authorize the Commissioner of the Pennsylvania State Police to use all available resources and personnel of the Department, in whatever manner that he deems necessary, to aid in the recovery aspects related to all interstate, other federal, and state highways in the Commonwealth to address the emergency resulting from this severe storm; and

*Further*, pursuant to the powers vested in me by the Constitution and laws of this Commonwealth, I hereby authorize the Adjutant General of Pennsylvania to place on state active duty for the duration of the emergency disaster proclamation, such individuals and units of the Pennsylvania National Guard, as requested by the Pennsylvania Emergency Management Agency, to alleviate the potential danger to public health and safety caused by the aforementioned emergency; and

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

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

*Given* under my hand and the Seal of the Governor, at the city of Harrisburg, this thirteenth day of April in the year of our Lord two thousand seven, and of the Commonwealth the two hundred and thirty-first.



*Governor*

[Pa.B. Doc. No. 07-731. Filed for public inspection April 27, 2007, 9:00 a.m.]

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

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

Amendment of Pennsylvania Rule of Disciplinary Enforcement 219; No. 58 Disciplinary Rules; Doc. No. 1

#### Order

*Per Curiam:*

*And Now*, this 10th day of April, 2007, Pennsylvania Rule of Disciplinary Enforcement 219 is amended to read as set forth in Annex A.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration. The amendments shall take effect upon publication in the *Pennsylvania Bulletin* and shall be applicable beginning with the 2007-2008 assessment year.

Mr. Justice Fitzgerald did not participate in the consideration or decision of this matter.

#### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart B. DISCIPLINARY ENFORCEMENT

#### CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

##### Subchapter B. MISCONDUCT

**Rule 219. Periodic assessment of attorneys; voluntary inactive status.**

\* \* \* \* \*

(d) On or before July 1 of each year all persons required by this rule to pay an annual fee shall file with the Administrative Office a signed statement on the form prescribed by the Administrative Office in accordance with the following procedures:

(1) The statement shall set forth:

\* \* \* \* \*

(ii) The current residence and office addresses of the attorney[. **Each address**], **each of which** shall be an actual street address or rural route box number, and the Administrative Office shall refuse to accept a statement that sets forth only a post office box number for either required address. **A preferred mailing address different from those addresses may also be provided on the statement and may be a post office box number. The attorney shall indicate which of the addresses, the residence, office or mailing address, will be accessible through the website of the Board (<http://www.padisciplinaryboard.org/>) and by written or oral request to the Board.**

**Official Note:** Public web docket sheets will show the attorney's address as entered on the court docket.

\* \* \* \* \*

[Pa.B. Doc. No. 07-732. Filed for public inspection April 27, 2007, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [231 PA. CODE CH. 1920]

Order Amending Rule 1920.14; No. 474 Civil Procedural Rules; Doc. No. 5

#### Order

*Per Curiam:*

*And Now*, this 11th day of April, 2007, Rule 1920.14 of the Pennsylvania Rules of Civil Procedure is amended as follows.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective immediately.

Mr. Justice Fitzgerald did not participate in the consideration or decision of this matter.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

**Rule 1920.14. Answer. Denial. Affidavit under Section 3301(d) of the Divorce Code.**

(a) The averments in the complaint as to the divorce or annulment [ **and** ], all other claims which may be joined under the Divorce Code **and any petition for special relief under these rules** shall be deemed denied unless admitted by an answer. **Notwithstanding the foregoing, the court may require a response to a petition for special relief.**

(b) The averments of the affidavit under Section 3301(d) of the Divorce Code shall be deemed admitted unless denied by counteraffidavit.

**Official Note:** See Rule 1920.72(d) for the form of counteraffidavit.

#### Explanatory Comment—1994

Subdivision (b) requires that the averments of the plaintiff's affidavit under Section 3301(d) of the Divorce Code be denied by counteraffidavit. If the defendant fails to file a counteraffidavit, all allegations are deemed admitted.

**Explanatory Comment—2007**

**Subdivision (a) has been amended to clarify that the averments in a petition for special relief in a divorce or annulment action are deemed to be denied unless admitted by an answer.**

[Pa.B. Doc. No. 07-733. Filed for public inspection April 27, 2007, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 8]

**Order Amending Rule 801; No. 356 Criminal Procedural Rules; Doc. No. 2**

### Order

*Per Curiam:*

Now, this 13th day of April, 2007, upon the recommendation of the Criminal Procedural Rules Committee; this proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice, and a Final Report to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 801 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective immediately.

Mr. Justice Fitzgerald did not participate in the consideration or decision of this matter.

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### CHAPTER 8. SPECIAL RULES FOR CASES IN WHICH DEATH SENTENCE IS AUTHORIZED

#### Rule 801. Qualifications for Defense Counsel in Capital Cases.

In all cases in which the district attorney has filed a Notice of Aggravating Circumstances pursuant to Rule 802, before an attorney may participate in the case either as retained or appointed counsel, the attorney must meet the educational and experiential criteria set forth in this rule.

(1) EXPERIENCE: Counsel shall

(a) be a member in good standing of the Bar of this Commonwealth;

(b) be an active trial practitioner with a minimum of 5 years [ ' ] criminal litigation experience; and

(c) have served as lead or co-counsel in a minimum of 8 significant cases [ **which were tried to verdict before a jury** ] that were given to the jury for deliberations. If representation is to be only in an appellate court, prior appellate or post-conviction representation in a minimum of 8 significant cases shall satisfy this requirement. A "significant case" for purposes of this rule [ **shall be a** ] is one that charges murder, [ **including** ] manslaughter [ **and** ], vehicular homicide, or a felony [ **of the first or second degree** ] for which the maximum penalty is 10 or more years.

(2) EDUCATION:

(a) During the 3-year period immediately preceding the appointment or entry of appearance, counsel shall have completed a minimum of 18 hours of training relevant to representation in capital cases, as approved by the Pennsylvania Continuing Legal Education Board.

(b) Training in capital cases shall include, but not be limited to, training in the following areas:

(i) relevant state, federal, and international law;

(ii) pleading and motion practice;

(iii) pretrial investigation, preparation, strategy, and theory regarding guilt and penalty phases;

(iv) jury selection;

(v) trial preparation and presentation;

(vi) presentation and rebuttal of relevant scientific, forensic, biological, and mental health evidence and experts;

(vii) ethical considerations particular to capital defense representation;

(viii) preservation of the record and issues for post-conviction review;

(ix) post-conviction litigation in state and federal courts;

(x) unique issues relating to those charged with capital offenses when under the age of 18 [ . ];

(xi) [ **Counsel's** ] **counsel's** relationship with the client and family [ ; ].

(c) The Pennsylvania Continuing Legal Education Board shall maintain and make available a list of attorneys who satisfy the educational requirements set forth in this rule.

### Comment

The purpose of this rule is to provide minimum uniform statewide standards for the experience and education of appointed and retained counsel in capital cases, to thus ensure such counsel possess the ability, knowledge, and experience to provide representation in the most competent and professional manner possible. These requirements apply to counsel at all stages of a capital case, including pretrial, trial, post-conviction, and appellate.

The educational and experience requirements of the rule may not be waived by the trial or appellate court. A court may allow representation by an out-of-state attorney pro hac vice, if satisfied the attorney has equivalent experience and educational qualifications, and is a member in good standing of the Bar of the attorney's home jurisdiction.

An attorney may serve as "second chair" in a capital case without meeting the educational or experience requirements of this rule. "Second chair" attorneys may not have primary responsibility for the presentation of significant evidence or argument, but may present minor or perfunctory evidence or argument, if deemed appropriate in the discretion of the court. Service as a "second chair" in a homicide case will count as a trial for purposes of evaluating that attorney's experience under paragraph [ (A) ](1)(c) of this rule.

**Paragraph (1)(c) was amended in 2007 to clarify that (1) cases that are tried to a verdict or that end with a mistrial after the case is given to the jury for deliberations satisfy the requirements of the rule, and (2) all cases charging felonies for which the term of imprisonment is 10 or more years will count as "significant cases," see, e.g., Crimes Code, 18 Pa.C.S. § 106(b), and 35 P.S. § 780-113(f)(1).**

The CLE Board may approve entire courses focusing on capital litigation, or individual portions of other courses dealing with general areas relevant to capital cases (such as trial advocacy). It is expected that counsel will attend training programs encompassing the full range of issues confronting the capital litigator from the investigative and pretrial stages through appellate and post-conviction litigation in the state and federal courts.

Determination of experience will be accomplished by the appointing or admitting court, by colloquy or otherwise.

For the entry of appearance and withdrawal of counsel requirements generally, see Rule 120.

For the appointment of trial counsel, see Rule 122.

For the entry of appearance and appointment of counsel in post-conviction collateral proceedings, see Rule 904.

**Official Note:** Adopted June 4, 2004, effective November 1, 2004; **amended April 13, 2007, effective immediately.**

#### *Committee Explanatory Reports:*

**Final Report explaining the April 13, 2007 changes to paragraph (1)(c) published with the Court's Order at 37 Pa.B. 1961 (April 28, 2007).**

### FINAL REPORT<sup>1</sup>

#### *Proposed Amendments to Pa.R.Crim.P. 801*

#### **Qualifications for Defense Counsel in Capital Cases**

On April 13, 2007, effective immediately, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 801 to clarify that cases charging ungraded felonies for which the penalty is ten years or more fall within the definition of a "significant case," and cases that end in a mistrial after being submitted to the jury count toward the eight significant cases required by the rule.

#### **I. INTRODUCTION**

Since June 4, 2004 when the Court adopted Rule 801 (Qualifications For Defense Counsel In Capital Cases) establishing the minimum educational and experiential requirements that attorneys must satisfy to represent defendants who are subject to the death penalty, the Committee has received numerous questions about the scope and application of the rule. Two issues that were raised by several different individuals concerned the provisions in paragraph (1)(c) of Rule 801: (1) whether ungraded felonies would count in calculating the 8 significant cases for purposes of meeting the experiential requirement; (2) whether the situation in which an attorney

has represented a defendant charged with "Rule 801 qualifying" felonies through the complete trial of the case only to have the jury be deadlocked on a verdict and a mistrial being declared would count toward the 8 significant cases. After considering these issues and the purpose for Rule 801, the Committee reasoned that this purpose would be served both (1) if ungraded felonies with the same sentence as the felonies of the first or second degree are classified as "significant cases" and (2) if cases in which the matter was submitted to the jury for deliberations end in a mistrial are counted toward the 8 significant cases requirement.

#### *Discussion*

Rule 801(1)(c) defines a "significant case" as a murder, including manslaughter and vehicular homicide, or a felony of the first or second degree. It is the specification of "a felony of the first or second degree" that generated many of the inquiries the Committee has received.<sup>2</sup> Because some offenses that are designated felonies without a grade carry a punishment the same as an offense of the first or second degree,<sup>3</sup> it makes sense these "ungraded" felonies also should be considered "significant cases" under Rule 801. Noting that the sentence for a felony of the second degree is "not more than ten years," the Committee concluded that to be counted as a significant case, an ungraded felony must have a maximum penalty of 10 or more years. Accordingly, the last sentence of Rule 801(1)(c) has been amended to be applicable to all felonies "for which the maximum penalty is 10 or more years." In addition, the phrase "murder, including manslaughter and vehicular homicide" has been amended to read "murder, manslaughter, vehicular homicide" because manslaughter and vehicular homicide are crimes distinct from murder.

Rule 801(1)(c) also requires that counsel must have served as lead or co-counsel in cases "which were tried to verdict before a jury." Several of the inquiries the Committee has received about Rule 801 questioned whether cases that are tried and submitted to the jury but end in a mistrial would count toward the 8 significant cases, pointing out in these cases the attorney has done everything he or she must do toward trying the case to verdict, there just was not a verdict. The Committee agreed this interpretation is a logical extension of the requirement that the attorney try a case to verdict before a jury. To make this clear, the first sentence of Rule 801(1)(c) has been amended by deleting the phrase "which were tried to verdict before a jury" and replacing this with "that were given to the jury for deliberations."

Finally, the Committee added an explanatory paragraph to the Rule 801 Comment that elaborates on the new rule provisions and includes cross-references to the Crimes Code and the Controlled Substance, Drug, Device and Cosmetic Act concerning graded and ungraded felonies.

[Pa.B. Doc. No. 07-734. Filed for public inspection April 27, 2007, 9:00 a.m.]

<sup>2</sup> The Crimes Code, 18 Pa.C.S. § 1103, provides that the sentence of imprisonment for felony of the first degree "shall be fixed by the court at not more than 20 years," and the sentence for a felony of the second degree "shall be fixed by the court at not more than ten years."

<sup>3</sup> For example, Title 35, section 780-113(f)(1), designates certain offenses of the Controlled Substance, Drug, Device and Cosmetic Act as felonies with a sentence not to exceed 15 years.

<sup>1</sup> The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

# Title 255—LOCAL COURT RULES

## ARMSTRONG COUNTY

### Adoption of New Local Rules of Court—2002; No. 2002-0189—Misc.

#### Order

*And Now*, this 12th day of April, 2007; *It Is Hereby Ordered* as follows:

1. L.R.C.P. No. 205.4, follows this Order, is hereby adopted as a new Local Rule of Civil Procedure.

2. Certified copies of this Order, with attachments, shall be distributed by the Court Administrator as required by pertinent state rules of court, together with a diskette containing the hard copy version where required.

*It Is Further Ordered* that the changes to the Armstrong County Local Rules of Civil Procedure shall be effective upon their publication on the website for Administrative Office of Pennsylvania Courts, [ujportal.pacourts.us](http://ujportal.pacourts.us).

*By the Court*

JOSEPH A. NICKLEACH,  
*President Judge*

#### Rule 205.4. Limited Electronic Filing and Service of Legal Papers.

The Prothonotary of Armstrong County is hereby authorized to accept for filing, legal papers as defined in subsection (a) of this Rule, by electronic transmission.

(a) As used in this rule, the following words shall have the following meanings:

“legal paper,” a writ of summons and a complaint in civil action.

(b) A legal paper shall be transmitted electronically to the Prothonotary in the format of Adobe PDF.

(c)(1) The electronic transmission of legal papers shall be accomplished via the website designated by the Prothonotary, accessible at <http://www.landata.com>.

(2) All parties shall qualify for access to the electronic filing system at the designated website, by complying with the following:

(i) create, and thereafter use, a Username and Password;

(ii) provide account information for the financial institution from which each transaction shall automatically deduct the filing cost; and

(iii) download the required software.

(3) A legal paper electronically submitted after the close of regular business hours of the Prothonotary shall be deemed to have been filed on the immediately following business day.

(d) A filing party shall pay the cost of the electronic filing of a legal paper by an Automated Clearing House (ACH) debit.

(e) A filing party shall be responsible for any delay, disruption or interruption, and assumes the risk of improper or untimely filing as set forth in Pa.R.C.P. No. 205.4(e).

(f) Following the electronic transmission of a legal paper, the Prothonotary shall electronically provide a filing party with an acknowledgment setting forth the time and date the legal paper was received.

(1) If a legal paper is rejected, the Prothonotary shall electronically provide a filing party with the reasons therefor.

(2) Upon acceptance of a legal paper, the Prothonotary shall electronically provide a filing party with a printable version of the document containing an embedded seal.

(g) The Prothonotary need not maintain a hard copy of any legal paper filed electronically except as required to comply with Pa.R.C.P. No. 205.4(b)(2)(ii).

(h) The filing party shall provide a valid return email address with a legal paper transmitted.

(i) The definition of “legal paper” as set forth in Section (a) of this Rule is not intended to alter or limit the definition of “legal paper” as used in Pa.R.C.P. No. 205.4(g).

#### Comment

This Rule introduces electronic filing for the first time in the Judicial District. It permits electronic filing of original process only.

[Pa.B. Doc. No. 07-735. Filed for public inspection April 27, 2007, 9:00 a.m.]

## DAUPHIN COUNTY

### Promulgation of Rules of Juvenile Dependency; No. 1793 CV 1989; No. 4-MD 2007

#### Order

*And Now*, this 9th day of April 2007, Dauphin County Local Rule 573 is amended as follows:

#### RULE 573. DISCOVERY IN CHILD ABUSE/ ASSAULT CASES

Pursuant to the Juvenile Act, 42 Pa.C.S. § 6307, and the Child Protective Services Law, 23 Pa.C.S. § 6840, any party to litigation seeking discovery of confidential reports and records of Dauphin County Services for Children and Youth (Child Protective Service Agency) shall file a petition for a Show Cause Order stating with particularity the scope, necessity, and authority for the discovery sought.

The petition and rule shall be served on any adverse party, on the Dauphin County Children and Youth Agency, and on the guardian ad litem (if any) for the child.

Any objection must identify that portion of the reports of records sought to be withheld and state with particularity any privilege asserted thereto.

Thereafter, the court shall either a) schedule a hearing on the motion; or b) schedule an in-camera conference; or c) issue an order based on the averments in the motion and in any response filed thereto.

Comments:

Nothing in this rule shall preclude a party from filing a motion for a protective order.

Certain privileges are absolute and are not overcome by a defendant's Sixth Amendment right to cross-examine a witness or to due process of law. Examples of the foregoing are:

- Domestic Violence Advocate/Counselor  
23 Pa.C.S. § 6116; *V.B.T. v. Family Services of Western Pa.*  
705 A.2d 1325 (Pa. Super. 1998)
- Sexual Assault Counselor Privilege  
42 Pa.C.S. § 5945; *Commonwealth v. Wilson*  
602 A.2d 1290 (Pa. 1992)
- Psychotherapist Privilege  
42 Pa.C.S. § 5944; *Commonwealth v. Counterman*  
719 A.2d 284 (Pa. 1998)

**Comment**

This rule was rescinded effective February 1, 2007, by passage of the amendments to the Pa.R.J.C.P.

This rule is readopted effective February 1, 2007.

*By the Court*

RICHARD A. LEWIS,  
*President Judge*

[Pa.B. Doc. No. 07-736. Filed for public inspection April 27, 2007, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Collection Fee and Late Payment Penalty for 2007-2008 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 2007-2008 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 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. 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.

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

[Pa.B. Doc. No. 07-737. Filed for public inspection April 27, 2007, 9:00 a.m.]

### Notice to Attorneys

Notice is hereby given under 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 of the Board*  
*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

<b>Bank Code</b>	<b>A.</b>
595	Abacus Federal Savings Bank
374	Abington Savings Bank
2	Adams County National Bank
572	Affinity Bank of Pennsylvania
302	Allegheny Valley Bank of Pittsburgh
548	Allegiance Bank of North America
579	Alliance Bank
375	Altoona First Savings Bank
376	Ambler Savings and Loan Association
532	American Bank of Lehigh Valley
502	American Eagle Savings Bank
581	American Home Bank, N.A.
116	Ameriserv Financial
377	Apollo Trust Company
568	Arc Federal Credit Union

<b>Bank Code</b>	<b>B.</b>
558	Bancorp Bank (The)
485	Bank of America
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
501	BELCO Community Credit Union
397	Beneficial Savings Bank
582	Berkshire Bank
391	Blue Ball Bank
392	Brentwood Savings Bank
495	Brown Brothers Harriman & Co.
161	Bryn Mawr Trust Company
156	Bucks County Bank

<b>Bank Code</b>	<b>C.</b>
480	Cambria County Federal Savings & Loan Assoc.
540	C & G Savings Bank
459	Centra Bank
394	Charleroi Federal Savings Bank
599	Citibank N.A.
238	Citizens and Northern Bank
561	Citizens Bank of Pennsylvania
420	Citizens National Bank—Myersdale
206	Citizens Savings Bank
353	Citizens Trust Company
602	City National Bank of New Jersey
576	Clarion County Community Bank
16	Clearfield Bank & Trust Co.
591	Clearview Federal Credit Union
354	Coatesville Savings Bank
603	Colonial American Bank

17	Columbia County Farmers National Bank	46	First National Bank of Mercersburg (The)
250	Commerce Bank, PA, NA	419	First National Bank of Mifflintown (The)
18	Commerce Bank/Harrisburg, NA	198	First National Bank of Minersville (The)
223	Commercial Bank & Trust of Pennsylvania	47	First National Bank of Newport (The)
310	Community Bank & Trust Company	426	First National Bank of Palmerton (The)
21	Community Bank	48	First National Bank of Pennsylvania
204	Community Banks	427	First National Bank of Port Alleghany (The)
533	Community First Bank, N.A.		First National Community Bank
430	Community National Bank of Northwestern PA	175	First National Community Bank—Midland
132	Community State Bank of Orbisonia	549	First Penn Bank
590	Continental Bank	170	First Resource Bank
23	County National Bank	592	First Savings Bank of Perkasié
380	County Savings Bank	40	First Star Savings Bank
382	CSB Bank	349	First Summit Bank
		158	First United National Bank
		408	Firstrust Bank
<b>Bank Code D.</b>		151	FNB Bank, N.A.
339	Dime Bank (The)	493	Fox Chase Bank
239	DNB First, N.A.	291	Franklin Mint Federal Credit Union
27	Dollar Bank	241	Fulton Bank
423	Dwelling House Savings & Loan Association	58	
<b>Bank Code E.</b>		<b>Bank Code G.</b>	
357	Eagle National Bank	588	Gateway Bank of Pennsylvania
569	Earthstar Bank	499	Gratz National Bank (The)
424	East Penn Bank	593	Graystone Bank
358	East Prospect State Bank	498	Greenville Savings Bank
597	East River Bank		
340	East Stroudsburg Savings Association	<b>Bank Code H.</b>	
500	Elderton State Bank	402	Halifax National Bank
567	Embassy Bank	244	Hamlin Bank and Trust Company
541	Enterprise Bank	64	Harleysville National Bank and Trust Company
28	Ephrata National Bank (The)	362	Harleysville Savings Bank
383	ESB Bank, F.S.B.	363	Hatboro Federal Savings
601	Esquire Bank	410	Herndon National Bank (The)
552	Eureka Bank	559	Home Savings & Loan Company
		68	Honesdale National Bank (The)
		350	HSBC Bank of USA
<b>Bank Code F.</b>		364	Huntingdon Valley Bank
31	Farmers & Merchants Trust Company		
205	Farmers National Bank of Emlenton	<b>Bank Code I.</b>	
436	Farmers National Bank of Kittanning	365	Indiana First Savings Bank
311	Fidelity Bank	575	Integrity Bank
34	Fidelity Deposit & Discount Bank	557	Investment Savings Bank
343	Fidelity Savings and Loan of Bucks County	200	Iron and Glass Bank
583	Fifth Third Bank	526	Iron Workers Bank
174	First Citizens National Bank	366	Irwin Bank & Trust Company
191	First Columbia Bank & Trust Co.		
539	First Commonwealth Bank	<b>Bank Code J.</b>	
551	First Cornerstone Bank	70	Jersey Shore State Bank
369	First Federal Savings & Loan Assoc. of Bucks County	127	Jim Thorpe National Bank
504	First Federal Savings & Loan Assoc. of Greene County	488	Jonestown Bank and Trust Company
388	First Federal Savings Bank	72	Juniata Valley Bank (The)
525	First Heritage Federal Credit Union		
228	First Keystone Bank	<b>Bank Code K.</b>	
371	First Liberty Bank & Trust	403	Keystone Nazareth Bank and Trust
263	First Merit Bank, N.A.	414	Kish Bank
51	First National Bank & Trust Co. of Newtown (The)		
42	First National Bank of Berwick (The)	<b>Bank Code L.</b>	
52	First National Bank of Chester County	74	Lafayette Ambassador Bank
416	First National Bank of Fleetwood (The)	554	Landmark Community Bank
421	First National Bank of Fredericksburg	187	Lebanon Valley Farmers Bank
322	First National Bank of Greencastle	182	Leesport Bank
418	First National Bank of Liverpool (The)	78	Luzerne National Bank
43	First National Bank of Marysville		
		<b>Bank Code M.</b>	
		386	Malvern Federal Savings Bank
		361	M & T Bank



510	Marion Center National Bank		
81	Mars National Bank (The)	<b>Bank Code</b>	<b>S.</b>
367	Mauch Chunk Trust Company	153	S&T Bank
5	Mellon Bank, N.A.	464	Scottdale Bank & Trust Company (The)
555	Mercer County State Bank	460	Second Federal Savings & Loan Assoc. of Philadelphia
192	Merchants National Bank of Bangor (The)		Sentry Federal Credit Union
478	Merchants National Bank of Kittanning	516	Sharon Savings Bank
294	Mid Penn Bank	458	Sky Bank
511	Mifflin County Savings Bank	312	Slovenian Savings & Loan Assoc. of Franklin—Conemaugh
276	Mifflinburg Bank & Trust Company	462	Somerset Trust Company
457	Milton Savings Bank		Sovereign Bank, FSB
345	Minersville Safe Deposit Bank and Trust Company	486	Standard Bank, PASB
596	MoreBank	316	Stonebridge Bank
346	Morton Savings Bank	518	Sun National Bank
484	Muncy Bank & Trust Company (The)	542	SunTrust
		517	Susquehanna Bank
<b>Bank Code</b>	<b>N.</b>	440	Susquehanna Bank PA
337	National City Bank of Pennsylvania	385	Susquehanna Patriot Bank
88	National Penn Bank	30	Swineford National Bank
347	Neffs National Bank (The)	282	
372	Nesquehoning Savings Bank	236	
536	New Century Bank	<b>Bank Code</b>	<b>T.</b>
434	New Tripoli Bank (The)	143	TD Banknorth
15	NextTier Bank	594	Team Capital Bank
545	Nittany Bank	463	The Haverford Trust Company
492	North Penn Bank	26	Third Federal Savings Bank
439	Northumberland National Bank	467	Turbotville National Bank (The)
93	Northwest Savings Bank		
546	Nova Savings Bank	<b>Bank Code</b>	<b>U.</b>
		113	Union Bank and Trust Company
<b>Bank Code</b>	<b>O.</b>	481	Union Building and Loan Savings Bank
348	Old Forge Bank	483	Union National Bank of Mount Carmel (The)
323	Omega Bank, NA		Union National Community Bank
489	OMEGA Federal Credit Union	133	United Bank of Philadelphia
94	Orrstown Bank	472	United Savings Bank
		475	Unity Bank
<b>Bank Code</b>	<b>P.</b>	600	Univest National Bank & Trust Company
598	Parke Bank	232	
267	Parkvale Bank	<b>Bank Code</b>	<b>V.</b>
584	Parkview Community Federal Credit Union	589	Valley Green Bank
580	Penn Liberty Bank	136	Vartan National Bank
97	Penn Security Bank & Trust Company		
168	Pennstar Bank	<b>Bank Code</b>	<b>W.</b>
544	Pennsylvania Business Bank		Wachovia
445	Pennsylvania State Bank	338	Washington Federal Savings Bank
99	PeoplesBank, A Codorus Valley Company	119	Wayne Bank
447	Peoples National Bank of Susquehanna County	121	Wesbanco Bank
491	Peoples State Bank (The)	553	West Milton State Bank
556	Philadelphia Federal Credit Union	122	West View Savings Bank
448	Phoenixville Federal Bank & Trust	494	Westmoreland Federal Savings
79	PNC Bank, N.A.	473	William Penn Bank
534	Pocono Community Bank	476	Willow Financial Bank
528	Polonia Bank	370	Wilmington Trust of PA
449	Port Richmond Savings	160	Woodlands Bank
454	Portage National Bank	272	Woori America Bank
451	Progressive Home Federal	573	
456	Prudential Savings Bank	<b>Bank Code</b>	<b>X.</b>
<b>Bank Code</b>	<b>Q.</b>	<b>Bank Code</b>	<b>Y.</b>
107	Quakertown National Bank (The)	571	Yardville National Bank
560	Quaint Oak Savings Bank	577	York Traditions Bank
<b>Bank Code</b>	<b>R.</b>	<b>Bank Code</b>	<b>Z.</b>
452	Reliance Savings Bank		
220	Republic First Bank		
208	Royal Bank America		

**Notice of Transfer of Attorneys to Inactive Status**

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated March 16, 2007, under Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective April 15, 2007 for Compliance Group 2 due August 31, 2006.

Notice with respect to attorneys having Pennsylvania registration addresses, which have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

Ahaghotu-Nwani, Chinyere CM  
Washington, DC

Aldrich, Debra C.  
Wilmington, DE

Anders, Gayle  
Nashville, TN

Badrinath, Asha Lata  
U.S. Virgin Islands

Booker Sr., Garvill Leon  
Apple Valley, CA

Bowser, Kyle Damon  
Encino, CA

Brannon, Gail L.  
Bradenton, FL

Brown, Paul Damon  
Wilmington, DE

Childs, Denise Marie Camille  
Oceanside, CA

Coveney, Pamela Joy  
Randolph, MA

deCelis, Sara Anne  
Haddonfield, NJ

Dobkin, Richard B.  
Tucker, GA

Dodd, Sabrina Marie  
Kensington, MD

Dunbar, Steven F.  
Phillipsburg, NJ

England Jr., John M.  
San Jose, CA

Fantt, Michele Avis  
Washington, DC

Fitzsimmons, Michael Sean  
South Brunswick, NJ

Gary, Kevin Michael  
Greenlawn, NY

Gelfand, Todd Jason  
Haddon Heights, NJ

Gorgei, Melissa A.  
Chicago, IL

Guzzi, Mark Earl  
Atlanta, GA

Harbig Jr., William Paul  
England

Hawkins, Joanne  
Williamstown, NJ

Hoppel, Richard Vincent  
East Liverpool, OH

Kasuri, Kuldip Singh  
Jackson Heights, NY

Katrlick, Joseph Peter  
White Marsh, MD

Keller, Sharon Elice  
Washington, DC

Kelly Jr., Joseph Edward  
Colts Neck, NJ

Kilgore, Danielle Suzette  
Baltimore, MD

Kosik, Robert A.  
Arlington, VA

Laverty, Yasmyne Christine  
Morris Plains, NJ

Litak-Jaswinski, Grace  
France

Littlefield, Braun Dewheil  
Atlantic City, NJ

Lloyd, John R.  
Allendale, NJ

Magazzu, Louis Neil  
Princeton, NJ

McCabe, Mary M.  
Rochester, NY

McClellan, Marsha A.  
Chicago, IL

McDermott, David E.  
Alexandria, VA

Meyers, Addison J.  
Coral Gables, FL

Moss, Robert Joel  
Voorhees, NJ

Paladino, Carl Pasquale  
Buffalo, NY

Ray, John William  
Miller Place, NY

Reilly, Timothy Patrick  
Absecon, NJ

Rihacek, John Thaddeus  
Freehold, NJ

Robertson, Rhonda Faye  
Washington, DC

Rose Jr., Allen Ernest  
San Mateo, CA

Rosenblum-Pisetzner, Melissa  
Cherry Hill, NJ

Ruble, Joseph Thomas  
Englewood, CO

Ruggiero, Roy D.  
Cherry Hill, NJ 08034

Sandler, Howard E.  
Laguna Hills, CA

Schneider, Lori Lynn  
Washington, DC

Skelly, Alan W.  
Mt. Orab, OH  
Spicer, Nathan Gordon  
Italy  
Spolan, Michael L.  
Berkeley, CA  
Sullivan, Alonda T.  
Ridgewood, NJ  
Trujillo, Sara Denise  
Bethesda, MD  
Walheim, D. Andrew  
Flemington, NJ  
Wenof, Michael Alan  
Tampa, FL  
White, Latanya Renee  
Brooklyn, NY

Whitmore, Roy L.  
Marlton, NJ  
Wolf, Samantha Susan  
Linwood, NJ  
Wynn, Constance Wynn  
Silver Spring, MD  
Zirritth, Daniel Joseph  
Livingston, NJ

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

[Pa.B. Doc. No. 07-739. Filed for public inspection April 27, 2007, 9:00 a.m.]

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# RULES AND REGULATIONS

## Title 58—RECREATION

### PENNSYLVANIA GAMING CONTROL BOARD

#### [58 PA. CODE CHS. 401, 405, 423 AND 461]

#### Enforcement, Hearings and Slot Machine Testing

Under the Pennsylvania Gaming Control Board's (Board) Resolutions No. 2005-3-REG and 2005-5-REG, the Board has the authority to amend the temporary regulations adopted on June 16, 2005, and September 28, 2005, as it deems necessary in accordance with the purpose of 4 Pa.C.S. Part II (relating to gaming) enacted by the act of July 5, 2004 (P. L. 572, No. 71) (Act 71), as amended by the act of November 1, 2006 (P. L. 1243, No. 135) and to further the intent of Act 71. To respond to changes in the Board's enforcement, hearings and slot machine testing requirements, the Board has decided to make changes to the temporary regulations, dated June 16, 2005, and September 28, 2005, as deposited with the Legislative Reference Bureau (Bureau) and published at 35 Pa.B. 4045 (July 16, 2005) and 35 Pa.B. 6407 (November 19, 2005).

Therefore, the Board has deposited with the Bureau amendments to Chapters 401, 405, 423 and 461. The amendments are effective as of March 27, 2007.

The temporary regulations of the Board in Chapters 401, 405, 423 and 461 are amended by amending §§ 401.4, 405.1 and 405.7 and by adding §§ 423.7 and 461.24 to read as set forth in Annex A.

#### Order

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

(a) The Board, acting under the authority of the Act 71, adopts the amendments to the temporary regulations adopted by resolution at the March 27, 2007, public meeting. The amendments to the temporary regulations pertain to enforcement, hearings and slot machine testing.

(b) The temporary regulations of the Board, 58 Pa. Code Chapters 401, 405, 423 and 461, are amended by amending §§ 401.4, 405.1 and 405.7 and by adding §§ 423.7 and 461.24 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(c) The amendments are effective March 27, 2007.

(d) The amendments to the temporary regulations shall be posted in their entirety on the Board's website and published in the *Pennsylvania Bulletin*.

(e) The Chairperson of the Board shall certify this order and deposit the amendments to the temporary regulations with the Bureau as required by law.

THOMAS A. DECKER,  
*Chairperson*

**Fiscal Note:** 125-67. No fiscal impact; (8) recommends adoption.

#### Annex A

#### TITLE 58. RECREATION

#### PART VII. GAMING CONTROL BOARD

#### Subpart A. GENERAL PROVISIONS

#### CHAPTER 401. PRELIMINARY PROVISIONS

#### § 401.4. Definitions.

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

\* \* \* \* \*

*Arrest*—Detaining, holding or taking into custody by police or other law enforcement authorities to answer for an alleged commission of an offense.

\* \* \* \* \*

*Charge*—An indictment, complaint, information, summons or other notice of an alleged commission of an offense.

\* \* \* \* \*

*Offense*—Felonies, crimes, high misdemeanors, misdemeanors, disorderly persons offenses, petty disorderly offenses, driving while intoxicated/impaired, motor vehicle offenses and violations of probation or any other court order.

\* \* \* \* \*

#### CHAPTER 405. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

#### § 405.1. General duties and powers.

The Bureau has the powers and duties set forth in section 1517 of the act (relating to enforcement) including:

(1) The investigation and review of all applicants seeking a license, permit or registration.

(2) The investigation of licensees, permittees, registrants and other persons for potential violations of the act, including potential violations referred to the Bureau by the Board or other persons.

(3) The monitoring of slot machine operations to ensure compliance with the act and the integrity of gaming, including internal controls, exclusion list enforcement, underage gaming and drinking, individual complaints, information systems, integrity and security issues.

(4) The inspection and examination of licensed entities as provided in section 1517(e) of the act. Inspections may include the review and reproduction of any document or record.

(5) The conduct of audits of a licensed entity as necessary to ensure compliance with the act and this part. An audit may include, but is not limited to, reviews, examinations and inspections of:

(i) Accounting, administrative and financial records and procedures utilized by the licensed entity.

(ii) Internal control procedures and management control procedures.

(iii) Security and surveillance departments.

(iv) Corrective action taken by the licensee to resolve reported deficiencies.

(v) Reports issued by an independent certified public accountant or independently registered public accounting firm pertaining to the adequacy of the licensee's system of internal controls over financial reporting.

(vi) The licensee's responses, if any, to the reports noted in subparagraph (v).

(vii) Other matters required by the Board or the Bureau.

(6) The referral of possible criminal violations under the act to the Pennsylvania State Police.

**§ 405.7. Enforcement action.**

(a) Upon a determination by the Office of Enforcement Counsel that sufficient facts exist to support enforcement action against a person holding a license, permit, certification or registration issued by the Board, the Office of Enforcement Counsel will file a formal complaint in accordance with § 493.2 (relating to complaints), including a proposed order for an enforcement action and serve such complaint in accordance with § 491.3 (relating to service by the Board).

(b) The complaint for an enforcement action will include a statement of the facts, the statute, regulation or statement of conditions that the person is being charged with violating and the remedy sought. The proposed order will be accompanied by a certificate of service demonstrating the date of service.

(c) Within 15 days from the date of service of complaint for an enforcement action, the person may file a notice of defense in accordance with § 493.2(d) and serve a copy of the request on the Office of Enforcement Counsel. Failure to file a notice of defense for an enforcement action complaint within 15 days will be deemed:

(1) A waiver by the person of any right to an administrative hearing before the Board.

(2) An admission by the person of all matters and facts alleged in the proposed order for enforcement action.

(3) Consent by the person to the entry of a final order by the Board disposing of the enforcement matter.

(d) Upon the person's failure to request a hearing within the prescribed 15 days, the Office of Enforcement Counsel will present the proposed enforcement order to the Board. The Board may, by resolution, adopt the proposed enforcement order.

(e) The Clerk will send a copy of the Board's final order to the person by certified mail.

**Subpart B. LICENSING, REGISTERING,  
CERTIFYING AND PERMITTING  
CHAPTER 423. APPLICATIONS**

**§ 423.7. Recommendations for denial.**

When a recommendation for denial of an application for a license, permit, certification or registration is made, the applicant for the license, permit, certification or registration may request a hearing. The hearing will be conducted under the procedures in Chapter 494 (relating to hearing procedure).

**Subpart E. SLOT MACHINES AND ASSOCIATED  
EQUIPMENT**

**CHAPTER 461. SLOT MACHINE TESTING AND  
CONTROL**

**§ 461.24. Testing and software installation on the  
live gaming floor.**

(a) Prior to the testing of slot machines, associated equipment and displays on a live gaming floor during a slot machine licensee's normal hours of operation, the slot machine licensee shall notify the Board's Gaming Lab in writing at least 72 hours prior to the test date, in a form and manner prescribed by the Board. The notification must include the following:

(1) A detailed narrative description of the type of testing to be conducted, including the reason for the testing, a list of individuals conducting the testing and the slot machine licensee's procedures for conducting the testing.

(2) The date, time and approximate duration of the testing.

(3) The model, slot machine location number and asset number of the slot machine or machines to be tested.

(4) The location within the licensed facility where the testing will occur.

(b) A slot machine licensee shall notify the Board's Gaming Lab at least 72 hours prior to the installation of any new software or the installation of any change in previously approved software, in a form and manner prescribed by the Board, for:

(1) Automated gaming voucher and coupon redemption machines.

(2) Wide area progressive systems.

(3) Slot monitoring systems.

(4) Casino management systems.

(5) Player tracking systems.

(6) External bonusing systems.

(7) Cashless funds transfer systems.

(8) Server supported slot systems.

(9) Server based slot systems.

(10) Automated jackpot payout machines.

(c) The notification required under subsection (b) must include:

(1) A description of the reasons for the new installation or change in previously approved software.

(2) A list of the computer components and programs or versions to be modified or replaced.

(3) A description of any screens, menus, reports, operating processes, configurable options or settings that will be affected.

(4) The method to be used to complete the proposed installation.

(5) The date that the proposed modification will be installed and the estimated time for completion.

(6) The name, title and employer of the persons performing the installation.

(7) A diagrammatic representation of the proposed hardware design change.

(8) Restrictions on "update" access to the production code to the person implementing the installation.

(9) Procedures to ensure that user and operator manuals are updated to reflect changes in policies and procedures resulting from the proposed installation.

[Pa.B. Doc. No. 07-740. Filed for public inspection April 27, 2007, 9:00 a.m.]

## PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 421, 423, 427 AND 431]

## Temporary Regulations; General Licensing Requirements; Licensing of Manufacturers and Suppliers

Under the Pennsylvania Gaming Control Board's (Board) Resolutions No. 2005-3-REG and 2006-9-REG, the Board has the authority to amend the temporary regulations adopted on June 16, 2005, and June 28, 2006, as it deems necessary in accordance with the purpose of 4 Pa.C.S. Part II (relating to gaming) (Act 71) and to further the intent of Act 71. To respond to changes in the Board's licensing programs for manufacturers and suppliers and as a result of the passage of the act of November 1, 2006 (P. L. 1243, No. 135), the Board has decided to make changes to the temporary regulations, dated June 16, 2005, and June 28, 2006, as deposited with the Legislative Reference Bureau (Bureau) and published at 35 Pa.B. 4045 (July 16, 2005) and 36 Pa.B. 3948 (July 22, 2006).

Therefore, the Board has deposited with the Bureau amendments to Chapters 421, 423, 427 and 431. The amendments are effective as of March 15, 2007.

The temporary regulations of the Board in Chapters 421, 423, 427 and 431 are amended by amending §§ 421.1, 421.3—421.5, 423.1, 423.3—423.6, 427.1—427.3 and 431.1—431.4; by deleting §§ 421.2 and 423.3; and by adding §§ 421.4a, 423.1a, 423.5a, 427.2a, 427.4 and 431.2a to read as set forth in Annex A.

*Order*

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

(a) The Board, acting under the authority of the Act 71, adopts the amendments to the temporary regulations adopted by resolution at the March 15, 2007, public meeting. The amendments to the temporary regulations pertain to general licensing requirements and licensing of manufacturers and suppliers.

(b) The temporary regulations of the Board, 58 Pa. Code Chapters 421, 423, 427 and 431, are amended by amending §§ 421.1, 421.3—421.5, 423.1, 423.3—423.6, 427.1—427.3 and 431.1—431.4; by deleting §§ 421.2 and 423.3; and by adding §§ 421.4a, 423.1a, 423.5a, 427.2a, 427.4 and 431.2a to read as set forth in Annex A.

(c) The amendments are effective March 15, 2007.

(d) The amendments to the temporary regulations shall be posted in their entirety on the Board's website and published in the *Pennsylvania Bulletin*.

(e) The Chairperson of the Board shall certify this order and deposit the amendments to the temporary regulations with the Bureau as required by law.

THOMAS A. DECKER,  
*Chairperson*

**Fiscal Note:** 125-62. No fiscal impact; (8) recommends adoption.

## Annex A

## TITLE 58. RECREATION

## PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, REGISTERING,  
CERTIFYING AND PERMITTING

## CHAPTER 421. GENERAL PROVISIONS

## § 421.1. General requirements.

(a) A license permit, certification or registration issuance, renewal or other approval issued by the Board is a revocable privilege. No person holding a license, permit, certification or registration, renewal, or other approval is deemed to have any property rights.

(b) By filing an application with the Board, an applicant consents to an investigation of the applicant's general suitability, financial suitability, character, integrity and ability to engage in, or be associated with, gaming activity in this Commonwealth to the extent deemed appropriate by the Board. The investigation may include a background investigation of the applicant, employees of the applicant, all persons having a controlling interest in the applicant, and other persons as determined by the Board.

(c) By filing an application for a license, permit, certification or registration issuance, renewal or other approval from the Board, an applicant agrees to:

(1) Abide by the provisions of the act and this part.

(2) Waive liability as to the Board, its members, its employees, the Pennsylvania State Police, the Commonwealth and its instrumentalities for damages resulting from disclosure or publication in any manner, other than a willfully unlawful disclosure or publication of material or information acquired during an investigation of the applicant.

(3) Consent to execute all releases requested by the Board.

(d) An applicant for or holder of a license, permit, certification or registration may not give or offer to give, compensation or reward or a percentage or share of the money or property played or received through gaming to a public official or public employee in consideration for or in exchange for obtaining a license, permit, certification or registration issued under this part.

(e) An applicant for or holder of a license, permit, certification or registration shall have a duty to inform the Bureau of an action which the applicant for or holder of a license, permit, certification or registration believes would constitute a violation of the act. No person who so informs the Bureau may be discriminated against by an applicant for or holder of a license, permit, certification or registration for supplying the information.

(f) An applicant for a license, permit, certification or registration shall have a continuing duty to inform the Board of any changes in the information supplied to the Board in or in conjunction with the original or renewal application or a change in circumstances that may render the applicant for a license, permit, certification or registration ineligible, unqualified or unsuitable to hold a license, permit, certification or registration under the standards and requirements of the act and of this part.

(g) An applicant for a license, permit, certification or registration shall have a continuing duty to promptly provide information requested by the Board relating to its

application or regulation and cooperate with the Board in investigations, hearings and enforcement and disciplinary actions.

(h) An application submitted to the Board constitutes the seeking of a privilege. An applicant shall at all times have the burden of proof. It shall be the applicant's affirmative responsibility to establish the facts supporting its suitability under the act and this subpart by clear and convincing evidence, including why a license, permit, certification or registration should be issued or renewed by the Board.

(i) A person holding a license, permit, certification or registration issued by the Board who violates a provision of the act or this part may be held jointly or severally liable for the violation.

(j) The Board will maintain lists of all applicants for licenses, permits, certifications or registrations under this part as well as a record of all actions taken with respect to each applicant. The lists will be posted on the Board's website ([www.pgcb.state.pa.us](http://www.pgcb.state.pa.us)).

**§ 421.2. (Reserved).**

**§ 421.3. Disqualification criteria.**

(a) An application for issuance or renewal of a license, permit, certification or registration may be denied, or a license, permit, certification or registration may be suspended or revoked if:

(1) The applicant has failed to prove to the satisfaction of the Board that the applicant or any of the persons required to be qualified, are in fact qualified in accordance with the act and with this part.

(2) The applicant for or holder of a license, permit, certification or registration has violated the act or this part.

(3) The applicant for or holder of a license, permit, certification or registration is disqualified under the criteria in the act.

(4) The applicant for or holder of a license, permit, certification or registration has materially departed from a representation made in the application for licensure or renewal.

(5) The applicant for or holder of a license, permit, certification or registration has failed to comply with applicable Federal or state laws or regulations.

(b) A denial of an application or nonrenewal, suspension or revocation of a license, permit, certification or registration may be made for a sufficient cause consistent with the act and the public interest.

**§ 421.4. Investigations; supplementary information.**

(a) The Board may make an inquiry or investigation concerning an applicant for or holder of a license, permit, certification or registration or any affiliate, intermediary, subsidiary or holding company of the applicant for or holder of a license, permit, certification or registration as it may deem appropriate either at the time of the initial application or at any time thereafter.

(b) It shall be the continuing duty of applicants and a holder of a license, permit, certification or registration to provide full cooperation to the Board in the conduct of an inquiry or investigation and to provide supplementary information requested by the Board.

**§ 421.4a. Presuitability determination.**

(a) Upon request from an eligible applicant for or holder of a license and upon receipt of an application and

the appropriate fees, the Board will make an inquiry or investigation of a potential purchaser of an applicant for or holder of a license, certification or registration as if the purchaser were an eligible applicant. The eligible applicant for or holder of a license may petition the Board, on behalf of the purchaser, for a Statement of Investigation under § 493.4 (relating to petitions generally).

(b) The applicant for or holder of a license making the request shall reimburse the costs associated with the inquiry or investigation upon request of the Board.

(c) This inquiry or investigation does not replace the application process required under the act and this part which is a requirement for licensure, certification or registration.

**§ 421.5. Monopolization of economic opportunities and control.**

(a) In accordance with section 1102(5) of the act (relating to legislative intent), a slot machine license, management company license or other certification or registration may not be issued to or held by a person if the Board determines that the issuance or holding will result in the monopolization of economic opportunities and control of the licensed gaming facilities in this Commonwealth by that person.

(b) For purposes of this section, monopolization of economic opportunities of and control of the licensed gaming facilities means that a person:

(1) Would have actual or potential domination of the gaming market in this Commonwealth contrary to the legislative intent.

(2) Could substantially impede or suppress competition among licensees.

(3) Could adversely impact the economic stability of the gaming industry in this Commonwealth.

(c) In determining whether the issuance or holding of a license by a person will result in monopolization of economic opportunities and control of the licensed gaming facilities in this Commonwealth, the Board will consider the following criteria:

(1) The percentage share of the market presently controlled by the person in each of the following categories:

(i) Total number of slot machine licenses available under section 1307 of the act (relating to number of slot machine licenses).

(ii) Total gaming floor square footage.

(iii) Number of slot machines.

(iv) Gross terminal revenue.

(v) Net terminal revenue.

(vi) Total amount of money, vouchers and electronic money transfers through the use of a cashless wagering system made to slot machines.

(vii) Number of persons employed by the licensee.

(2) The estimated increase in the market share in the categories in paragraph (1) if the person is issued or permitted to hold the license.

(3) The relative position of other persons who hold licenses, as evidenced by the market share of each person in the categories in paragraph (2).

(4) The current and projected financial condition of the industry.

(5) The current market conditions, including level of competition, consumer demand, market concentration, any consolidation trends in the industry and other relevant characteristics of the market.

(6) Whether the gaming facilities held or to be held by the person have separate organizational structures or other independent obligations.

(7) The potential impact of licensure on the projected future growth and development of the gaming industry in this Commonwealth and the growth and development of the host communities.

(8) The barriers to entry into the gaming industry, including the licensure requirements of the act, and whether the issuance or holding of a license by the person will operate as a barrier to new companies and individuals desiring to enter the market.

(9) Whether the issuance or holding of the license by the person will adversely impact consumer interests, or whether the issuance or holding is likely to result in enhancing the quality and customer appeal of products and services offered by slot machine licensees to maintain or increase their respective market shares.

(10) Whether a restriction on the issuance or holding of an additional license by the person is necessary to encourage and preserve competition and to prevent monopolization of economic opportunities and control of the licensed gaming facilities.

(11) Other evidence deemed relevant by the Board.

#### CHAPTER 423. APPLICATIONS

##### § 423.1. General requirements.

(a) For the purposes of this section, a reference to an applicant includes the applicant's affiliates, intermediaries, subsidiaries and holding companies.

(b) An application shall be submitted on forms supplied or approved by the Board, contain the information and documents required by the Board and include the applicable fees.

(c) The applicant shall file with the application the supplemental forms required by the Board. The forms require full disclosure of details relative to the applicant's suitability to conduct business in this Commonwealth under the act.

(d) Upon request of the Board, the applicant shall further supplement information provided in the application. The applicant shall provide the requested documents, records, supporting data and other information within the time period specified in the request, or if no time is specified, within 30 days of the date of the request. If the applicant fails to provide the requested information within the required time period as set forth in the request, the Board may deny the application.

(e) Information provided to the Board must be true and complete. If there is any change in the information provided to the Board, the applicant shall promptly file a written amendment in a form prescribed by the Board.

(f) The application and amendments thereto and other specific documents designated by the Board must be sworn to or affirmed by the applicant before a notary public.

(g) The Board will deny the application of an applicant that refuses to submit to a background investigation or provide requested information as required under the act.

(h) An applicant that submits a document to the Board which is in a language other than English shall also submit an English translation of the non-English language document. The translation must include the signature, printed name, address and telephone number of the translator and a verification by the translator of the truth and accuracy of the translation. At its discretion, the Board may accept an English summary of a document in lieu of a complete translation of the document.

(i) An application that has been accepted for filing and the related materials submitted to the Board become the property of the Board and will not be returned to the applicant.

##### § 423.1a. Preliminary submission review.

(a) Upon receipt of an application submission, the Board will review the submission to insure that it contains the following as applicable:

(1) Application fee.

(2) Application forms and additional information and accompanying documentation required by the act or this part governing the specific type of application.

(3) Completed authorization forms for release of information from Federal and State agencies required for the specific type of application.

(4) For slot machine license applications only, a bond or letter of credit as required by section 1313(c) of the act (relating to applicant's ability to pay license fee).

(b) If an application submission fails to include one or more of the items in subsection (a), the applicant will be notified that the application has not been accepted for filing and the applicant will be given an opportunity to cure the insufficiency.

(c) If the applicant fails to cure the insufficiency within the time period set by the Board, the submission and related materials will be returned to the applicant.

##### § 423.2. Application processing.

(a) Upon a determination that the prerequisites for filing have been met, the Board will:

(1) Accept the application for filing.

(2) Notify the applicant or the applicant's attorney, if any, in writing of the fact that the application has been accepted for filing and the date of the acceptance for filing. The Board will also notify the applicant that the acceptance for filing of the application will not constitute evidence that any requirement of the act has been satisfied.

(3) Obtain and evaluate information as may be necessary to determine the qualifications of the applicant and any matter relating to the application.

(4) Request the Bureau to promptly conduct an investigation and provide the information necessary to determine the qualifications of the applicant and matters relating to the application.

(5) Request the Pennsylvania State Police to provide a criminal history background investigation report, determine employee eligibility consistent with § 435.1 (relating to general provisions), conduct fingerprinting, photograph applicants and perform duties as directed by the Board.

(6) Request the Department to promptly conduct a tax clearance review.



(7) Request the Department of Labor and Industry to perform an Unemployment Compensation Tax clearance review and a Workers Compensation Tax clearance review.

(8) Request any agencies, entities or persons to conduct investigations or evaluations or to provide information to the Board, as deemed necessary by the Board.

(b) The Board will keep and maintain a list of the applicants under this part together with a record of the actions taken with respect to applicants.

(c) An application submitted under this part and the information obtained by the Board relating to the application shall be part of the evidentiary record of the licensing proceeding. The Board's decision to issue or deny a license shall be based solely on the evidentiary record before the Board.

**§ 423.3. (Reserved).**

**§ 423.4. Deficient applications.**

(a) If an application is found to be deficient, the Board will notify the applicant of the deficiencies in the application and permit the applicant to cure the deficiencies within a time period prescribed by the Board.

(b) Refusal to provide information as required in subsection (a) may result in the immediate denial of the application.

**§ 423.5. Application withdrawal.**

(a) A request for withdrawal of an application for a license, permit, certification or registration may be made by petition to the Board filed at any time prior to issuance by the Board of its determination with respect to the application.

(b) The petition must set forth the reasons for the withdrawal.

(c) An applicant may petition for the withdrawal of its application or an application submitted by one of its affiliates, intermediaries, subsidiaries or holding companies or persons or entities required to be qualified under section 1311 of the act (relating to slot machine license application business entity requirements).

(d) When rendering a decision on a petition for withdrawal, the Board may set the conditions of withdrawal and may deny or grant the request with or without prejudice.

(1) If a petition for withdrawal is granted with prejudice, the person or entity whose application has been withdrawn will not be eligible to apply for a license, permit, certification or registration with the Board until after expiration of 5 years from the date of the withdrawal.

(2) If a petition for withdrawal is granted without prejudice the Board will determine when the person or entity whose application has been withdrawn may be eligible to apply for a license, permit, certification or registration.

(e) The Board may convert an incomplete application to a petition for withdrawal.

(f) Unless the Board otherwise directs, fees or other payments relating to an application will not become refundable by reason of the withdrawal. The fees and costs owed to the Board related to the application shall be paid prior to granting a petition to withdraw.

**§ 423.5a. License, permit, registration and certification issuance and Statement of Conditions.**

*(a) Issuance criteria.*

(1) In addition to the criteria contained in the act, the Board will not issue or renew a license, permit, certification or registration unless the Board finds that the following criteria have been established by the applicant:

(i) The applicant has paid the applicable fees.

(ii) The applicant has fulfilled each condition set by the Board or contained in the act, including the execution of a Statement of Conditions.

(iii) The applicant is found suitable consistent with the laws of the Commonwealth and is otherwise qualified to be issued a license, certification, permit, registration or other authorization.

*(b) Statement of Conditions.*

(1) For this subsection, the term "executive officer" means the individual holding the highest ranking management position within the entity and who is authorized to contract on behalf of the entity.

(2) If the Board approves an entity's application for a license, certification or registration, or for the renewal of a license, certification or registration, the Board may require the executive officer of the entity whose application has been approved, or other competent individual designated by the entity in accordance with paragraph (3), to execute a Statement of Conditions in the manner and form required by the Board. Execution of the Statement of Conditions shall constitute the acceptance of each provision contained in the Statement of Conditions by both the entity and the executive officer. The executive officer shall ensure that the entity fully complies with each provision contained in the Statement of Conditions.

(3) Prior to the issuance of a license, certification or registration to an entity, the entity shall determine whether the entity will designate its executive officer or another competent individual with a direct reporting relationship to its executive officer to execute the Statement of Conditions on behalf of both the entity and its executive officer. If the entity elects to designate another competent individual with a direct reporting relationship to its executive officer to execute the Statement of Conditions on behalf of the entity and its executive officer, the entity shall adopt a resolution identifying the individual so designated, authorizing that individual to execute the Statement of Conditions on behalf of both the entity and its executive officer, and evidencing the executive officer's concurrence in that individual's designation. A copy of the resolution, certified as true and correct, shall be provided to the Board and attached to the Statement of Conditions.

(4) If the Board approves an individual's application for a license, permit, certification or registration, or for the renewal of a license, permit, certification or registration, the Board may require the individual whose application has been approved to execute a Statement of Conditions in the manner and form required by the Board. The execution of the Statement of Conditions shall constitute the acceptance of each provision contained in the Statement of Conditions by the individual. The individual shall fully comply with each provision contained in the Statement of Conditions.

(5) Failure to fully comply with any provision contained in an executed Statement of Conditions shall constitute a violation of the Statement of Conditions and may result

in the imposition of Board-imposed administrative sanctions, up to and including revocation, against the individual to whom the license, permit, certification or registration was issued, and, in the case of an entity, against the entity and its executive officer or other designee under paragraph (3).

**§ 423.6. Restriction on application after denial or revocation.**

(a) A person whose application has been denied or whose license, permit, certification or registration has been revoked, may not apply for a license, permit, certification or registration for 5 years from the date that the application was denied or the license, permit, certification or registration was revoked.

(b) The 5-year restriction in subsection (a) will not apply as follows:

(1) To applicants for a slot machine license if the denial was for reasons other than unsuitability.

(2) If the denial or revocation was based on pending charges for a disqualifying offense under section 1213 or section 1518 of the act (relating to license or permit prohibition; and prohibited acts and penalties), 18 Pa.C.S. (relating to crimes and offenses) or the criminal laws of another jurisdiction, and the pending charges do not result in conviction of the disqualifying offense.

(c) Two years from the date that the application was denied or the license, permit, certification or registration was revoked, a person may file a petition for permission to apply for a license, permit, certification or registration before the expiration of the 5-year period.

(d) A petition filed under subsection (c) shall be filed in accordance with § 493.4 (relating to petitions generally).

(e) Petitions filed under subsection (c) must contain:

(1) An explanation of how the conditions that were the basis for denial or revocation have been corrected or no longer exist.

(2) Supporting materials that demonstrate that the person meets the requirements for a license, permit, certification or registration.

(3) If the denial or revocation was the result of a conviction, evidence of rehabilitation, such as:

(i) The nature and seriousness of the offense or conduct.

(ii) The circumstances under which the offense or conduct occurred.

(iii) The date of the offense or conduct.

(iv) The age of the applicant when the offense or conduct was committed.

(v) Whether the offense or conduct was an isolated or repeated incident.

(vi) Social conditions which may have contributed to the offense or conduct.

(vii) Evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

(viii) Evidence that obligations for restitution, fines and penalties have been met.

(f) If a petition filed under subsection (c) is denied, a person may not file another petition under subsection (c) for 1 year from the date of the denial of the petition.

**CHAPTER 427. MANUFACTURER LICENSES**

**§ 427.1. Manufacturer general requirements.**

(a) A manufacturer seeking to manufacture slot machines and associated equipment for use in this Commonwealth shall apply to the Board for a manufacturer license.

(b) In accordance with section 1317.1 of the act (relating to manufacturer licenses), an applicant for or the holder of a manufacturer license or any of the applicant's or holder's affiliates, intermediaries, subsidiaries or holding companies, may not apply for or hold a slot machine license or supplier license.

(c) A licensed manufacturer or a licensed manufacturer designee may supply or repair any slot machine or associated equipment manufactured by the licensee.

(d) A licensed manufacturer may contract with a slot machine licensee or licensed supplier to supply or repair slot machines or associated equipment manufactured by the manufacturer licensee.

(e) Limitations may not be placed on the number of manufacturer licenses issued or when an application for a manufacturer license may be filed.

**§ 427.2. Manufacturer license applications and standards.**

(a) An applicant for a manufacturer license shall submit:

(1) An original and three copies of the Manufacturer Application and Disclosure Information Form unless otherwise directed by the Board.

(2) A nonrefundable application fee.

(3) A diversity plan as set forth in section 1325(b) of the act (relating to license or permit issuance) and Chapter 481 (relating to general provisions), which shall be signed by the chief executive officer of the applicant.

(4) An application from every key employee and principal as specified by the Manufacturer Application and Disclosure Information Form or as determined by the Board.

(5) If applicable, copies of filings required by the SEC during the 2 immediately preceding fiscal years, including annual reports filed with the SEC, under sections 13 or 15(d) of the SEC of 1934 (15 U.S.C.A. §§ 78m and 78o(d)), quarterly reports filed with the SEC, under sections 13 or 15(d) of the Securities Exchange Act of 1934, current reports filed with the SEC, under sections 13 or 15(d) of the Securities Exchange Act of 1934, and proxy statements issued by the applicant.

(6) An affirmation that neither the applicant nor any of its affiliates, intermediaries, subsidiaries or holding companies, holds any direct or indirect ownership interest in an applicant for or holder of a slot machine applicant or license or supplier license, or employs, directly or indirectly, a person who satisfies the definition of a principal or key employee of a slot machine applicant or licensee or supplier applicant or licensee. In applying this provision to an applicant for a manufacturer license, the Board will not include interests that are held by individuals in any of the following manners:

(i) In mutual funds when the value of the interest owned does not exceed 1% of the total fair market value

of the applicant or licensee and provided that the mutual fund is not a nondiversified fund invested primarily in entities operating in, or connected with, the gaming industry.

(ii) Through defined benefit pension plans.

(iii) Through deferred compensation plans organized and operated under section 457 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 457).

(iv) In blind trusts over which the holder may not exercise a managerial control or receive income during the time period the holder is subject to these provisions.

(v) Through tuition account plans organized and operated under section 529 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 529).

(vi) Through plans described in section 401(k) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 401(k)).

(vii) An interest held by a spouse if an action seeking a divorce and dissolution of marital status has been initiated in any jurisdiction by either party to the marriage.

(7) A sworn or affirmed statement that the applicant has developed and implemented internal safeguards and policies to prevent a violation of section 1513 of the act (relating to political influence) and a copy the safeguards and policies.

(b) In addition to the materials required under subsection (a), an applicant for a manufacturer license shall:

(1) Promptly provide information requested by the Board relating to the manufacturer's application or regulation and cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions.

(2) Comply with the general application requirements in Chapters 421 and 423 (relating to general provisions; and applications).

(3) Demonstrate that the applicant has the ability to manufacture, build, rebuild, repair, fabricate, assemble, produce, program, design or otherwise make modifications to slot machines or associated equipment which meet one or more of the following criteria:

(i) Are specifically designed for use in the operation of a slot machine.

(ii) Are needed to conduct an authorized game.

(iii) Have the capacity to affect the outcome of the play of a game.

(iv) Have the capacity to affect the calculation, storage, collection or control of gross terminal revenue.

(c) An applicant for a manufacturer license will be required to reimburse the Board for additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation.

(d) In determining whether an applicant is suitable to be licensed as a manufacturer under this section, the Board will consider the following:

(1) The financial fitness, good character, honesty, integrity and responsibility of the applicant.

(2) If the principals of the applicant individually qualify under the standards of section 1317.1 of the act (relating to manufacturer license).

(3) The integrity of financial backers.

(4) The suitability of the applicant and principals and key employees of the applicant based on the satisfactory results of:

(i) The background investigation of the principals and key employees.

(ii) A current tax clearance review performed by the Department.

(iii) A current Unemployment Compensation Tax clearance review and a Workers Compensation Tax clearance review performed by the Department of Labor and Industry.

**§ 427.2a. Manufacturer license term and renewal.**

(a) A manufacturer license or renewal will be valid for 1 year from the date on which the license or renewal is approved by the Board.

(b) A renewal application and renewal fee shall be filed at least 6 months prior to the expiration of the current license.

(c) A manufacturer license for which a completed renewal application and fee has been received by the Board will continue in effect for an additional 6-month period or until acted upon by the Board, whichever occurs first.

**§ 427.3. Alternative manufacturer licensing standards.**

(a) If an applicant for a manufacturer license holds a similar license in another jurisdiction in the United States, the applicant may submit a written request with its application required under § 427.2(a) (relating to manufacturer license applications and standards) for the Board to adopt an abbreviated licensing process under section 1319 of the act (relating to alternative manufacturer licensing standards) to review a manufacturer license application.

(b) The Board may use the abbreviated process if:

(1) The Board determines, after investigation, that the licensing standards in the jurisdiction in which the applicant is licensed are similarly comprehensive, thorough and provide equal, if not greater, safeguards as provided in the act and that granting the request is in the public interest.

(2) The applicant has provided a copy of its most recent application or renewal for the similar license in the other jurisdiction and a copy of the license or the order issued by the other jurisdiction granting the license.

(3) The applicant has no administrative or enforcement actions pending in another jurisdiction or the applicant has adequately disclosed and explained the action to the satisfaction of the Board.

(4) There are no pending or ongoing investigations of possible material violations by the applicant in another jurisdiction or the applicant has adequately disclosed and explained the investigation to the satisfaction of the Board.

(c) This section may not be construed to waive fees associated with obtaining a license through the application process in this Commonwealth.

**§ 427.4. Responsibilities of a manufacturer.**

(a) A holder of a manufacturer license shall have a continuing duty to:

(1) Provide any information requested by the Board relating to the manufacturer's licensing or regulation; cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions; and comply with all conditions, restrictions, requirements, orders and rulings of the Board in accordance with the act.

(2) Report a change in circumstances that may render the holder of a manufacturer license ineligible, unqualified or unsuitable to hold a license under the standards and requirements of the act and of this part.

(3) Provide a copy of SEC filings listed in § 427.2(a)(5) (relating to manufacturer license applications and standards) that are filed after the date of issuance of its license. The copy shall be submitted no later than 30 days after the date of filing with the SEC.

(b) An employee of a licensed manufacturer whose duties of employment or incidental activities related to employment require the employee to be on the gaming floor or in a restricted area shall be required to obtain an occupation permit under § 435.4 (relating to occupation permit).

(c) A slot machine licensee may service or repair slot machines or associated equipment at its licensed facility pursuant to a written agreement between the slot machine licensee and the manufacturer licensee that provided the slot machines or associated equipment at the licensed facility.

(d) A slot machine licensee may perform routine maintenance directly related to the availability of slot machines for play, customer service or a clean and gracious playing environment. The routine maintenance includes installation or replacement of the following: batteries, hardware, including hinges, screws, bolts and custom handles, light bulbs, locks on slot machines and slot cash storage boxes, including the rekeying of the locks, printers, exclusive of printer software and paper stock. Routine maintenance also includes external cleaning and the clearing of paper, bill and coin jams which do not require removal or dismantling of the mechanisms.

#### CHAPTER 431. SUPPLIER LICENSES

##### § 431.1. Supplier general requirements.

(a) A supplier seeking to sell, lease, offer or otherwise provide, distribute or service slot machines or associated equipment to a slot machine licensee within this Commonwealth shall apply to the Board for a supplier license.

(b) In accordance with sections 1317 and 1317.1 of the act (relating to supplier licenses; and manufacturer licenses), an applicant for or the holder of a supplier license or any of the applicant's or holder's affiliates, intermediaries, subsidiaries or holding companies, may not apply for or hold a slot machine license or a manufacturer license.

(c) Limitations may not be placed on the number of supplier licenses issued or when an application for a supplier license may be filed.

##### § 431.2. Supplier license applications and standards.

(a) An applicant for a supplier license shall submit:

(1) An original and three copies of the Supplier Application and Disclosure Information Form for the applicant and each of the applicant's affiliated entities unless otherwise directed by the Board.

(2) A nonrefundable application fee.

(3) A diversity plan as set forth in section 1325(b) of the act (relating to license or permit issuance) and Chapter 481 (relating to general provisions).

(4) An application from every key employee and each natural person who is a principal as specified by the Supplier Application and Disclosure Information Form or as determined by the Board.

(5) If applicable, copies of filings required by the SEC during the 2 immediately preceding fiscal years, including all annual reports filed under section 13 or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78m and 78o(d)), quarterly reports filed under section 13 or section 15(d) of the Securities Exchange Act of 1934, current reports filed under section 13 or section 15(d) of the Securities Exchange Act of 1934 and proxy statements issued by the applicant.

(6) An affirmation that neither the applicant nor any of its affiliates, subsidiaries, intermediaries and holding companies holds any direct or indirect ownership interest in any applicant for or holder of a manufacturer license or slot machine licensee, or employs, directly or indirectly, any person who satisfies the definition of a principal or key employee of a manufacturer or slot machine applicant or licensee. In applying this provision to an applicant for a supplier license, the Board will not include interests that are held by individuals in any of the following manners:

(i) In mutual funds when the value of the interest owned does not exceed 1% of the total fair market value of the manufacturer or slot machine applicant or licensee and provided that the mutual fund is not a nondiversified fund invested primarily in entities operating in, or connected with, the gaming industry.

(ii) Through defined benefit pension plans.

(iii) Through deferred compensation plans organized and operated under section 457 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 457).

(iv) In blind trusts over which the holder may not exercise managerial control or receive income during the time period the holder is subject to these provisions.

(v) Through tuition account plans organized and operated under section 529 of the Internal Revenue Code (26 U.S.C.A. § 529).

(vi) Through plans described in section 401(k) of the Internal Revenue Code (26 U.S.C.A. § 401(k)).

(vii) An interest held by a spouse if an action seeking a divorce and dissolution of marital status has been initiated in any jurisdiction by either party to the marriage.

(7) A sworn or affirmed statement that the applicant has developed and implemented internal safeguards and policies to prevent a violation of section 1513 of the act (relating to political influence) and a copy the safeguards and policies.

(b) In addition to the materials required under subsection (a), an applicant for a supplier license shall:

(1) Promptly provide information requested by the Board relating to the supplier's application or regulation and cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions.

(2) Comply with the general application requirements in Chapters 421 and 423 (relating to general provisions; and applications).

(3) Demonstrate that the applicant has or will establish a principal place of business in this Commonwealth.

(c) An applicant for a supplier license shall be required to reimburse the Board for additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation.

(d) In determining whether an applicant is suitable to be licensed as a supplier under this section, the Board will consider the following:

(1) The financial fitness, good character, honesty, integrity and responsibility of the applicant.

(2) If the principals of the applicant individually qualify under the standards of section 1317 of the act (relating to supplier licenses).

(3) The integrity of financial backers.

(4) The suitability of the applicant and the principals and key employees of the applicant based on the satisfactory results of:

(i) A background investigation of the principals and key employees.

(ii) A current tax clearance review performed by the Department.

(iii) A current Unemployment Compensation Tax clearance review and a Workers Compensation Tax clearance review performed by the Department of Labor and Industry.

**§ 431.2a. Supplier license term and renewal.**

(a) A supplier license or renewal will be valid for 1 year from the date on which the license or renewal is approved by the Board.

(b) A renewal application and renewal fee shall be filed at least 2 months prior to the expiration of the current license.

(c) A supplier license for which a completed renewal application and fee has been received by the Board will continue in effect for an additional 6-month period or until acted upon by the Board, whichever occurs first.

**§ 431.3. Responsibilities of a supplier.**

(a) Within 1 year of the Board's issuance of a supplier license, the supplier shall establish and maintain a principal place of business in this Commonwealth.

(b) At the time of licensure, a supplier shall have assets or available lines of credit to support the sale, financing, servicing or repair of all slot machines to be placed in service or repaired by the supplier. The assets and available lines of credit shall be from a source independent of slot machine manufacturers and licensed gaming entities. Notwithstanding the forgoing, a licensed

manufacturer may extend financing or payment terms to a licensed supplier, at prevailing market rates and terms, for the acquisition or leasing of slot machines, to be secured by the slot machines sold, leased or transferred.

(c) A supplier shall submit to the Board for review any agreements with a licensed manufacturer or with a slot machine licensee and detailed business plans. The Board's review may include, but not be limited to, financing arrangements, inventory requirements, warehouse requirements, warehouse space, technical competency, compensative agreements and other terms or conditions to ensure the financial independence of the licensed supplier from licensed manufacturer or licensed gaming entity.

(d) A holder of a supplier license shall have a continuing duty to:

(1) Provide information requested by the Board relating to licensing or regulation; cooperate with the Board in investigations, hearings and enforcement and disciplinary actions; and comply with the conditions, restrictions, requirements, orders and rulings of the Board in accordance with the act.

(2) Report a change in circumstances that may render the holder of a supplier license ineligible, unqualified or unsuitable to hold a license under the standards and requirements of the act and of this part.

(3) Provide a copy of SEC filings listed in § 427.2(a)(5) (relating to manufacturer license applications and standards) that are filed after the date of issuance of its license. The copy shall be submitted no later than 30 days after the date of filing with the SEC.

(e) An employee of a licensed supplier whose duties of employment or incidental activities related to employment allow the employee access to slot machines or associated equipment or require the employee to be on the gaming floor or in a restricted area shall be required to obtain an occupation permit under § 435.4 (relating to occupation permit).

(f) A slot machine licensee may service or repair slot machines or associated equipment at its licensed facility pursuant to a written agreement between the licensed gaming entity and the supplier licensee that provided the slot machines or associated equipment for use or play at the licensed facility.

(g) A slot machine licensee may perform routine maintenance directly related to the availability of slot machines for play, customer service or a clean and gracious playing environment. The routine maintenance includes installation or replacement of the following: batteries, hardware, including hinges, screws, bolts and custom handles, light bulbs, locks on slot machines and slot cash storage boxes, including the rekeying of the locks, printers, exclusive of printer software and paper stock. Routine maintenance also includes external cleaning and the clearing of paper, bill and coin jams which do not require removal or dismantling of the mechanisms.

(h) A licensed manufacturer or a manufacturer's designee may supply, install, service or repair slot machines or associated equipment manufactured by the licensed manufacturer.

**§ 431.4. Supplier log books.**

(a) A supplier licensee shall maintain a log book to register all individuals who enter the licensee's principal place of business and each physical facility utilized by the

licensee to house inventory, replacement parts, supplies, transportation or delivery equipment.

(b) The supplier licensee shall record or cause to be recorded the following in the log book:

- (1) The date, entrance time and departure time of each individual.
- (2) The name of each individual entering the place of business or physical facility and who they represent.
- (3) The signature of each individual.
- (4) The purpose for the visit.
- (5) The individual's Board license, permit, certification or registration number, if applicable.

(c) Licensed, permitted or registered employees of a supplier are not required to register in the log book.

(d) Each log book required by this section shall be maintained at the entrance of the location to which it pertains and shall be made readily accessible for examination and inspection upon the demand of any agent, employee or representative of the Board, the Department of Revenue or the Pennsylvania State Police.

[Pa.B. Doc. No. 07-741. Filed for public inspection April 27, 2007, 9:00 a.m.]

**PENNSYLVANIA GAMING CONTROL BOARD  
[58 PA. CODE CH. 465]**

**Enforcement, Hearings and Slot Machine Testing**

Under the Pennsylvania Gaming Control Board's (Board) Resolution No. 2006-2-REG, the Board has the authority to amend the temporary regulations adopted on February 2, 2006, as it deems necessary in accordance with the purpose of 4 Pa.C.S. Part II (relating to gaming) enacted by the act of July 5, 2004 (P. L. 572, No. 71) (Act 71), as amended by the act of November 1, 2006 (P. L. 1243, No. 135) and to further the intent of Act 71. To clarify the Board's internal controls requirements, the Board has decided to make changes to the temporary regulations, dated February 2, 2006, as deposited with the Legislative Reference Bureau (Bureau) and published at 36 Pa.B. 910 (February 18, 2006).

Therefore, the Board has deposited with the Bureau amendments to Chapter 465 (relating to accounting and internal controls). The amendments are effective as of March 27, 2007.

The temporary regulations of the Board in Chapter 465 are amended by amending §§ 465.12 and 465.21 to read as set forth in Annex A.

*Order*

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

(a) The Board, acting under the authority of the Act 71, adopts the amendments to the temporary regulations adopted by resolution at the March 27, 2007, public meeting. The amendments to the temporary regulations pertain to enforcement, hearings and slot machine testing.

(b) The temporary regulations of the Board, 58 Pa. Code Chapter 465, are amended by amending §§ 465.12 and 465.21 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(c) The amendments are effective March 27, 2007.

(d) The amendments to the temporary regulations shall be posted in their entirety on the Board's website and published in the *Pennsylvania Bulletin*.

(e) The Chairperson of the Board shall certify this order and deposit the amendments to the temporary regulations with the Bureau as required by law.

THOMAS A. DECKER,  
*Chairperson*

**Fiscal Note:** 125-68. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART VII. GAMING CONTROL BOARD**

**Subpart E. SLOT MACHINE TESTING,  
CERTIFICATION AND CONTROL**

**CHAPTER 465. ACCOUNTING AND INTERNAL  
CONTROLS**

**§ 465.12. Slot machine licensee's organization.**

(a) Slot machine licensees' systems of internal controls must, in accordance with section 1322 of the act (relating to slot machine accounting controls and audits) and § 465.3 (relating to internal control systems and audit protocols), include organization charts depicting appropriate segregation of functions and responsibilities and descriptions of the duties and responsibilities for each position shown on each organization chart. Slot machine licensees shall be permitted, except as otherwise provided in this section, to tailor organizational structures to meet the needs or policies of a particular management philosophy. The proposed organizational structure of each slot machine licensee shall be approved by the Board in the absence of a conflict between the organizational structure and the following criteria. The criteria are designed to maintain the integrity of the slot machine operation. A slot machine licensee's organization charts must provide for:

\* \* \* \* \*

(5) A chief executive officer. For the purposes of this section, a chief executive officer means the person located at the licensed facility who is ultimately responsible for the daily conduct of the slot machine licensee's gaming business regardless of the form of business association of the slot machine licensee or applicant or the particular title which that person or any other person holds. Each supervisor of a department required by subsection (b) shall report directly to the chief executive officer of the slot machine licensee regarding administrative matters and daily operations. The slot machine licensee's organization charts must designate which positions, in the absence of the chief executive officer, shall be designated as having responsibility for the daily conduct of the slot machine licensee's gaming business.

\* \* \* \* \*

(c) The supervisors of the surveillance and internal audit departments required by subsection (b) shall report directly to one of the following persons or entities regarding matters of policy, purpose, responsibility and authority. These persons or entities shall also control the hiring, termination and salary of each supervisor:

(1) The independent audit committee of the slot machine licensee's board of directors.

(2) The independent audit committee of the board of directors of any holding or intermediary company of the slot machine licensee which has authority to direct the operations of the slot machine licensee.

(3) The senior surveillance or internal audit executives of any holding or intermediate company included in paragraph (2) if the most senior executive in the reporting line reports directly to the independent audit committee of the board of directors of the holding or intermediary company.

(4) For slot machine licensees or holding companies which are not corporate entities, the noncorporate equivalent of any of the persons or entities listed in paragraphs (1)—(3).

\* \* \* \* \*

**§ 465.21. Personal check cashing.**

\* \* \* \* \*

(b) Personal checks accepted under subsection (a) shall be presented by the patron directly to a slot cashier who shall:

\* \* \* \* \*

(5) For personal checks equaling or exceeding \$500, verify the validity of the check directly with the commercial bank, savings bank, saving and loan association or credit union upon which it is drawn or obtain an authorization and guarantee of the check from a check verification and warranty service certified as a vendor with the Board. The slot machine licensee shall retain adequate documentation evidencing the check verification performed in connection with the acceptance of each personal check.

\* \* \* \* \*

[Pa.B. Doc. No. 07-742. Filed for public inspection April 27, 2007, 9:00 a.m.]

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# PROPOSED RULEMAKING

## STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

### Continuing Education for Professional Nurses

The State Board of Nursing (Board) proposes to amend §§ 21.1, 21.5 and 21.29 (relating to definitions; fees; and expiration and renewal of license) and to add §§ 21.131—21.134 (relating to continuing education) to read as set forth in Annex A. This proposed rulemaking is intended to establish the requirements for professional nurses to complete continuing education in compliance with recent amendments to The Professional Nursing Law (act) (63 P. S. §§ 211—225).

#### *Effective Date*

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

#### *Statutory Authority*

The proposed rulemaking is authorized by the act of June 29, 2006 (P. L. 275, No. 58) (Act 58), which amended the act by adding section 12 (63 P. S. § 222), which requires professional nurses to complete 30 hours of continuing education for biennial license renewal and directs the Board to promulgate regulations establishing requirements of continuing nursing education, including any necessary fees.

#### *Background and Need for the Amendment*

Prior to Act 58, professional nurses were the only professional health care provider in this Commonwealth that were not required to complete mandatory continuing education for licensure renewal. Mandatory continuing education is intended to ensure that professional nurses remain abreast of developments in their field and are able to provide high quality care to patients. As required by the act, this proposed rulemaking establishes the requirements for continuing education content and computation of hours, lists preapproved providers of continuing education, provides for Board approval of continuing education from other sources and provides disciplinary sanctions for failure to complete mandatory continuing education.

#### *Description of Proposed Amendments*

##### *§ 21.1. Definitions.*

The Board proposes to add three definitions to § 21.1. The Board will define "continuing education" as "an activity approved by the Board as a condition for renewal of licensure for which a certificate of attendance is provided." The certificate of attendance is required as the method by which the Board may verify compliance with the continuing education requirement. "Certificate of attendance" is defined as "written third party verification of an individual's completion of continuing education." Consistent with definitions used by other professional licensing boards, for example, the State Board of Dentistry, which defines a "continuing education certificate" as "a document prepared by the program sponsor which contains the title of the course, the dates attended or completed and the hours of education completed," the proposed rulemaking requires verification of attendance by a third party.

Finally, the Board proposes to define "distance learning continuing education" as continuing education "in which the individual participates in the educational activity by means of an electronic media or through peer-reviewed journals or individually, rather than in a classroom, laboratory or clinical setting where the faculty and participant are physically located in the same room." The Board's definition seeks to include a wide variety of distance learning, including videoconferences, Internet continuing education and professional journals that offer continuing education. These sources are highly reliable methods of obtaining continuing education that generally require the participant to complete a substantive test of the material covered to obtain credit. Individual continuing education is also included in the definition to capture group or independent research projects. Research must be approved by the sponsoring facility's Institutional Review Board to be creditable, as set forth in § 21.133(d) (relating to continuing education content). Another example of creditable individual continuing education is taking a college course in a foreign language relevant to health care in accordance with §§ 21.133(b) and 21.134(a)(5) (relating to continuing education sources).

##### *§ 21.5. Fees.*

Section 12 of the act requires the Board to set fees necessary for the Board to carry out its responsibilities under this section. The Department of State revenue office met with the Board's Executive Director and determined the appropriate fee based on the cost to the Board of reviewing a continuing education proposal. The fee is set at \$75 for approval of 1 hour of continuing education. The fee is cumulative, in other words, a request for approval of a 10-hour continuing education activity would carry a fee of \$750. Calculating the approval fee on a per-credit hour basis is consistent with the method used by other organizations that accredit continuing education for professional nurses.

##### *§ 21.29. Expiration and renewal of license.*

The Board proposes to delete outdated material in § 21.29(a) pertaining to professional nursing licenses that expired on October 31, 1985, and retain only the portion that continues to be relevant. The provision will be redrafted to provide simply that the Board will assign registered nurses to one of four license expiration dates: April 30 in even-numbered years, October 31 in even-numbered years, April 30 in odd-numbered years and October 31 in odd-numbered years.

The Board proposes to amend § 21.29(b) to improve clarity. The Board also proposes to amend § 21.29(c) to delete the requirement that the licensee's current employer must retain the display portion of the renewed license. This provision was intended to ensure that only nurses with current licenses could practice nursing. This provision is outdated because the Board's licensure records are now available online. Online verification of current licensure is an efficient, no-cost method of ensuring that a licensee holds a current license to practice. In addition, online verification is much more accurate, as the Board's online licensure records are updated daily.

The Board proposes to amend § 21.29(c) to specifically refer to online renewal of licensure to ensure that all licensees are aware of the availability of online renewal. Online renewal saves time for both the licensee and Board staff and allows a licensee to renew a license almost instantly. By contrast, during peak renewal peri-



ods when the Board may receive 5,000 or more paper applications for renewal in a week, processing time for renewing a license may be up to 1 month. Online renewal is more efficient for the licensee and saves the Board enormous cost in having its staff process paper applications.

In addition to administrative requirements for biennial license renewal, such as disclosing licensure in another state in § 21.29(c)(1), paying the biennial renewal fee in § 21.29(c)(2) and disclosing discipline in another state or criminal conviction in § 21.29(c)(4), the Board proposes to include a requirement that the nurse verify compliance with the continuing education requirements in § 21.29(c)(3).

#### *§ 21.131. Continuing education.*

The Board proposes to add a section setting forth the general requirements regarding continuing education. Subsection (a) sets forth the statutory requirement that a professional nurse complete 30 hours of continuing education approved by the Board during each biennium. This requirement will begin with the first renewal that allows each of the four license renewal groups at least 2 years to comply. For example, if the final-form rulemaking is effective by the end of 2007, licensees who renew in April of even-numbered years would have to complete 30 hours of continuing education for the first time between May 2008 and April 2010, and would need to verify completion of the required hours on their renewal application in 2010. Licensees who renew in October of even-numbered years would have to complete their required hours for the first time between November 2008 and October 2010; those in April of odd-numbered years would be required to complete the required hours for the first time between May 2009 and April 2011; and those in October of odd-numbered years would commence compliance between November 2009 and October 2011.

Subsection (b) would set forth the statutory exception that licensees applying for initial licensure by examination will not be required to meet the continuing education requirement on the first renewal immediately following licensure if the applicant completed a nursing education program within 2 years of the date of application. This provision is consistent with other health care providers' requirements and recognizes that a recent graduate has up-to-date knowledge in the profession.

Subsection (c) would require licensees to maintain certificates of attendance for at least 5 years and to provide copies of the certificates to the Board upon request. Subsection (d) sets forth the statutory provision requiring applicants for reinstatement of a lapsed license or reactivation of an inactive license to comply with the continuing education requirements for the biennial period immediately preceding application for reinstatement. Subsection (e) sets forth the same requirement for a licensee seeking reinstatement of a suspended license.

In subsection (f), the Board sets forth additional information regarding the waiver of continuing education contemplated by section 12(d) of the act. In addition to the requirements for waiver set forth in the act, the Board proposes to require that licensees request the waiver not less than 120 days prior to the expiration date of the licensee's license to allow sufficient time for Board staff to process the request. In addition, it would provide that the Board will grant, deny or grant in part the request for waiver.

In subsection (g), the Board addresses the disciplinary action for licensees who fail to comply with the continuing

education requirements. In paragraph (1), the Board proposes to provide for the imposition of a civil penalty, through proposed § 43b.18a (regarding schedule of civil penalties—nurses), for licensees who fail to complete 30 hours of continuing education during the biennial period. The civil penalty schedule for continuing education violations (first offense) is promulgated by the Commissioner of Professional and Occupational Affairs in a separate rulemaking package. Second or subsequent offenses will subject the professional nurse to discipline under section 14(a)(3) of the act (63 P. S. § 224(a)(3)), which authorizes the Board to discipline a licensee for willful or repeated violation of the act or regulations of the Board.

Subsection (g)(2) would require licensees who have not completed 30 hours of continuing education in the biennial period to report the actual number of hours completed, to make up the deficiency within 6 months and to provide the Board with certificates of attendance for the entire 30 hours of continuing education immediately upon completion. For licensees who did not complete the required number of hours and who additionally fail to provide the Board with certificates of attendance for 30 hours of continuing education within 6 months after renewal, paragraph (3) sets forth additional disciplinary sanctions under section 14(a)(3) of the act.

#### *§ 21.132. Continuing education hours.*

Section 21.132 would set forth information regarding the computation of time for purposes of crediting an activity for continuing education hours. Consistent with the Board's regulations for certified registered nurse practitioners (CRNP), each hour for purposes of continuing education must be not less than 50 minutes. This is also consistent with an "academic hour" used by most colleges and universities. Section 21.132(b) sets forth equivalencies for course-related clinical practice and academic quarter and semester units. This section would allow, for example, a professional nurse who obtained licensure after graduation from a diploma program to obtain continuing education credit for nursing courses taken in pursuit of a bachelor's degree in nursing. Similarly, this section would allow a professional nurse obtaining an advanced nursing degree to be awarded continuing education credit for advanced nursing courses.

#### *§ 21.133. Continuing education content.*

Section 21.133 would set forth the acceptable content for continuing education activities. Courses in nursing administration, management, education and diagnostic and procedural coding are acceptable because these areas constitute a large percentage of the work of many nurses. Group or individual research may only be used for continuing education credit if the Institutional Review Board of the facility in which the research will take place has approved the research. This caveat ensures that continuing education credit is granted only for research that has been evaluated by the body responsible for evaluating research in a health care facility. The Board proposes in § 21.133(e) to deny continuing education credit for nonprofessional course content in self-improvement, changes in attitude, financial gain and courses designed for lay people.

#### *§ 21.134. Continuing education sources.*

In addition to the statutory approval of Nationally certified education courses, the Board determined that some sources of continuing education consistently prepare educational activities of quality that they should be preapproved to provide continuing education activities. This approach is consistent with the approach used by

the other health-related licensing boards in the Commonwealth and other state boards of nursing. The preapproved providers, listed in § 21.134(a), are as follows: Board-approved professional nursing or CRNP education programs; accredited professional nursing, CRNP, certified registered nurse anesthetist, clinical nurse specialist and nurse midwifery education programs; programs sponsored by accredited hospitals and health care facilities; programs sponsored by hospitals and health care facilities licensed by the Department of Health; programs sponsored by regionally-accredited institutions of higher education offering courses that comply with § 21.133; National nursing, medical and osteopathic organizations and state and regional affiliates; and National pharmaceutical organizations and state and regional affiliates.

Under subsection (b), the Board may approve other sources of continuing education on a case-by-case basis. The continuing education sponsor or a nurse seeking approval for a continuing education activity must submit the following information: full name and address of the provider; title of the activity; date and location of the activity; faculty qualifications; schedule of the activity, including, for activities with multiple presenters, the title of each subject, lecturer and time allotted; hours of continuing education; method of certifying and assuring attendance and draft of certificate of attendance to be provided to course participants; course objectives; curriculum; target audience; program coordinator; instruction methods; evaluation methods, including participant evaluation and activity evaluation; and other information requested by the Board. Section 21.134(c) would require that requests for approval of continuing education activities be submitted at least 120 days prior to the commencement of the activity to allow the Board sufficient time to review the request. If approved, the Board will determine the number of continuing education hours awarded. Consistent with the regulations governing continuing education for CRNPs, a separate application fee is required whenever a change is made to any information except a change to the date and location of an activity.

Finally, § 21.123(g) would provide that distance learning is acceptable for completion of all 30 continuing education hours required for biennial license renewal. Although the professional licensing boards for other health-related professions in this Commonwealth have limited the number of hours that may be completed through distance learning, two compelling reasons form the basis of the Board's decision to permit professional nurses to complete all 30 hours through distance learning. First, distance learning for completion of nursing continuing education is the standard across the United States. Of the 26 other states, including the District of Columbia, that require continuing education for professional nurses, all 26 permit the nurse to complete 100% of the continuing education requirement from distance learning sources. The remaining states do not mandate continuing education for licensure renewal. Second, unlike the other health-related professions in this Commonwealth, an individual can obtain a nursing license after graduating from a nursing education program that is conducted entirely through distance learning media.

Because the proposed rulemaking is statutorily mandated and its implementation is largely administrative, the Board did not specifically request input in drafting of the proposed rulemaking from nursing associations and other interested parties. However, the statutory amendments were well publicized and several associations provided input to the Board on the drafting of the rulemaking.

Also, the Board considered the impact the proposed rulemaking would have on the regulated community and on public safety and welfare. The Board finds that the proposed rulemaking addresses a compelling public interest as described in this preamble.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will not have an adverse fiscal impact on the Commonwealth or its political subdivisions, as the Board is self-supporting. The proposed rulemaking will not impose additional paperwork requirements upon the Commonwealth or its political subdivisions. To the extent that private sector providers of continuing education will be required to provide certificates of attendance to professional nurses who complete a continuing education activity, there may be additional paperwork requirements placed on certain members of the private sector. Professional nurses will also experience increased paperwork requirements in tracking compliance with the statutorily mandated continuing education. Professional nurses or their employers will incur costs in complying with statutorily mandated continuing education.

#### *Sunset Date*

The Board continuously monitors the cost-effectiveness of its regulations. Therefore, no sunset date has been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 18, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

#### *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

JOANNE L. SORENSEN, RN, MS,  
*Chairperson*

*(Editor's Note: For a document relating to this proposed rulemaking, see 37 Pa.B. 1986 (April 28, 2007).)*

**Fiscal Note:** 16A-5130. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

GENERAL PROVISIONS

§ 21.1. Definitions.

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

\* \* \* \* \*

*Certificate of attendance*—Written verification of an individual's completion of continuing education from an approved provider.

*Continuing education*—An activity approved by the Board as a condition for renewal of licensure or certification for which a certificate of attendance is provided.

\* \* \* \* \*

*Distance learning continuing education*—Continuing education in which the individual participates in the educational activity by means of electronic media or through peer-reviewed journals or individually, rather than in a classroom, laboratory or clinical setting where the faculty and participant are physically located in the same room.

\* \* \* \* \*

§ 21.5. Fees.

(a) The following fees are charged by the Board:

\* \* \* \* \*

Request for approval of 1 hour of continuing education for a professional nurse ..... \$75

\* \* \* \* \*

LICENSES

§ 21.29. Expiration and renewal of license.

(a) [ Registered nurses whose licenses expire on October 31, 1985 will thereafter be subject to the following license renewal schedule:

(1) Licenses of registered nurses whose license numbers end in the numbers 01 through 25 will expire on April 30, 1986 and, following renewal, will thereafter expire on April 30 in the even-numbered years. The license renewal fee for licenses that expire on April 30, 1986 will be 25% of the renewal fee for the usual 2-year renewal period. The renewal fee for licenses that expire on an anniversary of April 30, 1986 will be the renewal fee for the usual 2-year renewal period.

(2) Licenses of registered nurses whose license numbers end in the numbers 26 through 50 will expire on October 31, 1986 and, following renewal, will thereafter expire on October 31 in the even-numbered years. The license renewal fee for licenses that expire on October 31, 1986 will be 50% of the renewal fee for the usual 2-year renewal period. The renewal fee for licenses that expire on

an anniversary of October 31, 1986 will be the renewal fee for the usual 2-year renewal period.

(3) Licenses of registered nurses whose license numbers end in the numbers 51 through 75 will expire on April 30, 1987 and, following renewal, will thereafter expire on April 30 in the odd-numbered years. The license renewal fee for licenses that expire on April 30, 1987 will be 75% of the renewal fee for the usual 2-year renewal period. The renewal fee for licenses that expire on an anniversary of April 30, 1987 will be the renewal fee for the usual 2-year renewal period.

(4) Licenses of registered nurses whose license numbers end in the numbers 76 through 00 will expire on October 31, 1987 and, following renewal, will thereafter expire on October 31 in the odd-numbered years. The license renewal fee for licenses that expire on October 31, 1987 will be the renewal fee for the usual 2-year renewal period. The renewal fee for licenses that expire on an anniversary of October 31, 1987 will be the renewal fee for the usual 2-year renewal period.

(5) Registered nurses who obtain initial licensure on or after November 1, 1985 and registered nurses who reactivate their licenses on or after November 1, 1985 will be assigned ] The Board will assign registered nurses to one of the following license expiration dates:

[ (i) ] (1) April 30 in the even-numbered years.

[ (ii) ] (2) October 31 in the even-numbered years.

[ (iii) ] (3) April 30 in the odd-numbered years.

[ (iv) ] (4) October 31 in the odd-numbered years.

(b) [ Application for ] Notice of the renewal period of a license will be [ forwarded biennially ] sent to each active [ registrant ] licensee prior to the expiration date of the [ current renewal biennium ] licensee's license.

(c) [ The application form shall be completed and returned, accompanied by the required renewal fee. Upon approval of the application, the applicant will receive a license for the current renewal period. The display portion of the renewed license shall be retained by the current employer of the registrant; the wallet card portion shall be retained by the registrant. ] The applicant for license renewal may complete and submit an application online or may mail a completed application form to the Board's administrative office. When applying for licensure renewal, a professional nurse shall:

(1) Complete and submit the renewal application form, including disclosing any license to practice nursing or any allied health profession in any other state, territory, possession or country.

(2) Pay the biennial renewal of licensure fee in § 21.5 (relating to fees).

(3) Beginning with the license period commencing on \_\_\_\_\_ (Editor's Note: The blank refers to the date of the first biennial renewal that occurs at least 2 years after the effective date of adoption of this proposed rulemaking.), verify that the professional nurse has complied with the continuing education requirements mandated by section 12 of the act (63 P. S. § 222) during the biennial period

immediately preceding the application for renewal in accordance with §§ 21.131–21.134 (relating to continuing education).

(4) **Disclose any discipline imposed by a state licensing board on any nursing or allied health profession license or certificate in the previous biennial period and any criminal charges pending or criminal conviction, plea of guilty or nolo contendere, or admission into a probation without verdict or accelerated rehabilitative disposition during the previous biennial period.**

(d) [When communicating with the Board, the registrant shall identify herself by using full name, including maiden name; current address; and the Commonwealth certificate number, which shall either be typed or printed.] Licensees shall retain the wallet card and display portion of their license.

(e) **When communicating with the Board, licensees shall identify themselves by full name, current address and license number.**

(Editor's Note: The following text is new. It has been printed in regular type to enhance readability.)

#### CONTINUING EDUCATION

##### § 21.131. Continuing education.

(a) *Requirement of continuing education.* Beginning with the license period commencing on \_\_\_\_\_ (Editor's Note: The blank refers to the date of the first biennial renewal that occurs at least 2 years after the effective date of adoption of this proposed rulemaking.), an applicant for renewal of a professional nursing license shall complete 30 hours of continuing education approved by the Board during the biennial period immediately preceding the application for renewal in accordance with section 12 of the act (63 P. S. § 222) and this subchapter.

(b) *Exception.* An applicant applying for initial licensure by examination in this Commonwealth will not be required to meet the continuing education requirement on the first renewal immediately following licensure if the applicant completed an approved nursing education program within 2 years of the date of application for initial licensure by examination.

(c) *Certificates of attendance.* The licensee shall retain original certificates of attendance to document completion of the continuing education requirement for at least 5 years and provide legible copies of the certificates upon request by the Board.

(d) *Reinstatement of lapsed license or reactivation of inactive license.* A licensee seeking to reinstate a lapsed license or reactivate an inactive license shall submit certificates of attendance to demonstrate that the licensee completed 30 hours of continuing education within the biennial period immediately preceding application for reinstatement.

(e) *Reinstatement of suspended license.* A licensee seeking to reinstate a suspended license shall submit certificates of attendance to demonstrate that the licensee completed 30 hours of continuing education within the biennial period immediately preceding application for reinstatement.

(f) *Waiver.* A licensee may request a waiver of the continuing education requirement because of serious illness, military service or other demonstrated hardship. The licensee shall submit the request and any supporting documentation to the Board in writing at least 120 days

prior to the licensee's license expiration date. The Board will grant, deny or grant in part the request for waiver.

(g) *Disciplinary action authorized.*

(1) Failure to complete a minimum of 30 hours of continuing education in a biennial period will subject the professional nurse to discipline under section 13(b) of the act (63 P. S. 223(b)) in accordance with the schedule of civil penalties in § 43b.18a (relating to schedule of civil penalties—nurses). A second or subsequent violation will subject the professional nurse to discipline under section 14(a)(3) of the act (63 P. S. § 224(a)(3)).

(2) A professional nurse who has not completed a minimum of 30 hours of continuing education shall report the number of continuing education hours completed on the biennial renewal application and shall make up the deficiency within 6 months. The licensee shall provide certificates of attendance for the entire 30-hour requirement to the Board immediately upon completion.

(3) Notwithstanding any civil penalty assessed under paragraph (1), failure to provide the Board with certificates of attendance documenting 30 hours of approved continuing education within 6 months after the end of the biennial period in which the professional nurse was deficient will subject the licensee to discipline under section 14(a)(3) of the act.

##### § 21.132. Continuing education hours.

(a) The Board will accept hours of continuing education as designated by an approved provider, so long as each hour is at least 50 minutes of activity.

(b) For purposes of determining acceptable hours of continuing education for academic coursework, the following applies:

(1) Each 3 hours in course-related clinical practice will be accepted as 1 hour of continuing education.

(2) One academic quarter unit is equal to 10 continuing education hours.

(3) One academic semester unit is equal to 15 continuing education hours.

##### § 21.133. Continuing education content.

(a) Continuing education must be relevant to professional nursing in a general or specialty area and enhance the knowledge and application of the physical, social, biological and behavioral sciences.

(b) Courses in areas related to nursing such as the following are acceptable:

(1) Human sexuality.

(2) Death, dying and grief.

(3) Foreign language relevant to health care.

(4) Therapeutic interpersonal relationship skills.

(5) Patient rights and pharmacology.

(c) Courses in nursing administration, management, education and diagnostic and procedural coding are acceptable.

(d) Group or individual research, if approved by the Institutional Review Board, is acceptable and will be credited as 15 hours of continuing education.

(e) Nonprofessional course content in self-improvement, changes in attitude, financial gain and those courses designed for lay people are not acceptable for meeting requirements for license renewal.

**§ 21.134. Continuing education sources.**

(a) The following providers of continuing education and credentialing organizations for professional nurses are approved:

(1) Board-approved professional nursing or CRNP education programs.

(2) Accredited professional nursing, CRNP, Certified Registered Nurse Anesthetist, Clinical Nurse Specialist and Nurse Midwifery education programs.

(3) Programs sponsored by accredited hospitals and health care facilities.

(4) Programs sponsored by hospitals and health care facilities licensed by the Department of Health.

(5) Programs sponsored by regionally-accredited institutions of higher education offering courses that comply with § 21.133 (relating to continuing education content).

(6) National nursing, medical and osteopathic organizations and their state and regional affiliates.

(7) National pharmaceutical organizations and their state and regional affiliates.

(b) The Board may approve other sources of continuing education on a case-by-case basis after the provider or professional nurse seeking approval submits the following:

(1) Full name and address of the provider.

(2) Title of the activity.

(3) Date and location of the activity.

(4) Faculty qualifications.

(5) Schedule of the activity, including, for activities with multiple presenters, the title of each subject, lecturer and time allotted.

(6) Hours of continuing education.

(7) Method of certifying and assuring attendance, and draft of certificate of attendance to be provided to course participants.

(8) Course objectives.

(9) Curriculum.

(10) Target audience.

(11) Program coordinator.

(12) Instruction methods.

(13) Evaluation methods, including participant evaluation and activity evaluation.

(14) Other information requested by the Board.

(c) Requests for approval of a continuing education activity under subsection (b) shall be submitted at least 120 days prior to commencement of the activity and shall be accompanied by the fee set forth in § 21.5 (relating to fees).

(d) Upon approval of a continuing education activity under subsection (b), the Board will determine the number of continuing education hours awarded for the activity.

(e) A separate application and fee, as set forth in § 21.5, shall be submitted whenever a change is made to any information submitted under subsection (b), except for information related to a change in date or location, or both, of the activity under subsection (b)(3).

(f) A continuing education provider shall award a certificate of attendance to professional nurses who complete the continuing education activity. The certificate must contain the information listed in subsection (b)(1)–(6) and the name of the individual to whom the certificate is awarded.

(g) Distance learning continuing education is acceptable for completion of all 30 continuing education hours required for license renewal.

[Pa.B. Doc. No. 07-743. Filed for public inspection April 27, 2007, 9:00 a.m.]

# STATEMENTS OF POLICY

## BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

### Schedule of Civil Penalties—Nurses

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to rescind § 43b.18 (relating to schedule of civil penalties—nurses—statement of policy) and replace it with § 43b.18a (relating to schedule of civil penalties—nurses) to read as set forth in Annex A.

#### *Effective Date*

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

#### *Statutory Authority*

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards and commissions in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of the licensing boards or commissions.

#### *Background and Purpose*

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the Boards and Commissions being accomplished through the Act 48 citation process.

Annex A sets forth amendments to the civil penalty schedule of the State Board of Nursing (Board). The proposed rulemaking was drafted following discussions with a representative of the Commissioner and the Board at regularly scheduled public meetings. The schedule of civil penalties for lapsed license violations was previously published as a statement of policy at 34 Pa.B. 5809 (October 23, 2004). It is the intent of this proposed rulemaking to codify the schedule of civil penalties as a regulation.

In addition, the proposed schedule of civil penalties establishes new civil penalties for violation of the continuing education requirement recently enacted in section 12 of the Professional Nursing Law (63 P. S. § 222). Section 12 of the Professional Nursing Law requires professional nurses to complete 30 hours of continuing education

during each biennium. The Board is proposing comprehensive regulations implementing the mandate of section 12 of the Professional Nursing Law through separate rulemaking. The Commissioner is proposing a civil penalty schedule for violation of the continuing education requirements for professional nurses because with over 200,000 professional nurses who will be subject to continuing education requirements, the Commissioner and Board believe the Act 48 citation process will be a much more efficient method of handling violations, while still ensuring licensees due process.

#### *Description of Proposed Rulemaking*

The Commissioner, in consultation with the Board, proposes a \$250 civil penalty for the first offense of failing to complete 1 to 10 hours of continuing education in a biennial period; a \$500 civil penalty for failing to complete 11 to 20 hours of continuing education in a biennial period; and a \$1,000 civil penalty for failing to complete 21 to 30 hours of continuing education in a biennial period. Second and subsequent offenses would not be subject to an Act 48 citation, but rather, would proceed through the formal disciplinary process.

The Board considered and approved the proposed rulemaking at regularly scheduled public meetings. The proposed rulemaking addresses a compelling public interest as described in this preamble.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking would have no adverse fiscal impact on the Commonwealth or its political subdivisions and would reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for violations subject to the Act 48 citation process.

#### *Sunset Date*

Professional licensure statutes require each board and commission to be self-supporting. Therefore, boards and commissions continually monitor the cost effectiveness of regulations affecting their operations. As a result, no sunset date has been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 18, 2007, the Commissioner 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 Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. 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 Commissioner, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Basil L. Merenda, Commissioner, Professional and Occupational Affairs, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

BASIL L. MERENDA,  
*Commissioner*

*(Editor's Note: For a document relating to this proposed rulemaking, see 37 Pa.B. 1980 (April 28, 2007).)*

**Fiscal Note:** 16-38. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**  
**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**  
**SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL**

*(Editor's Note: As part of this proposed rulemaking, the Commissioner is proposing to delete the text of the statement of policy in § 43b.18, which appears in 49 Pa. Code page 43b-31, serial page (325211), and replace it with § 43b.18a, which is printed in regular type to enhance readability.)*

**§ 43b.18. (Reserved).**

**§ 43b.18a. Schedule of civil penalties—nurses.**

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**STATE BOARD OF NURSING**

<b>Violation under 63 P. S.</b>	<b>Title/Description</b>	<b>Civil Penalty</b>
Section 225.4	Practicing professional nursing on a lapsed license	1st offense—0—12 mos.—\$100 per month up to \$1,000 Over 12 months—Formal action 2nd offense—Formal action
Section 664(4)	Practicing practical nursing on a lapsed license	1st offense—0—12 mos.—\$75 per month Over 12 months— Formal action 2nd offense—Formal action
Section 225.4	Holding oneself out as a licensed dietitian-nutritionist on a lapsed license	1st offense—0—12 months—\$100 per month up to \$1,000 Over 12 months—Formal action 2nd offense—Formal action
Section 222(b)	Failure to complete 30 hours of approved continuing education	1st offense—Deficiency of 1—10 hours—\$250 Deficiency of 11—20 hours—\$500 Deficiency of 21—30 hours—\$1,000 2nd offense—Formal action

[Pa.B. Doc. No. 07-744. Filed for public inspection April 27, 2007, 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 Thursday, May 10, 2007. 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 include a presentation on the status of the Flood Mitigation Task Force report and recommendations; a presentation on a revised proposal for a Flexible Flow Management Plan (FFMP) for the New York City Delaware Basin Reservoirs for potential consideration by the Commission at its meeting in July; a presentation on PCB Trackdown for the Camden County Municipal Utilities Authority; and a presentation on proposed modifications to the Commission's office building to improve energy efficiency and reduce cost.

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

1. *Pen Argyl Municipal Authority D-75-28 CP-2*. An application for approval to upgrade the Pen Argyl Municipal Authority WWTP. The WWTP design capacity will remain at 0.95 mgd. The project involves replacement of the existing contact aeration/trickling filter processes with a sequencing batch reactor process. The treatment process change is needed to improve nutrient removal. The WWTP will continue to discharge to a UNT of Waltz Creek in the Martins Creek Watershed, which is located within the drainage area to a section of the nontidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters. The WWTP serves the Borough of Pen Argyl and portions of Plainfield and Washington Townships, all located within Northampton County, PA.

2. *Mt. Airy No. 1, LLC D-77-58-3*. An application to modify an existing wastewater treatment plant to replace aged equipment and provide more reliable operation of the treatment facility. The modifications include installation of new fine screening equipment to replace the comminutor; replacement of the existing air supply system, including the blowers and air diffusers in the aeration basins; installation of new alum, polymer, alkalinity and sodium hypochlorite systems for process control and disinfection; construction of a new sludge holding tank; and miscellaneous improvements to controls, power supply and alarms throughout the treatment facility. No change is proposed to the existing effluent limits or design capacity of 0.220 mgd. The project effluent discharges to Forest Hills Run in the drainage area of DRBC Special Protection Waters. The project is located at the former Mount Airy Lodge property in Paradise Township, Monroe County, PA. In addition to serving a proposed hotel and casino, the project will continue to serve the adjacent golf course clubhouse and Our Lady of the Poconos Convent, Paradise Township.

3. *West Deptford Township D-79-82 CP-4*. An application for the renewal of a groundwater withdrawal project to continue withdrawal of 108.5 mg/30 days to supply the applicant's public water supply distribution system from existing Wells Nos. 3—8 in the Potomac-Raritan-Magothy Formation. The project is located in the Mantua and Woodbury Creeks Watersheds in West Deptford Township, Gloucester County, NJ.

4. *Lake Wynonah Municipal Authority D-91-20 CP-3*. 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 new Well No. 8 and to retain the existing withdrawal from all wells of 12 mg/30 days. The project is located in the Long Run Member of the Catskill Formation in the Plum Creek Watershed in Wayne and South Manheim Townships, Schuylkill County, PA.

5. *City of Philadelphia—Division of Aviation D-96-36 CP-2*. An application for the renewal of a groundwater withdrawal project to continue the withdrawal of 29.7 mg/30 days to supply the applicant's western boundary area mitigation system from existing Wells Nos. EW-A, EW-1, EW-2 and EW-3 in the Pleistocene Sand and Gravel Formation. The project is located in the Delaware River Watershed in the City of Philadelphia, Philadelphia County, PA.

6. *Buckingham Township D-2003-13 CP-4*. An application for approval of a groundwater withdrawal project to supply up to 3.24 mg/30 days of water to the applicant's public water supply distribution system from new Well No. CS-5 and to retain the existing total withdrawal allocation from all wells of 42 mg/30 days. The project is located in the Stockton, Brunswick and Lockatong formations in the Pine Creek, Neshaminy Creek and Robin Run Watersheds in Buckingham Township, Bucks County, PA and is located in the Southeastern Pennsylvania Ground Water Protected Area. (This project was originally noticed on August 18, 2005 as part of Docket D-2003-13 CP-2.)

7. *Borough of Bridgeport D-70-81 CP-2*. An application for approval to rerate a 0.77 mgd wastewater treatment plant (WWTP) to operate at its design capacity of 0.9 mgd. The project is located off River Road just south of the Pennsylvania Turnpike in the Schuylkill River Watershed in Upper Merion Township, Montgomery County, PA. The WWTP will continue to serve Bridgeport Borough and discharge to the Schuylkill River through the existing outfall. The project is located in the Southeastern Pennsylvania Ground Water Protected Area.

8. *Mount Holly Municipal Utilities Authority D-70-133 CP-3*. An application for approval to expand a 5 mgd WWTP to treat 6 mgd. The project is located in the Rancocas Creek Watershed in Mount Holly Township, Burlington County, NJ. The expanded WWTP will continue to serve Mount Holly Township and portions of Eastampton, Mount Laurel, Hainesport, Lumberton, Moorestown and Westampton Townships, all within Burlington County. The existing powdered activated carbon treatment system will be replaced by a conventional activated sludge process. Following chlorine disinfection, the WWTP effluent will be aerated and discharged to North Branch Rancocas Creek within the tidal reach of DRBC Water Quality Zone 2.

9. *Borough of National Park D-77-18 CP-2*. An application for approval of a groundwater withdrawal project to supply up to 12 mg/30 days of water to the applicant's



public supply distribution system from new Well No. 6 and existing Well No. 5, formerly known as Well No. 4. The requested allocation of 12 mg/30 days constitutes a decrease from the existing allocation of 22.5 mg/30 days. The project is located in the Potomac-Raritan-Magothy Formation in the Woodbury Creek Watershed in National Park Borough, Gloucester County, NJ.

10. *Waste Management Disposal Services of Pennsylvania, Inc. D-91-47 PA-3.* An application for renewal of a groundwater withdrawal project at Pottstown Landfill to continue withdrawal of up to 0.6 mg/30 days of water to the docket holder's contaminant extraction system from new recovery well RW-7 and from six existing recovery wells (RW-1 through RW-6). The docket holder seeks to retain the existing withdrawal limit from all wells of 0.6 mg/30 days, notwithstanding that its current need is less than 10,000 gpd. The project is located in the Brunswick and Lockatong Formations in the Manatawny Creek Watershed in West Pottsgrove Township, Montgomery County, PA and is located in the Southeastern Pennsylvania Ground Water Protected Area. (This was NAR'd as D-97-47 PA-3.)

11. *Pennsylvania American Water Company D-98-16 CP-2.* An application for the renewal of a groundwater withdrawal project to increase withdrawal from 36 mg/30 days to 61.5 mg/30 days. The requested allocation includes the existing allocation of 36 mg/30 days from Wells PCP No. 2, PCP No. 3, PCP No. 4, PFE No. 2, PFE No. 4, Pine Hill, Summit Point, PMIPA and Coolbaugh No. 1, all approved by Docket No. D-98-16 CP, in addition to the existing allocation of 15.75 mg/30 days for Wells Nos. 1—5 and 7 of the Pocono Farms Water Company, approved by Docket No. D-94-65 CP-2, which was recently acquired by the applicant. The applicant is also seeking approval for a new well, which is designated as the Mt. Pocono Field Office well. The wells are located in the Polar Gap and Catskill Formations in the Tobyhanna Creek, East Branch Tobyhanna Creek, Devils Hole Creek, Red Run and Indian Run Watersheds in Coolbaugh Township and Mt. Pocono Borough, Monroe County, PA. This withdrawal project is located within the drainage area to the section of the nontidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.

12. *Downingtown Area Regional Authority D-98-33 CP-2.* An application for approval of the rerate of the existing Downingtown Area Regional Authority's WWTP. The discharge from the applicant's WWTP will increase from an average annual flow of 7.134 mgd to 7.5 mgd and will continue to be discharged to the East Branch Brandywine Creek. Additional solids handling improvements are also included in the project. The facility is located in East Caln Township, Chester County, PA.

13. *Dow Reichhold Specialty Latex, LLC D-99-32-2.* An application for approval of a ground water withdrawal project to supply up to 5.4 mg/30 days of water to the applicant's reverse osmosis facility from new Well No. 18 and to increase the existing withdrawal from all wells from 17 mg/30 days to 22.4 mg/30 days. The water will be used to create distilled water for the applicant's latex manufacturing facility. The project is located in the Magothy Aquifer in the Fork Branch Watershed, Kent County, DE.

14. *Lonza, Inc. D-99-38-2.* An application requesting approval for an increase in the average monthly and maximum daily TDS limit for the docket holder's industrial waste treatment plant (IWTP) discharge. The request is to increase the average monthly limit from

17,500 mg/l to 20,000 mg/l and to increase the maximum daily limit from 35,000 mg/l to 40,000 mg/l. The docket holder has requested that the average monthly and maximum daily mass loading rates for TDS be increased to 13,344 lb/day and 26,688 lb/day, respectively. The docket holder's IWTP treats effluent from the production of pharmaceutical products. The IWTP discharges to the Schuylkill River. The facility is located in Upper Merion Township, Montgomery County, PA.

15. *Upper Saucon Township D-2000-51 CP-2.* An application for approval of a groundwater withdrawal project to supply up to 32.16 mg/30 days of water to the docket holder's public supply distribution system through one new well (Well No. CC2) and two existing wells (Wells Nos. CC1 and Abandoned Mine Shaft). The individual allocation for the Abandoned Mine Shaft Well is a reduction from the previous allocation of 30 mg/30 days to 3 mg/30 days; however, the proposed total allocation for all sources is an increase from the previous total allocation for all sources of 30 mg/30 days. The project is located in the Brunswick Formation in the Saucon Creek Watershed in Upper Saucon Township, Lehigh County, PA.

16. *Upper Bern Township D-2001-2 CP-2.* An application for approval to expand a 0.055 mgd WWTP to treat 0.155 mgd. The project will continue to serve only a portion of Upper Bern Township, Berks County, PA. The project is needed to serve future growth in the township and to connect some onlot septic systems to the WWTP. The existing sequencing batch reactor plant will be supplemented by a 0.1 mgd biologically engineered single sludge treatment system, which is a modification of the conventional activated sludge process. The existing chlorine disinfection system will be replaced by an ultraviolet light system and the existing headworks will be replaced by a new Rotomat unit. The project is located off the intersection of Main Street and Wolf Creek Road in Upper Bern Township upstream from Blue Marsh Reservoir in the Tulpehocken Creek Watershed. The WWTP will continue to discharge to Wolf Creek, a tributary of Northkill Creek.

17. *The Upper Hanover Authority D-2002-10 CP-2.* An application for the renewal of a groundwater withdrawal project to increase the total system withdrawal from 32.12 mg/30 days to 43.113 mg/30 days to supply the applicant's public water supply distribution system from existing Wells Nos. RH-1, RH-2, RH-3, TUHA-1, TUHA-2, TUHA-3, TUHA-4 and Kemmerer Spring in the Brunswick, Leithsville and Hardyston Quartzite formations. The increased allocation is requested in order to meet projected increases in service area demand. The project is located in the Perkiomen and Macoby Creeks Watersheds in Upper Hanover Township, Montgomery County and Hereford Township, Berks County, PA and within the Southeastern Pennsylvania Ground Water Protected Area.

18. *Blair Academy D-76-89.* An application for approval of the existing Blair Academy WWTP. The WWTP is permitted to discharge 50,000 gpd to Blair Creek, a tributary of the Paulins Kill River. The facility is located in Blairstown Township, Warren County, NJ, within the drainage area to a section of the nontidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.

19. *Mirant NY-Gen, LLC D-2001-38 CP-1*. An application for approval of the continued operation and remediated control measures of the applicant's Mongaup hydropower and reservoir system. The project is located in the Mongaup River Watershed in Orange and Sullivan Counties, NY in the drainage area of the Upper Delaware portion of DRBC's Special Protection Waters. The project facilities include the Toronto, Cliff Lake and Swinging Bridge Reservoirs, the latter of which provides hydroelectric power and receives flows from the former. In addition, the applicant makes releases from and generates hydroelectric power by means of its Mongaup Falls and Rio Reservoir facilities, also in the Mongaup River Basin. This application modifies an application originally noticed on August 20, 2001, which requested approval of an operating plan for the applicant's Mongaup hydropower and reservoir system. Mirant's Swinging Bridge Reservoir has two powerhouses (Units No. 1 and 2). The modified application includes eliminating the use of Unit No. 1 by filling the gate tower, penstock and tunnel with lightweight concrete. As a result, Unit No. 2 operating time is proposed to be increased from 13% to 30% and to use approximately 97% of the available inflow to the site, with only minor losses of power generation capability. Remedial control measures, including sinkhole backfilling, filter installation to stabilize material movement, and the conduit-related grouting, are being undertaken with the approval of the Federal Energy Regulatory Commission to provide structural repair at the dam, which had undergone subsidence. Mirant determined that complete filling of the conduit would further assure that future subsidence would not recur. Mirant applied for an Emergency Certificate from DRBC to implement the Swinging Bridge Dam modification project in an expeditious manner. The Emergency Certificate was approved by the DRBC on February 13, 2007. The project will not change reservoir volumes or affect reservoir level maintenance, and will not change the regulated flow from the Mongaup River System to the Delaware River.

20. *Pocono Manor Investors, LP D-2006-26-1*. An application for approval of the existing Pocono Manor Resort WWTP discharge of 0.140 mgd. The WWTP will continue to discharge to Swiftwater Creek, which is a tributary to the Brodhead Creek. The Brodhead Creek is a tributary to the Middle Delaware River Special Protection Waters. The facility is located in Pocono Township and currently serves Pocono Manor Village and the Pocono Manor Inn. The facility was built to service the 3,000 acre Pocono Manor property that is located in Pocono Township, Mount Pocono Borough and Tobyhanna Township, Monroe County, PA.

21. *Alcan Global Pharmaceutical Packing, Inc. D-2006-30-1*. An application for the approval of the existing discharge from the applicant's Millville Tube Drawing facility. The facility discharges 84,500 gpd of contact and noncontact cooling water to Petticoat Stream, which is a tributary of the Maurice River. The facility manufactures pressed and blown glassware and cooling water is used to cool the glass furnace and compressors. The facility is located in Millville City, Cumberland County, NJ.

22. *Hudson Valley Foie Gras, LLC D-2006-37-1*. An application for approval to increase an existing discharge from the applicant's WWTP from 4,000 gpd to 20,000 gpd. The WWTP will continue to discharge to the Middle

Mongaup River, which is a tributary of the Mongaup River. The Mongaup River is a tributary to the Upper Delaware River which is designated as Special Protection Waters. The facility is located in Ferndale, Sullivan County, NY.

23. *Joshmor, Inc. D-2007-5-1*. An application for approval to construct a 0.047 mgd WWTP to serve 207 single family homes in the proposed Emerson Chase Development. The project is located in the McMichael Creek Watershed in Jackson and Chestnuthill Townships, Monroe County, PA. Following treatment in a 3-cell lagoon and a filter system, disinfected effluent will be spray applied to approximately 13 acres of adjacent woodland in the drainage area of the Middle Delaware portion of DRBC's Special Protection Waters. Because the proposed lagoon will be lined with synthetic material and will provide up to 177 days of storage, no discharge to McMichael Creek is proposed.

24. *Golden Pheasant Golf Course D-2007-9-1*. An application for approval of a surface water withdrawal project to supply up to 15.4 mg/30 days of water to the applicant's golf course irrigation system from four surface water intakes. The project is located in the South Branch Rancocas Creek Watershed in Lumberton and Medford Townships, Burlington County, NJ.

25. *Unimin Corporation D-2007-14-1*. An application for approval to discharge up to 2.275 mgd to Dividing Creek from a hydraulic dredging operation. After neutralization and sedimentation, wash water from sorted dredge material (slurry sand) along with scalping screen separator water, stormwater and infiltration groundwater is discharged to Outfall 001A. The applicant also discharges to Cub Swamp, a tributary of Dividing Creek, through Outfall 002A during 10-year storm events. The facility is located in the tidal Delaware Bay Watershed in Commercial and Downe Townships, Cumberland County, NJ.

In addition to the public hearing on the dockets listed previously, the Commission's 1:30 p.m. business meeting will include: a public hearing and consideration of a resolution regarding an interim releases program for the New York City Delaware Basin Reservoirs pending notice and comment rulemaking on a revised proposal for a Flexible Flow Management Plan (FFMP); a resolution authorizing the executive director to engage the United States Geological Survey as prime contractor, in collaboration with NOAA/National Weather Service, the United States Army Corps of Engineers and DRBC, for development of a model for evaluating the potential for Delaware Basin Reservoirs to be used to mitigate flooding; a resolution reauthorizing the Toxics Advisory Committee; a resolution authorizing the executive director to engage contractors to design building modifications to improve energy efficiency and reduce cost and to develop RFPs for construction; a resolution authorizing the executive director to solicit bids for building modifications in association with development of the Ruth Patrick River Garden; a resolution providing for election of the Commission Chair, Vice Chair and Second Vice Chair for the year commencing July 1, 2007; and a resolution for the minutes providing for annual salary rates of Commission employees for Fiscal Year 2008.

The meeting will also include: adoption of the Minutes of the Commission's February 28, 2007, business meeting; announcements of upcoming advisory committee meetings and other events; a report by the Executive Director; a report by the Commission's General Counsel; and an opportunity for public dialogue.

Draft dockets scheduled for public hearing on May 10, 2007, will be posted on the Commission's website, [www.drbc.net](http://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 (TRS) at 711, to discuss how the Commission can accommodate their needs.

PAMELA M. BUSH,  
*Secretary*

[Pa.B. Doc. No. 07-745. Filed for public inspection April 27, 2007, 9:00 a.m.]

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Project Contractors

The Department of Agriculture (Department) is soliciting names of research institutions which have an interest in conducting agricultural research during the period of July 1, 2007, to June 30, 2008, and continuing. Institutions which respond will be provided with a preproposal format and a list of research topic areas. Institutions which responded for Fiscal Year 2006-07 will automatically receive a solicitation and do not need to respond again. The Department, through a selection process, will decide which projects are to be placed under contract. Interested parties should submit their name, address and telephone number to Kendy Gable, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110, (717) 705-3979.

DENNIS C WOLFF,  
*Secretary*

[Pa.B. Doc. No. 07-746. Filed for public inspection April 27, 2007, 9:00 a.m.]

## DEPARTMENT OF BANKING

### Action on Applications

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 9, 2002 (P. L. 1572, No. 207), known as the Credit Union Code; and applications received for the week ending April 17, 2007.

### BANKING INSTITUTIONS

#### Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
4-10-07	Mifflinburg Bank & Trust Company Mifflinburg Union County	8 North Route 11 and 15 Selinsgrove Snyder County	Opened

#### Branch Relocations/Consolidations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
4-11-07	Meridian Bank Berwyn Chester County	<i>Into:</i> 1776 East Lancaster Avenue Tredyffrin Township Berwyn Chester County  <i>From:</i> 1436 Lancaster Avenue Tredyffrin Township Berwyn Chester County	Filed

#### Branch Discontinuances

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
4-14-07	Pennsylvania State Bank Camp Hill Cumberland County	715 Wertzville Road Enola Cumberland County	Closed

## NOTICES

## SAVINGS INSTITUTIONS

No Activity.

## CREDIT UNIONS

## Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Credit Union</i>	<i>Location</i>	<i>Action</i>
3-31-07	Alcose Credit Union, White Oak, and Artcraft Credit Union, North Huntingdon Surviving Institution— Alcose Credit Union, White Oak	White Oak	Effective

The Department's website at [www.banking.state.pa.us](http://www.banking.state.pa.us) includes public notices for more recently filed applications.

VICTORIA A. REIDER,  
*Acting Secretary*

[Pa.B. Doc. No. 07-747. Filed for public inspection April 27, 2007, 9:00 a.m.]

## DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

### Weatherization Assistance Program State Plan; Public Hearing

The Department of Community and Economic Development (Department) will hold a public hearing at 10 a.m. on Tuesday, May 15, 2007, in Conference Room 4W-1, 4th Floor, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA. The purpose of this hearing is to receive comments on the Weatherization Assistance Program's proposed State Plan to be submitted to the United States Department of Energy for the program year 2007-2008.

A copy of this plan may be obtained by contacting the Department of Community and Economic Development, Center for Community Empowerment, 4th Floor, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, (717) 787-1984.

Written comments may be submitted by JamesEtta Reed, Director, Center for Community Empowerment, 4th Floor, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120 until 5 p.m. on May 15, 2007.

Persons with a disability who wish to attend this hearing and require auxiliary aid, services or other accommodations to participate in the proceedings should contact Yvonne Adams at (717) 787-1984 to discuss how the Department may accommodate their needs.

DENNIS YABLONSKY,  
*Secretary*

[Pa.B. Doc. No. 07-748. Filed for public inspection April 27, 2007, 9:00 a.m.]

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Applications, Actions and Special Notices

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#### APPLICATIONS

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### 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 &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0060704	Pleasant Valley Manor, Inc. 4227 Manor Drive Stroudsburg, PA 18360	Monroe County Hamilton Township	McMichaels Creek 01E	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0103926	Component InterTechnologies, Inc. 2426 Perry Highway Hadley, PA 16130-2998	Perry Township Mercer County	UNT to Little Shenango River 20-A	Y
PA0032603	Devite Mobile Home Park 2546 Ben Franklin Highway Edinburg, PA 16116	Mahoning Township Lawrence County	UNT to Shenango River 20-A	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.*

**PA0051993**, Sewage, **Giambrone Enterprises, L. P.**, 1030 North West End Boulevard, Quakertown, PA 18951. This existing facility is located in Richland Township, **Bucks County**.

Description of Proposed Activity: Renewal of NPDES permit to discharge treated effluent from a restaurant.

The receiving stream, a UNT to Tohickon Creek, is in the State Water Plan Watershed 2D and is classified for TSF, aquatic life, water supply and recreation. The nearest downstream public water supply intake for North Penn and North Wales Water Authority is located on the Delaware River and is approximately 27 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.008 mgd.

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>		
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Instantaneous Maximum mg/l</i>
CBOD <sub>5</sub>			25		50
Total Suspended Solids			30		60
Ammonia as N					
(5-1 to 10-31)			2.5		5.0
(11-1 to 4-30)			7.5		15.0
Phosphorus as P			0.5		1.0
Fecal Coliform (col/100ml)			200		1,000
Dissolved Oxygen			2.0		
			Instantaneous Minimum		
pH (standard units)			6.0		9.0
Total Residual Chlorine			1.2		2.0

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

1. Notification of Designation of Responsible Operator
2. Abandon STP when Public Sewers become Available
3. Remedial Measures if Public Nuisance
4. No Stormwater to Sanitary Sewers
5. Necessary Property Rights
6. Change in Ownership
7. Chlorine Minimization
8. Proper Sludge Disposal
9. Operator Training
10. Laboratory Certification
11. Instantaneous Maximum Limitations
12. Fecal Coliform Reporting

The EPA waiver is not in effect.

**PA0020290**, Sewage, SIC 4952, **Quakertown Borough**, 35 North Third Street, Quakertown, PA 18951-0727. This proposed facility is located in Richland Township, **Bucks County**.

Description of Proposed Activity: Renewal of an NPDES permit to discharge 3.1 mgd of treated sewage into Tohickon Creek.

The receiving stream, Tohickon Creek, is in the State Water Plan Watershed Three Mile—2D and is classified for TSF. The nearest downstream public water supply intake for PA Water Company is located on the Delaware River and is 29 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 3.1 mgd.

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	8	12	16
(11-1 to 4-30)	15	23	30
Suspended Solids	30	45	60
Ammonia (as N)			
(5-1 to 10-31)	2.0		4.0
(11-1 to 04-30)	6.0		12.0
Phosphorus (as P)	0.5		1.0
Total Residual Chlorine	0.035		0.063
Fecal Coliform	200 colonies/100 ml as a geometric average		1,000 #/100 ml
Dissolved Oxygen	Minimum of 6.0 mg/l at all times		
pH	Within limits of 6.0 to 9.0 standard units at all times		
Chlorobromomethane	Monitor and Report		
Dichlorobromomethane	Monitor and Report		
Phenols, Total	Monitor and Report		
Whole Effluent Toxicity (TU <sub>c</sub> )			
(Ceriodaphnia Dubia)	Monitor and Report		
Whole Effluent Toxicity (TU <sub>c</sub> )			
(Fathead Minnow)	Monitor and Report		

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

1. The EPA waiver is not in effect.
2. Special Test Methods.
3. Implementation of Pretreatment Program Requirements.
4. Effective Disinfection.
5. Stormwater Requirements.

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

**PA-0064122**, Industrial, **Conectiv Bethlehem, LLC**, 2254 Applebutter Road, Bethlehem, PA 18015. This proposed facility is located in the City of Bethlehem, **Northampton County**.

Description of Proposed Activity: Renewal of NPDES Permit

The receiving stream, Lehigh River, is in the State Water Plan Watershed No. 2C and is classified for WWF. The nearest downstream public water supply intake for Keystone Water Company is located on Delaware River over 50 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 6.18 mgd.

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>
Zinc				Monitor
Total Chromium				Monitor
pH			6 to 9 standard units	
Free Available Chlorine				0.20
Temperature				110° F

Internal Monitoring Point 101

<i>Parameter</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Maximum Daily</i>	<i>Average Monthly</i>	<i>Maximum Daily</i>
Total Suspended Solids			30.0	100.0
Oil and Grease			15.0	30.0

Outfalls 002 and 003

Stormwater only—no specific limitations.

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

**Application No. PA 0260754**, Sewage, **Thomas Stewart**, 1301 Enola Road, Carlisle, PA 17013. This facility is located in North Middleton Township, **Cumberland County**.

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

The receiving stream, Wertz Run, is in Watershed 7-B and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Pennsylvania American Water Company is located on the Conodoguinet Creek, approximately 17.4 miles downstream. The discharge is expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 0.0004 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	50
Total Suspended Solids	30	60
Total Residual Chlorine	Monitor and Report	
pH	From 6.0 to 9.0 inclusive	
Fecal Coliform	200/100 ml as a geometric average	
(5-1 to 9-30)	2,000/100 ml as a geometric average	
(10-1 to 4-30)		

Persons may make an appointment to review the Department of Environmental Protection's files on this case by calling the file review coordinator at (717) 705-4732.

The EPA waiver in effect.

**Application No. PA 0248746**, CAFO, **New Hope Farm**, 23177 Back Road, Concord, PA 17217. Leon Snyder (230 Poplar Road, Fleetwood, PA 19522) and Country View Family Farms, Inc. (6360 Flank Drive, Suite 100, Harrisburg, PA 17112-2766) have submitted an NPDES permit renewal application for New Hope Farm, an existing swine operation located in Fannett Township, **Franklin County**. The CAFO is situated near a UNT of Doylestown Stream (Watershed 12-B), which is classified as a CWF. The CAFO has a target animal population of approximately 1,320 animal equivalent units consisting of 2,750 sows, 1,120 gilts and 20 boars.

The Department has conducted administrative and technical reviews of the application. Based on the preliminary review and application of lawful standards and regulations, the Department has made a tentative determination to reissue the NPDES permit for the operation subject to the terms and conditions and monitoring and reporting requirements specified in the permit. The permit application and draft permit are on file at the Southcentral Regional Office of the Department.

Persons may make an appointment to review the Department of Environmental Protection's files by calling the file review coordinator at (717) 705-4732.

The Environmental Protection Agency permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

**Application No. PA 0248347**, CAFO, **Lesher's Poultry Farm**, 1153 Swamp Fox Road, Chambersburg, PA 17201-8865. Lesher's Poultry Farm, Inc. has submitted an application for an NPDES permit for an existing CAFO of the same name, located in Guilford Township, **Franklin County**. The farm consists of three layer barns housing 270,254 laying hens and one pullet barn housing 95,500 pullets, for a total of 1,063 animal equivalent units. The farm is situated near a UNT of Conococheague Creek which is classified for WWF.

The Department has conducted administrative and technical reviews of the application. Based on the preliminary review and application of lawful standards and regulations, the Department has made a tentative determination to reissue the NPDES permit for the operation subject to the terms and conditions and monitoring and reporting requirements specified in the permit. The permit application and draft permit are on file at the Southcentral Regional Office of the Department.

Persons may make an appointment to review the Department of Environmental Protection's files by calling the file review coordinator at (717) 705-4732.

The Environmental Protection Agency permit waiver provision under 40 CFR 123.24(e) does not apply to this NPDES permit.

*Southwest Regional Office: Regional Manager, Water Management, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**PA0001236, Industrial Waste**, SIC 3613, **Eaton Electrical**, One Tuscarawas Road, Beaver, PA 15009. This application is for renewal of an NPDES permit to discharge treated process water and untreated cooling water stormwater from the Vanport Plant in Vanport Township, **Beaver County**.

The following effluent limitations are proposed for discharge to the receiving waters of Two Mile Run and 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 Water Authority, located on the Ohio River, 8.0 miles below the discharge point.

*Outfall 302: existing discharge, design flow of 0.168 mgd.*

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Oil and Grease			15.0	30.0	
Total Suspended Solids			31.0	62.0	
Total Residual Chlorine			0.5		1.0
pH	not less than 6.0 nor greater than 9.0				

*Other Conditions:* Outfall 002 receives wastewater from Internal Monitoring Point 302. Effluent limits are imposed and monitored at this internal monitoring point.

*Outfall 006: existing discharge, design flow of 0.038 mgd.*

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Temperature (° F)					
June 1-15				110	
June 16-30				110	
July 1-31				106	
August 1-31				104	
September 1-15				97	
September 16-30				91	
Zinc	Monitor and Report				
pH	not less than 6.0 nor greater than 9.0				



Outfalls 001, 008, 009: existing stormwater discharge, design flow of varied mgd

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum

The discharge from these outfalls shall consist of uncontaminated stormwater runoff only.

Outfalls 003—005 and 007: stormwater discharge, design flow of varied mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Zinc					Monitor and Report

The EPA waiver is not in effect.

**PA0253359, Industrial Waste**, SIC 4941, **Cambria Somerset Authority**, 244 Walnut Street, Johnstown, PA 15901. This application is for issuance of an NPDES permit to discharge two raw water supply line 'blow-offs' from the Cambria Somerset Authority in Franklin, **Cambria County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as outfalls 001—Hinckston Run; 002—Peggy's Run, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Greater Johnstown Water Authority, located at Johnstown, greater than 20 miles below the discharge point.

Outfall 001 and 002: new discharge, design flow of measured mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow			Monitor and Report		
Total Suspended Solids			30		60
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.

**PA0210625, Industrial Waste. Bradford Forest Inc.**, 44 High Street, Bradford, PA 16701-0369. This proposed facility is located in Borough of Bradford, **McKean County**.

Description of Proposed Activity: a new NPDES permit for an existing discharge of untreated stormwater and wet decking.

The receiving water is a UNT (wetlands) to East Branch Tunungwant Creek and Rutherford Run. The receiving stream is in State Water Plan 16-C and is classified for the following uses: CWF, aquatic life, water supply and recreation. The nearest downstream potable water supply, State of New York, is located on Tunungwant Creek and is approximately 4.8 miles below the point of discharge.

- The proposed effluent limits for Outfall 001 based on a design flow of n/a mgd.
- The proposed effluent limits for Outfall 002 based on a design flow of n/a mgd.
- The proposed effluent limits for Outfall 003 based on a design flow of n/a mgd.
- The proposed effluent limits for Outfall 004 based on a design flow of n/a mgd.
- The proposed effluent limits for Outfall 007 based on a design flow of n/a mgd.
- The proposed effluent limits for Outfall 009 based on a design flow of n/a mgd.
- The proposed effluent limits for Outfall 010 based on a design flow of n/a mgd.

Parameter	Concentrations		
	Average Monthly (mg/l)	Maximum Daily (mg/l)	Instantaneous Maximum (mg/l)
Flow		XX	
CBOD		XX	
TSS		XX	
Total Al		XX	
Total Iron		XX	
Total Mn		XX	
Dissolved Oxygen		XX	

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
pH		XX	

The proposed effluent limits for Outfall 005 based on a design flow of 0.002 mgd.

The proposed effluent limits for Outfall 006 based on a design flow of 0.002 mgd.

The proposed effluent limits for Outfall 008 based on a design flow of 0.002 mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow		XX	
CBOD		XX	
TSS		XX	
Total Al		XX	
Total Iron		XX	
Total Mn		XX	
Dissolved Oxygen		XX	
pH		XX	

There shall be no discharge of woody material such as bark, twigs, branches, heartwood or sapwood that will not pass through a 2.54 centimeter (1.0 inch) diameter round opening.

XX—Monitor and report on DMRs.

The EPA waiver is in effect.

**PA0040380**, Sewage, **Country Roads Mobile Home Park**, 811 Rose Stop Road, New Castle, PA 16101. This proposed facility is located in Shenango Township, **Lawrence County**.

Description of Proposed Activity: New permit to continue an existing discharge of treated sewage.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride, phenolics, sulfate and chloride, the existing/proposed downstream potable water supply, considered during the evaluation is the potable water supply (Public Water Supplier) is located on the Slippery Rock Creek (Salvation Army Camp Allegheny) and is approximately 7 miles below point of discharge.

The receiving stream, the UNT to Hell Run, is in Watershed 20-C and classified for exceptional value, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.0125 mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX		
CBOD <sub>5</sub>	25		50
Total Suspended Solids	30		60
NH <sub>3</sub> -N			
(5-1 to 10-31)	3		6
(11-1 to 4-30)	9		18
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	1.5		3.5
Dissolved Oxygen		at least 3 mg/l at all times	
pH		6.0 to 9.0 standard units at all times	

XX—Monitor and report on monthly DMRs.

The EPA waiver is in effect.

**PA0024970**, Sewage, **Department of the Army**, Pittsburgh District, Corps of Engineers, William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222-4188. This facility is located in Pymatuning Township, **Mercer County**.

Description of Proposed Activity: New permit for an existing discharge of treated sewage.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride, phenolics, sulfate and chloride, the existing/proposed downstream potable water supply, considered during the evaluation is the Public Water Supplier and is located on the Shenango River (Sharpsville Municipal Water Authority) and is approximately 32.64 miles below point of discharge.

The receiving stream, the Shenango River, is in Watershed 20-A and classified for WWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.052 mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX		
CBOD <sub>5</sub>	25		50
Total Suspended Solids	30		60
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	0.5		1.2
pH		6.0 to 9.0 standard units at all times	

XX—Monitor and report on monthly DMRs.

The EPA waiver is in effect.

**PA0239976**, Industrial Waste, **Redbank Valley Municipal Authority**, 243 Broad Street, New Bethlehem, PA 16242. This proposed facility is located in New Bethlehem Borough, **Clarion County**.

Description of Proposed Activity: a new permit for new discharge replacing an existing discharge of treated industrial waste.

The receiving water is Redbank Creek. The receiving stream is in State Water Plan 17-C and is classified for the following uses: TSF, aquatic life, water supply and recreation. The nearest downstream potable water supply, Kittanning Suburban Joint Water Authority, is located on the Allegheny River and is approximately 40 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.04 mgd.

<i>Parameter</i>	<i>Concentrations</i>		
	<i>Average Monthly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX		
Total Suspended Solids	30.0	60.0	75.0
Aluminum	0.8	1.5	1.9
Iron	2.0	4.0	5.0
Manganese	1.0	2.0	2.5
Total Residual Chlorine	0.5		1.2
pH		6.0 to 9.0 standard units at all times	

The EPA waiver is in effect.

**PA0239861**, Sewage, **Cochranton Borough**, 109 East Adams Street, Cochranton, PA 16314. This proposed facility is located in Wayne Township, **Crawford County**.

Description of Proposed Activity: A new NPDES Permit for a new discharge of treated sewage. This permit is being redrafted to change effluent copper to monitor and report and to incorporate Special Conditions to help ensure endangered mussels protection downstream in French Creek.

For the purpose of evaluating effluent requirements for TDS, NO<sub>2</sub>-NO<sub>3</sub>, fluoride, phenolics, sulfate and chloride, the existing/proposed downstream potable water supply, considered during the evaluation is the Emlenton Water Company located on the Allegheny River and is approximately 53 miles below point of discharge.

The receiving stream, French Creek, is in Watershed 16-D and classified for WWF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.175 mgd.

<i>Parameters</i>	<i>Loadings</i>		<i>Concentrations</i>		
	<i>Average Monthly (lb/day)</i>	<i>Average Weekly (lb/day)</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow (mgd)	XX	XX			
CBOD <sub>5</sub>	32	48	22	33	44
Total Suspended Solids	44	66	30	45	60
Fecal Coliform (5-01 to 9-30)			200/100 ml as a geometric average		
(10-01 to 4-30)			2,000/100 ml as a geometric average		
Ultraviolet Disinfection			Monitor and Report Intensity		

Parameters	Loadings		Concentrations		Instantaneous Maximum (mg/l)
	Average Monthly (lb/day)	Average Weekly (lb/day)	Average Monthly (mg/l)	Average Weekly (mg/l)	
NH <sub>3</sub> -N (5-01 to 10-31)	11.7		8		16
(11-01 to 4-30)	35		24		48
Phosphorus	2.9		2		4
Dissolved Oxygen			Minimum 3		
Copper	XX		XX		XX
pH			6.0 to 9.0 standard units at all times		

XX—Monitor and report on monthly DMRs.

Special Conditions to ensure Endangered Mussel Protection

1. Daily WWTP observations required.
2. Inline continuous effluent monitoring/alarm system requirement.
3. Adoption of pretreatment program ordinance.
4. Requirement to develop a PPC Plan with focus on endangered mussel protection.
5. Requirement to develop a Contingency Plan for effluent copper removal.

The EPA waiver is not in effect.

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

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

**WQM Permit No. 0707401**, Sewerage, **Clappertown Christian Missionary & Alliance Church**, R. D. 2, Box 19, Williamsburg, PA 16693. This proposed facility is located in Huston Township, **Blair County**.

Description of Proposed Action/Activity: Seeking permit authorization for the construction/operation of a sewage treatment system to replace a malfunctioning system.

**WQM Permit No. WQG02210702**, Sewerage, **Wormleysburg Borough**, 20 Market Street, Wormleysburg, PA 17043. This proposed facility is located in Wormleysburg Borough, **Dauphin County**.

Description of Proposed Action/Activity: Seeking permit authorization for the construction/operation of sewer extension and pump station to serve The Woods at Waterford.

**WQM Permit No. 2107403**, Sewerage, **Newville Borough Water & Sewer Authority**, 99 Cove Alley, Newville, PA 17241. This proposed facility is located in Penn and West Pennsboro Townships, **Cumberland County**.

Description of Proposed Action/Activity: Seeking permit authorization for the construction/operation for the Route 233 Sanitary Sewer and Water Extension including: two pumping stations, force mains, gravity sewer and a water service line.

**WQM Permit No. 3607202**, CAFO, **Brubaker Farms Partnership, Mike and Luke Brubaker**, 493 Musser Road, Mount Joy, PA 17552. This proposed facility is located in East Donegal Township, **Lancaster County**.

Description of Proposed Action/Activity: Seeking permit authorization for the expansion of their existing dairy farm with a broiler operation. There are two existing manure storage structures on the farm. The farm will undergo an expansion that will include a methane digester.

### IV. NPDES Applications for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

### V. Applications for NPDES Wavier 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.*

NPDES Permit No.	Applicant Name & Address	County	Municipality	Receiving Water/Use
PAI010907001	269 Canal Road, LP 301 Oxford Valley Road Suite 702 Yardley, PA 19067-7713	Bucks	Warminster Township	Delaware Division of the PA Canal WWF
PAI011507018	Benco Associates 625 Todd Road Honey Brook, PA 19344	Chester	Honey Brook Township	West Branch Brandywine Creek HQ-TSF-MF

## NOTICES

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<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI014607002	Summit Realty Advisors, LLC 621 Delaware Street New Castle, DE 09720	Montgomery	Ambler Borough	Wissahickon Creek/Schuylkill River TSF

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

*Lackawanna County Conservation District: 1300 Old Plank Road, Mayfield, PA 18433, (570) 281-9495.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAS10N029R(1)	First National Acquisition, Inc. 200 Phillips Road Exton, PA 19341-1326	Lackawanna	Covington Township	Lake Run HQ-CWF Roaring Brook HQ-CWF Tamarack Creek HQ-CWF Meadow Brook HQ-CWF

*Schuylkill County Conservation District: 1206 Agriculture Center Drive, R. R. 5, Box 5810, Pottsville, PA 17901, (570) 622-3742.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI025404004(1)	Yudacot Limited Partnership P. O. Box 279 St. Clair, PA 17970	Schuylkill	Ryan Township	Codorus Creek HQ-CWF

*Monroe County Conservation District: 8050 Running Valley Road, Stroudsburg, PA 18360, (570) 629-3060.*

**NPDES Permit PAS10S119**, Stormwater, **Alpine Rose Resorts, Inc.**, 4626 Kathi Drive, Bethlehem, PA 18017-8701, has applied to discharge stormwater associated with a construction activity located in Eldred Township, **Monroe County** to Aquashicola Creek (HQ-CWF). This notice involves a revision to the previous permit to include an Antidegradation Analysis.

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI032107001	Traditions of America-Anderson 1233 Locust Street 4th Floor Philadelphia, PA 19107	Cumberland	South Middleton Township	Letort Spring Run/EV

*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 &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041407006	Andrea Grazzini Grazzini LDP, Phase I 487 Nimitz Avenue State College, PA 16801	Centre	Benner Township	UNT of Buffalo Run HQ-CWF

*Clearfield County Conservation District: 650 Leonard Street, Clearfield, PA 16830, (814) 765-2629.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041706003	Department of Transportation District 2-0 1924-30 Daisy Street P. O. Box 342 Clearfield, PA 16830	Clearfield	Goshen and Lawrence Townships	Lick Run HQ-CWF

*Lycoming County Conservation District: 542 County Farm Road, Suite 202, Montoursville, PA 17754, (570) 433-3003.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI044107001	Grizzly Industries, Inc. 1815 West Battlefield Street Springfield, MO 65807	Lycoming	Muncy Township	WB Susquehanna River WWF

*Union County Conservation District: Union County Government Center, 155 North 15th Street, Lewisburg, PA 17837, (570) 524-3860.*

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI2046007001	Donald O. Hower Rapid Run Development 69 Maple Street Mifflinburg, PA 17844	Union	West Buffalo Township	Rapid Run HQ-CWF

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

PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

### PUBLIC WATER SUPPLY (PWS) PERMIT

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

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

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

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

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

#### SAFE DRINKING WATER

#### Applications Received under the Pennsylvania Safe Drinking Water Act

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

**Application No. 1307501**, Public Water Supply.  
Applicant **Vogel Farm Spring Water**  
Packer Township  
**Carbon County**

Responsible Official James Dulcey  
Vogel Farm Spring Water  
174 Dulcey Road  
Weatherly, PA 18255

Type of Facility Bulk Water Hauling System

Consulting Engineer Kenneth M. Justice, P. E.  
211 E. 11th Avenue  
Conshohocken, PA 19428

Application Received Date April 9, 2007

Description of Action The development of a spring source. The water is treated by cartridge filtration, UV and ozonation prior to storage in a silo for loading tanker trucks.

**Application No. 1307502**, Public Water Supply.  
Applicant **Broad Mountain Spring Water**  
Packer Township  
**Carbon County**

Responsible Official James Dulcey  
Broad Mountain Spring Water  
174 Dulcey Road  
Weatherly, PA 18255

Type of Facility Bulk Water Hauling System

Consulting Engineer Kenneth M. Justice, P. E.  
211 E. 11th Avenue  
Conshohocken, PA 19428

Application Received Date April 9, 2007

Description of Action The development of a spring source. The water is treated by cartridge filtration, UV and ozonation prior to storage in a silo for loading tanker trucks.

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

**Permit No. 0607507**, Public Water Supply.  
Applicant **Pennsylvania American Water**  
Municipality Exeter Township  
County **Berks**

Responsible Official David R. Kauffman  
800 West Hersheypark Drive  
Hershey, PA 17033

Type of Facility Public Water Supply

Consulting Engineer Paul J. Mourt, P. E.  
Hatch Mott MacDonald  
27 Bleeker Street  
Millburn, NJ 07041

Application Received March 27, 2007

Description of Action Demolition of existing  
wooden-roofed finished water  
storage reservoirs (2),  
construction of new ground level  
300,000 gallon finished water  
storage tank, construction of new  
underground booster pump  
station to replace existing station  
on golf course.

Consulting Engineer Alfred Benesch & Company  
400 One Norwegian Plaza  
P. O. Box 1090  
Pottsville, PA 17901

Application Received Date March 16, 2007

Description of Action The installation of a 20,000  
gallon water storage tank.

**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

**MINOR AMENDMENT**

**Applications Received under the Pennsylvania Safe Drinking Water Act**

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

**Application Minor Amendment, Public Water Supply.**

Applicant **LURRS**  
Lehigh Township  
**Northampton County**

Responsible Official Mark J. Leuthe, Partnership  
Agent  
499 Riverview Drive  
P. O. Box 68  
Walnutport, PA 18088  
(610) 767-8545

Type of Facility Community Water System

Consulting Engineer NA

Application Received Date April 11, 2007

Description of Action Application for transfer of PWS  
operations permit No. 3480049  
from Heritage Village Water  
Authority to LURRS, a  
Pennsylvania General  
Partnership.

**Application Minor Amendment, Public Water Supply.**

Applicant **Mehoopany Township Municipal**  
Mehoopany Township  
**Wyoming County**

Responsible Official Neal Wintermute, Chairperson  
Mehoopany Township Municipal  
Authority  
R. R. 2, Box 50  
Main Street  
Mehoopany, PA 18629

Type of Facility Public Water System

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.*

**Ramalho Residence**, Lower Moreland Township, **Montgomery County**. On behalf of Lewis Ramalho, 3485 Brae Bourn Drive, Hindington Valley, PA 19006 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted by release of No. 2 fuel oil. The future use of the site will remain the same. A summary of the Notice of Intent to Remediate was reported to have been published in the *Bucks County Intelligencer* on December 7, 2006.

**269 Canal Road**, Falls Township, **Bucks County**. Trevan Houser, Land Resource Solutions, LLC, 1274 N. Church Street, NJ 08057 on behalf of Anthony Cino, 269 Canal Road, LP, 301 Oxford Valley Road, Suite 702, Yardley, PA 19067 has submitted a Notice of Intent to Remediate. Groundwater at the site has impacted by release of inorganics. The future use of the site is proposed for commercial redevelopment as a Brownfield site.

**Trans Materials**, West Goshen Township, **Chester County**. Christopher Ward, RT Env. Service, Inc., Pureland Complex, 510 Heron Drive, Suite 306, Bridgeport, NJ 08014 on behalf of Senya Isayeff, IRR-Keystone Community Alliance-West Goshen, 550 Union Street, West Chester, PA 19382 has submitted a Notice of Intent to Remediate. Groundwater at the site has been impacted by release of chlorinated solvents. The future use of the site is nonresidential, mixed-use warehouse and office space.

**Hafer Farm Property**, New Hanover Township, **Montgomery County**. Richard Ley, MARCOAR Remediation, Inc., 540 Trestel Place, Downingtown, PA 19335 on behalf of Marlene Troxell, National Penn Investors rust-Trustee Hafer Est., 2201 Ridgewood Road, No. 180, Wyomissing, PA 19610 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted by release of unleaded gasoline. The future intended use of the property is private residential.

**Marlin Residence**, Lower Providence Township, **Montgomery County**. Richard D. Trimpi, Trimpi Associates, Inc, 1635 Old Plains Road, Pennsburg, PA 18073 on behalf of Mr. and Mrs. Marlin, 3962 Township Line Road, Collegetown, PA 19426 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted by release of No. 2 fuel oil. The future use of the site is residential. A summary of the Notice of Intent to Remediate was reported to have been published in *The Mercury* on March 10, 2007.

**Francis Freas Glass Works**, Conshohocken Borough, **Montgomery County**. On behalf of Douglass Marzell, Francis Freas Glass Works, 144-148 East 9th Avenue, Conshohocken, PA 19428 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by release of chlorinated solvents. The future use of the property is nonresidential, and will be a continuation of the current manufacturing operations and office use.

**Four Falls Corp. Center**, West Conshohocken Borough, **Montgomery County**. Michael Christie, Penn

E & R, Inc., 2755 Bergey Road, Hatfield, PA 19440 on behalf of Richards Evans, Thomas Properties Group, Inc., 200 Four Falls, Suite 109, West Conshohocken, PA 19428 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by release of Nos. 4-6 fuel oil. The future use of the site will remain the same.

**Keystone Industrial Port Complex/Lot 8 Phase 4**, Fairless Hills, **Bucks County**. Jeffrey Smith, Langan Engineering and Env. Service, Inc., 30 S. 17th Street, Suite 1300, Philadelphia, PA 19103 on behalf of Kathleen Mayher, United States Steel Corp., 600 Grant Street, Philadelphia, PA 15219, has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by release of chlorinated solvents. The subject property is currently vacant. A summary of the Notice of Intent to Remediate was reported to have been published in the *Bucks County Courier Times* on March 12, 2007.

**Colony Arms Apts.**, Lower Providence Township, **Montgomery County**. Herbert Grant, Con-Tech Services, Inc., 23 East Front Street, Media, PA 19063 on behalf of Dan Stephano, Colony Arms Assoc., P. O. Box 370, Springs House, PA 19477 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by release of No. 2 fuel oil. The property use will remain the same as present, a residential apartment complex. A summary of the Notice to Intent to Remediate was reported to have been published in the *Times Herald* on March 20, 2007.

**905 Bristol Pike**, Bristol Township, **Bucks County**. Samuel Kucia, Environmental Consulting, Inc., 500 East Washington Street, Suite 375, Norristown, PA 19401 on behalf of Robert White, Redevelopment Authority of Bucks County, One North Wilson Avenue, Bristol, PA 19007 has submitted a Notice of Intent to Remediate. Soil at the site has been impacted by release of No. 2 fuel oil. The future use of the site will remain the same.

**18 Chestnut Street**, Sadsbury Township, **Chester County**. Gilbert Marshall, Marshall Geoscience, Inc., 170 E. First Avenue, Collegetown, PA 19426 on behalf of Joseph DiSciullo, 444 West Lincoln Highway, Coatesville, PA 19320 has submitted a Notice of Intent to Remediate. Groundwater at the site has been impacted by release of unleaded gasoline.

*Northeast Region: Ronald S. Brezinski, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**Former Leach-Covington Property**, Tunkhannock Township, **Monroe County**. Richard D. Trimpi, CHMM, PG, Trimpi Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073 has submitted a Notice of Intent to Remediate (on behalf of his client, Argyle Watterston, Option One Mortgage Corporation, 6531 Irvine Center Drive, Irvine, CA 92618) concerning the remediation of soils and groundwater found to have been impacted by No. 2 fuel oil as the result of an accidental release. The applicant proposes to remediate the site to meet the Residential Statewide Health Standard. A summary of the Notice of Intent to Remediate was published in the *Pocono Record* on April 10, 2007. The intended future use of the site will be residential.

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

**Schoppert Residence**, Fairview Township, **York County**. Environmental Standards, 1140 Valley Forge Road, Valley Forge, PA 19482, on behalf of Michelle Schoppert, 727 Old Quaker Road, Lewisberry, PA 17339-9789, submitted a Notice of Intent to Remediate site soils



contaminated with No. 2 fuel oil released from an aboveground storage tank. The property is and will remain a private residence. The applicant is seeking to remediate to the Residential Statewide Health Standard.

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

**Sheetz Store No. 280—Mill Hall**, Bald Eagle Township, **Clinton County**, Mountain research, LLC, 825 25th Street, Altoona, PA 16601 on behalf of Sheetz, Inc., 5700 6th Avenue, Altoona, PA 16602 has submitted a Notice of Intent to Remediate soil and groundwater contaminated with 1,2,4-Trimethylbenzene, 1,3,5-Trimethylbenzene, Benzene, Toluene, Ethylbenzene, Xylene, Naphthalene, Cumene and Lead; groundwater is also contaminated with MTBE. The applicant proposes to remediate the site to meet the Site-Specific Standard.

## AIR QUALITY

### PLAN APPROVAL AND OPERATING PERMIT APPLICATIONS

#### NEW SOURCES AND MODIFICATIONS

The Department of Environmental Protection (Department) has developed an "integrated" plan approval, State operating permit and Title V operating permit program. This integrated approach is designed to make the permitting process more efficient for the Department, the regulated community and the public. This approach allows the owner or operator of a facility to complete and submit all the permitting documents relevant to its application one time, affords an opportunity for public input and provides for sequential issuance of the necessary permits.

The Department has received applications for plan approvals and/or operating permits from the following facilities.

Copies of the applications, subsequently prepared draft permits, review summaries and other support materials are available for review in the regional office identified in this notice. Persons interested in reviewing the application files should contact the appropriate regional office to schedule an appointment.

Persons wishing to receive a copy of a proposed plan approval or operating permit must indicate their interest to the Department regional office within 30 days of the date of this notice and must file protests or comments on a proposed plan approval or operating permit within 30 days of the Department providing a copy of the proposed document to that person or within 30 days of its publication in the *Pennsylvania Bulletin*, whichever comes first. Interested persons may also request that a hearing be held concerning the proposed plan approval and operating permit. Comments or protests filed with the Department regional offices must include a concise statement of the objections to the issuance of the Plan approval or operating permit and relevant facts which serve as the basis for the objections. If the Department schedules a hearing, a notice will be published in the *Pennsylvania Bulletin* at least 30 days prior the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the regional office identified before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable

requirements in 25 Pa. Code Chapters 121—143, the Federal Clean Air Act (act) and regulations adopted under the act.

### PLAN APPROVALS

**Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.**

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

**06-05112A: WBLF Acquisition Co., LLC** (256 Eagle View Boulevard, Exton, PA 19341) for construction of additional municipal solid waste landfill cells controlled by a gas collection system and enclosed ground flare in Cumru Township, **Berks County**. The facility will be subject to 40 CFR Part 60, Subpart WWW, Standards of Performance for New Stationary Sources.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.*

**37-257A: Mohawk Area School District**, (Mohawk School Road, Bessemer, PA 16112) for changing sulfur content of coal allowance from 1.5% sulfur to 2.0% sulfur at the Mohawk Elementary School in North Beaver Township, **Lawrence County**. This is not a Title V facility.

**61-185D: Heath Oil Co.** (SR 8, Barkeyville, PA 16038) for modification of Plan Approval 61-185C conditions with regards to NSPS Subpart XX for Bulk Gasoline Terminals in Barkeyville Borough, **Venango County**. This is a State-only facility.

**61-185E: Heath Oil Co.** (SR 8, Barkeyville, PA 16038), for combustion of various fuels, in addition to oil and natural gas, in the heaters for Source 105 in Barkeyville Borough, **Venango County**. This is a State-only facility.

**10-350B: Cloverleaf Group, Inc.** (1 Trueserve Way, East Butler, PA 16029) for replacement of a SIAS Color Press (Source 108) with a new Thieme 5 Color Press (Source 118) in East Butler Borough, **Butler 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.**

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

**46-0032C: SPS Technologies, LLC** (301 Highland Avenue, Jenkintown, PA 19046) for modification of an existing plan approval (No. 46-0032B) to allow an increase in the use of a solvent, trichloroethylene, for a vapor degreaser, from 12 to 26 tons per 12-month rolling sum at its facility in Abington Township, **Montgomery County**. This facility is a Title V facility. This solvent increase will result in HAP emissions of less than 12 tpy as currently permitted in the existing plan approval. The Plan Approval and Operating Permit will contain recordkeeping

requirements and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

**09-0179: Bucks County Furniture, LTD** (174 Keystone Drive, Telford, PA 18969) for installation of a surface coating process and control equipment at the company wood furniture manufacturing facility in West Rockhill Township, **Bucks County**. The surface coating process consists of three spray booths with dry panel filters in each booth and off-Line Spraying/Staining Operation. The Bucks County Furniture facility is a synthetic minor facility with the VOC emission limit of less than 25 tpy. The Plan Approval and Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

**15-0039A: Highway Materials, Inc.** (1750 Walton Road, Blue Bell, PA 19422-0465) for modification to the existing Batch Mix Asphalt Plant at their Downingtown facility in East Caln Township, **Chester County**. The facility is a non-Title V facility for any of air pollutants. This asphalt plant is subject to CFR Part 60 Subpart I-Standards of Performance (NSPS) for Hot Mix Asphalt Facilities. The Plan Approval will allow the installation of a new fuel burner to minimize NOx and VOC emissions. No emission increase at the facility is expected. The Plan Approval and Operating Permit will contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

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

**54-399-041: Silberline Manufacturing Co., Inc.** (130 Lincoln Drive, Tamaqua, PA 18252-0420) for construction of 11 ribbon mixers to produce aluminum pigment at their facility in Rush Township, **Schuylkill County**. This aluminum pigment manufacturing facility is a Title V facility. This installation will result in an emission increase of 13.78 tpy of VOCs from the facility. The plan approval will include all appropriate monitoring, recordkeeping and reporting requirements designed to keep the sources operating within all applicable air quality requirements and will be incorporated into the Title V Operating Permit through an Administrative Amendment in accordance with 25 Pa. Code § 127.450.

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

**06-05079D: United Corrstack, LLC** (720 Laurel Street, Reading, PA 19602) for construction of a 482 mmBtu/hr circulating fluidized bed boiler and a 30 MW steam turbine adjacent to the company's existing plant in the City of Reading, **Berks County**. The boiler will burn biomass as well as other residual fuels. The boiler will be equipped with a dry sorbent injection system for acid gas control; multiclone and electrostatic precipitator for particulate control; and selective catalytic reduction system for NOx control. Fabric filters will control storage and conveying equipment.

**United Corrstack, LLC** requested a limit of 8,500 operating hours per year. With this limit placed on production, total facility emissions are expected to be less than 96 tpy of NOx, 92 tpy of SOx, 99 tpy of CO, 96 tpy of PM/PM10, 17 tpy of VOCs, 13 tpy of ammonia, 7 tpy of sulfuric acid mist and 9.6 tpy of HCl.

The following is a summary of the conditions the Department proposes to place in the plan approval to ensure compliance with all applicable regulatory requirements:

1. For any 12-consecutive month period, the boiler shall not exceed 8,500 hours of operation including start up and shut down times.

2. For any 12-consecutive month period, United Corrstack, LLC shall maintain facility wide emissions to less than major source thresholds.

3. The boiler will be subject to 40 CFR 60, Subpart Db. United Corrstack, LLC shall comply with all applicable requirements of the Subpart.

4. United Corrstack, LLC will install, calibrate, maintain and operate continuous flue gas monitoring systems for measuring SO<sub>2</sub>, NOx, CO, O<sub>2</sub> and opacity.

5. United Corrstack, LLC is required to keep pollutant emissions from the new boiler to the minimum attainable by use of best available technology. Specific pollutant emission limits are:

<i>Pollutant</i>	<i>Emission limit</i>
SO <sub>2</sub>	0.044 lb/mmBtu (30-day rolling average) measured by CEMS
Filterable PM	0.029 lb/mmBtu (3-hour block average)
Total particulate matter (PM-10)	0.046 lb/mmBtu (3-hour block average)
CO	0.047 lb/mmBtu (3-hour block average) measured by CEMS
NOx	0.042 lb/mmBtu (30-day rolling average) measured by CEMS
VOCs	0.008 lb/mmBtu (3-hour block average)
HCl	0.005 lb/mmBtu (3-hour block average)
HF	0.0005 lb/mmBtu (3-hour block average)
NH <sub>3</sub>	0.006 lb/mmBtu (3-hour block average)
H <sub>2</sub> SO <sub>4</sub>	0.003 lb/mmBtu (3-hour block average)
Opacity measured by COMS	10% (3-minute average) except 30% for one 3-minute period/hr

6. United Corrstack, LLC shall conduct performance testing to verify boiler emissions. Flue gas exhaust shall be tested using the following methods:

- EPA Reference Method 5, 5B or 17 for filterable PM
- EPA Reference Method 202 for condensable PM10
- EPA Reference Method 6C for SO<sub>2</sub>
- EPA Reference Method 8 for H<sub>2</sub>SO<sub>4</sub>
- EPA Reference Method 10 for CO
- EPA Reference Method 18 for sampling PAH
- EPA Reference Method 23 for D/F
- EPA Reference Method 25A for VOCs
- EPA Reference Method 26 for HCl and HF

- EPA Reference Method 29 for metals
- EPA Reference Conditional Test Method CTM-027 for NH<sub>3</sub>

7. At a minimum of once each week United Corstack, LLC shall conduct an inspection around the facility perimeter to detect any visible emissions, fugitive emissions and/or malodors.

8. To maintain facility wide emissions to less than major source thresholds, United Corstack, LLC will limit the fuel bound elements as follows: sulfur to 1.45% by weight of the fuel mix, nitrogen to 1.5% by weight of the fuel mix and chlorine to 0.2% by weight of the fuel mix. A representative sample of fuel shall be tested monthly for sulfur, nitrogen and chlorine. The permittee shall use the test results to monthly calculate and record HCl emissions for the past month and the 12-month rolling total of HCl emissions for the past 12-months.

9. Total dissolved solids in the cooling tower water shall not exceed 1,500 ppm.

The plan approval and resulting operating permit will contain emission limits, monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations.

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

**08-00002A: E.I. DuPont de Nemours & Co., Inc.** (R. D. 1, Box 15, Towanda, PA 18848) for modification and installation of an air cleaning device on a polymer-coated metal foil treating oven in North Towanda Township, **Bradford County**.

The facility in which the respective oven is located is a major (Title V) facility for which a Title V Operating Permit (No. 08-00002) has been issued.

Residual VOCs from the polymer coating on the metal foil are emitted from the electrically-heated oven during the treating process. The respective modification is an increase in oven usage such that the potential uncontrolled VOC emissions will increase from a maximum of .75 tpy to a maximum of 11.7 tpy. The proposed air cleaning device is a condenser.

Following the installation of the condenser, the VOC emissions from the oven will not exceed a maximum of .25 tpy. None of the VOCs emitted will be HAPs.

The Department of Environmental Protection's (Department) review of the information submitted by E.I. duPont de Nemours & Co., Inc. indicates that the respective oven will comply with all applicable regulatory requirements pertaining to air contamination sources and the emission of air contaminants following the installation of the condenser, including the BAT provision of 25 Pa. Code §§ 127.1 and 127.12. Based on this finding, the Department proposes to issue plan approval for the modification of, and installation of a condenser on, the respective oven. Additionally, if the Department determines that the oven is operating in compliance with all conditions of the plan approval and all applicable regulatory requirements following the oven modification and condenser installation, the Department intends to incorporate the plan approval conditions into Title V Operating Permit 08-00002 in accordance with the administrative amendment requirements of 25 Pa. Code § 127.450.

The following is a summary of the conditions the Department proposes to place in the plan approval to be issued to ensure compliance with all applicable requirements:

1. Prior to the installation of the condenser, the VOC emissions from the oven shall not exceed .75 ton in any 12-consecutive month period. Following the installation of the condenser, the oven shall not thereafter be operated without the simultaneous operation of the condenser and the VOC emissions shall not exceed .25 ton in any 12-consecutive month period. There shall be no hazardous air pollutant emissions from the oven either before or after the installation of the condenser.

2. The temperature of the condenser exhaust shall not exceed 30° F at any time the oven is in operation. Additionally, the oven shall be equipped with an interlock system that will prevent the oven heaters from functioning if the temperature of the condenser exhaust exceeds 30° F.

3. The condenser shall be equipped with instrumentation to continuously monitor both the condenser exhaust temperature and the pressure differential across the condenser.

4. Condenser condensate shall be collected in an enclosed system and stored in closed containers.

5. The permittee shall maintain comprehensive accurate records of the oven throughput each month, the amount of condenser condensate collected each month and the identity of the VOCs contained in the polymer coating of each roll of foil processed through the oven.

A copy of the plan approval application is available for public inspection during normal business hours at the address as follows. Persons interested in inspecting the application must schedule an appointment in advance.

Any person wishing to protest the issuance of plan approval or provide the Department with additional information which he/she believes should be considered in the Department's review of the respective plan approval application may do so by submitting the protest or information in writing to the department at the address listed.

Protests or comments must be received by the Department within 30 days of the last date of publication of this notice in order to be considered. Each protest or comment should include the name, address and telephone number of the person submitting the protest or comment and a concise statement explaining the relevancy of the protest or comment being presented to the Department.

A public hearing may be held if the Department, in its discretion, decides that a hearing is warranted based on the information received. Persons protesting the issuance of plan approval, submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in a local newspaper of general circulation in the Towanda area or by letter or telephone if the Department feels that notification is sufficient.

Written comments, protests or requests for a public hearing should be directed to David W. Aldenderfer, Environmental Program Manager, Air Quality Program, Department of Environmental Protection, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448.

For additional information regarding the respective plan approval application, contact Richard L. Maxwell, Jr., Chief, New Source Review Section, Air Quality Program, Department of Environmental Protection, 208 West Third Street, Suite 101, Williamsport, PA 17701-6448, (570) 327-3640.

### 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.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-9476.*

**V06-013: Exelon Generating Co.—Delaware Station** (1325 North Beach Street, Philadelphia, PA 19125) for operation of an electric generating facility in City of Philadelphia, **Philadelphia County**. The facility's air emission sources include three 233 mmBtu/hr combustion turbines and one 284 mmBtu/hr combustion turbine.

The Operating Permit will be issued under the 25 Pa. Code, Philadelphia Code Title 3 and Air Management Regulation XIII. Permit copies and other supporting information are available for public inspection at AMS, 321 University Avenue, Philadelphia, PA 19104. For further information, contact Edward Wiener, (215) 685-9426.

Persons wishing to file protest or comments on the previous 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 30 days before the hearing.

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

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

**39-00086: We Are Pets, Inc.**, (9923 Old Route 22, Breinigsville, PA 18031) for an animal crematory in the Weisenberg Township, **Lehigh County**. The facility's main source is a propane gas fired Pet Crematory. The facility has the potential to emit PM, VOCs, HAPs, NOx, SOx and CO below the major emission thresholds. The proposed State-only Operating Permit contains applicable requirements for emissions limitations, monitoring, recordkeeping, reporting and work practice standards designed to ensure facility compliance with Federal and State air pollution regulations.

**66-00003: Deer Park Lumber, Inc.** (1301 SR 6E, Tunkhannock, PA 18657) for a hardwood sawmill in Tunkhannock Township, **Wyoming County**. The only source at the facility is one wood fired boiler with two multiclone collectors. The facility has the potential to emit PM, VOCs, HAPs, NOx, SOx and CO below the major emission thresholds. The proposed State-only Operating Permit contains applicable requirements for emissions limitations, monitoring, recordkeeping, reporting and work practice standards designed to ensure facility compliance with Federal and State air pollution regulations.

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

**31-03003: New Enterprise Stone and Lime Co., Inc.** (P. O. Box 77, New Enterprise, PA 16664) for operation of

a stationary and a portable limestone crushing plant at their Orbisonia Quarry in Cromwell Township, **Huntingdon County**. This action is the issuance of a State-only operating permit.

**36-03092: Donegal Rock Products, LLC** (1330 Charlestown Road, Phoenixville, PA 19460) for operation of their limestone crushing plant at the company's Rheems Quarry in West Donegal Township, **Lancaster County**. This action is a renewal of the previous operating permit and all permit requirements remain in effect.

**67-03079: Hercon Lab** (101 Sinking Spring Lane, P. O. Box 467, Emigsville, PA 17318) for natural minor operating permit renewal for operation of a transdermal patch solvent coater controlled by a natural gas fired, 2.1 mmBtu/hr incinerator in Manchester Township, **York County**. The annual emissions of the VOC, NOx and PM from the operation are less than 1 ton each. The natural minor operating permit renewal shall contain additional recordkeeping and operating restrictions designed to keep the facility operating within all applicable air quality requirements.

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

**17-00002: Dominion Transmission, Inc.** (445 West Main Street, Clarksburg, WV 26301) for renewal of a State-only operating permit for operation of a natural gas compressor station (Helvetia Compressor Station) in Brady Township, **Clearfield County**.

The facility incorporates a 330 horsepower natural gas-fired reciprocating internal combustion compressor engine, a .375 mmBtu/hr natural gas-fired triethylene glycol dehydration system and three storage tanks. This facility has the potential to emit up to 41.81 tons of NOx, 8.85 tons of VOCs, 5.21 tons of CO, .65 ton of PM (including .65 ton of PM10), .01 ton of SOx and 1.65 tons of HAP per year.

The Department of Environmental Protection (Department) proposes to renew State-only Operating Permit 17-00002. The Department intends to incorporate into this renewal all conditions currently contained in State-only Operating Permit 17-00002 with these exceptions, changes and/or additions:

1. Conditions requiring monthly "walk around" inspections of the facility and the maintenance of records of these inspections have been removed from the permit as the Department feels that the type of permit condition violations that would be the most likely to occur at this facility cannot be detected during a "walk around" inspection. Inspections are consequently of questionable value.

2. A condition requiring the reporting of malfunctions has been revised to make it clear that only equipment malfunctions with the potential to cause air contaminant emission limitation or permit condition violations need be reported.

3. A condition requiring records to be maintained of the calculations used to verify compliance with the PM and SOx emission limitations for the 330 horsepower compressor engine has been removed from the permit as it is virtually impossible for a natural gas-fired engine to exceed the respective limitations.

4. Conditions have been added to the permit restricting the fuel used in the 330 horsepower compressor engine and dehydration unit to natural gas.

5. A condition requiring the maintenance of records of the vapor pressure of the materials stored in two of the

facility's three storage tanks has been modified to also require the maintenance of the identity of the materials stored in the respective two tanks.

6. A condition prohibiting the storage of materials with a vapor pressure equal to, or greater than, 1.5 pounds per square inch in two of the facility's three storage tanks unless the tanks are equipped with a pressure relief valve has been revised to prohibit the storage of materials with a vapor pressure greater than 1.5 pounds per square inch under actual storage conditions.

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

**26-00558: Hunter Panels, LLC** (P. O. Box 7000, Carlisle, PA 17013) for polyisocyanurate foam panel manufacturing at facility in Georges Township, **Fayette County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, New Source Review Chief, (814) 332-6940.*

**25-00095: Lord Corp., MPD** (1635 West 12th Street, Erie, PA) for a Synthetic Minor Permit to operate a fabricated rubber products manufacturing facility in Erie City, **Erie County**. The facility has voluntary limits for VOC and HAP emissions in order to maintain Synthetic Minor status.

### COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

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

The following permit applications to conduct mining activities have been received by the Department of Environmental Protection (Department). A copy of an application is available for inspection at the district mining office indicated before an application. Where a 401 Water

Quality Certification is needed for any aspect of a particular proposed mining activity, the submittal of the permit application will serve as the request for certification.

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

Where any of the mining activities listed will have discharges of wastewater to streams, the Department will incorporate NPDES permits into the mining activity permits issued in response to these applications. NPDES permits will contain, at a minimum, technology-based effluent limitations as identified in this notice for the respective coal and noncoal applications. In addition, more restrictive effluent limitations, restrictions on discharge volume or restrictions on the extent of mining which may occur will be incorporated into a mining activity permit, when necessary, for compliance with water quality standards (in accordance with 25 Pa. Code Chapters 93 and 95). Persons or agencies who have requested review of NPDES permit requirements for a particular mining activity within the previously mentioned public comment period will be provided with a 30-day period to review and submit comments on the requirements.

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

#### Coal Applications Received

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

<i>Parameter</i>	<i>30-Day Average</i>	<i>Daily Maximum</i>	<i>Instantaneous Maximum</i>
Iron (total)	3.0 mg/l	6.0 mg/l	7.0 mg/l
Manganese (total)	2.0 mg/l	4.0 mg/l	5.0 mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH <sup>1</sup>		greater than 6.0; less than 9.0	
Alkalinity greater than acidity <sup>1</sup>			

<sup>1</sup>The parameter is applicable at all times.

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

ing from a precipitation event of less than or equal to a 1-year 24-hour event) from coal refuse disposal piles.

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

**Permit Number: 30841316 and NPDES Permit No. PA0213535, Consol Pennsylvania Coal Company,**

(P. O. Box J, 1525 Pleasant Grove Road, Claysville, PA 15323), to renew the permit for the Bailey Mine and Prep Plant in Richhill, Aleppo and Gray Townships, **Greene County** and West Finley Township, **Washington County** and related NPDES permit. No additional discharges. Application received on February 22, 2007.

**Permit Number: 30841310 and NPDES Permit No. PA0046132, Duquesne Light Company**, (1800 Seymour Street, Pittsburgh, PA 15233-1134), to renew the permit for the Warwick Mine No. 3 in Dunkard, Perry, Greene and Whiteley Townships, **Greene County** and related NPDES permit for reclamation only. No additional discharges. Application received on March 20, 2007.

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

**56920104 and NPDES No. PA0599468. Commercial Coal Sales, Inc.**, P. O. Box 148, Friedens, PA 15541, permit renewal for reclamation only of a bituminous surface mine in Milford Township, **Somerset County**, affecting 71.0 acres. Receiving streams: UNT to Middle Creek, Middle Creek, UNT to Casselman River and Casselman River classified for the following uses: TSF and WWF. There are no potable water supply intakes within 10 miles downstream. Application received on April 5, 2007.

*Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.*

**03020110 and NPDES Permit No. PA0250244. Original Fuels, Inc.** (P. O. Box 343, Punxsutawney, PA

15767). Renewal application for reclamation only to an existing bituminous surface mine, located in Redbank Township, **Armstrong County**, affecting 73 acres. Receiving stream: UNT to Redbank Creek, classified for the following use: TSF. The potable water supply intake within 10 miles downstream from the point of discharge: The Borough of Hawthorn. Renewal application received on April 12, 2007.

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

**54070102. Gilberton Coal Company**, (10 Gilberton Road, Gilberton, PA 17934), commencement, operation and restoration of an anthracite surface mine, refuse reprocessing and refuse disposal operation in Butler Township, **Schuylkill County** affecting 149.7 acres, receiving stream: none. Application received on April 6, 2007.

**54860206R4. South Tamaqua Coal Pockets, Inc.**, (804 West Penn Pike, Tamaqua, PA 18252), renewal of an existing coal refuse reprocess and refuse disposal operation in West Penn Township, **Schuylkill County** affecting 65.0 acres, receiving stream: none. Application received on April 10, 2007.

#### *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 <sup>1</sup>		greater than 6.0; less than 9.0	
pH <sup>1</sup>			

<sup>1</sup> The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to 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.

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

**07070301 and NPDES No. PA0262374. Glenn O. Hawbaker, Inc.**, 1952 Waddle Road, State College, PA 16803-1649, commencement, operation and restoration of a noncoal surface mine and stream encroachments for Schmucker Run and UNT Nos. 1–3, Nos. 5–8 in Woodbury Township, **Bedford County**, affecting 98.7 acres. Receiving stream: Schmucker Run classified for the following use: WWF. There are no potable water supply intakes within 10 miles downstream. Application received on March 22, 2007.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**4473SM10 and NPDES Permit No. PA0119440. Penn Coal Land, Inc.** (P. O. Box 68, Boswell, PA 15531), renewal of NPDES Permit in Decatur Township, **Clearfield County**. Receiving streams: UNT to Little Laurel Run to Laurel Run to Moshannon Creek to West

Branch Susquehanna River and UNT to Coal Run to Moshannon Creek to West Branch Susquehanna River, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. NPDES renewal application received on February 23, 2007.

## **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 Federal Water Pollution Control Act (33 U.S.C.A. § 1341(a)).**

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

**E01-265: DRAMKA, Inc.**, 1 Barnhart Drive, Hanover, PA 17331, Straban Township, **Adams County**, USACOE Baltimore District.

To construct and maintain a road crossing impacting 0.29 acre of PEM wetlands and including seven 106-foot long, 12-inch diameter CMP's, a 12-inch water line, an 8-inch sanitary sewer line, a 27-inch stormwater line and conduits for gas, electric, phone and cable all in associated wetlands to a UNT to Rock Creek (WWF) and to place fill material within the floodway of a UNT to Rock Creek (WWF) located east of Old Harrisburg Road and north of Shealer Road (Gettysburg, PA Quadrangle: Latitude: 39° 51' 22"; Longitude: 77° 12' 46", N: 19.3 inches; W: 12.3 inches) in Straban Township, Adams County.

The permittee is required to provide 0.29 acre of replacement wetland. The permittee has proposed 0.36 acre of replacement wetland onsite adjacent to the remaining PFO wetland.

**E21-394: Hampden Township Sewer Authority**, William J. Greene, 230 South Sporting Hill, Mechanicsburg, PA 17055, Hampden Township, **Cumberland County**, ACOE Baltimore District.

To conduct various activities as follows:

1. To remove 150-foot long of the existing 60-inch diameter stream enclosure at the upstream end and then to construct and maintain a 60-inch diameter having a total length of 280 feet with three 9-foot diameter junction manholes to be connected at the existing enclosure (Harrisburg West, PA Quadrangle N: 4.34 inches; W: 14.34 inches, Latitude: 40° 16' 26"; Longitude: 76° 58' 41").

2. To fill in a 90-foot long stream channel of, and a 0.03 acre of de minimis wetland, to construct and maintain a 24-inch diameter outfall pipe with riprap protection and riprap lined outlet channel of a retention basin along a

UNT to Sears Run (WWF) (Harrisburg West, PA Quadrangle N: 4.34 inches; W: 14.34 inches, Latitude: 40° 16' 26"; Longitude: 76° 58' 41").

3. To construct and maintain a 24-inch diameter by 20-foot long sanitary sewer line along an Sears Run (WWF) located just upstream of the access lane (Harrisburg West, PA Quadrangle N: 4.34 inches; W: 13.91 inches, Latitude: 40° 16' 27"; Longitude: 76° 58' 33").

4. To construct and maintain a 24-inch diameter by 25-foot long sanitary sewer line and a 24-inch diameter by 20-foot long HDPE pipe culvert along a UNT to Sears Run (WWF) located just downstream of the access lane (Harrisburg West, PA Quadrangle N: 4.20 inches; W: 13.75 inches, Latitude: 40° 16' 23"; Longitude: 76° 58' 25").

5. To construct and maintain a 24-inch diameter by 40-foot long sanitary sewer along Sears Run (WWF) (Harrisburg West, PA Quadrangle N: 3.95 inches; W: 13.64 inches, Latitude: 40° 16' 19"; Longitude: 76° 58' 22").

6. To construct and maintain a 24-inch diameter by 100-foot long sanitary sewer along a 0.05 acre of de minimis wetland (WWF) (Harrisburg West, PA Quadrangle N: 3.90 inches; W: 13.64 inches, Latitude: 40° 16' 18"; Longitude: 76° 58' 22").

7. To construct and maintain a 24-inch diameter by 40-foot long sanitary sewer along Sears Run (WWF) (Harrisburg West, PA Quadrangle N: 3.85 inches; W: 13.64 inches, Latitude: 40° 16' 16"; Longitude: 76° 58' 22").

8. To construct and maintain a 24-inch diameter by 60-foot long sanitary sewer line along a 0.05 acre of de minimis wetland (Harrisburg West, PA Quadrangle N: 3.52 inches; W: 13.55 inches, Latitude: 40° 16' 10"; Longitude: 76° 58' 20").

9. To construct and maintain a 24-inch diameter by 15-foot long sanitary sewer line and a 48-inch diameter by 110-foot long CMP culvert with a 30-foot long riprap protection along a UNT to Sears Run (WWF) (Harrisburg West, PA Quadrangle N: 3.20 inches; W: 13.20 inches, Latitude: 40° 16' 04"; Longitude: 76° 58' 11").

10. To construct and maintain a 24-inch diameter by 15-foot long sanitary sewer line and a 48-inch diameter by 60-foot long CMP culvert with a 30-foot long riprap protection along a UNT to Sears Run (WWF) (Harrisburg West, PA Quadrangle N: 3.10 inches; W: 13.20 inches, Latitude: 40° 16' 04"; Longitude: 76° 58' 11").

11. To construct and maintain a 24-inch diameter by 25-foot long sanitary sewer line and a 36-inch by 65-foot long CMP culvert with a 30-foot long riprap protection along a UNT to Sears Run (WWF) (Harrisburg West, PA Quadrangle N: 3.30 inches; W: 12.80 inches, Latitude: 40° 16' 05"; Longitude: 76° 58' 00").

12. To construct and maintain a 24-inch diameter by 30-foot long sanitary sewer line along a UNT to Sears Run (WWF) (Harrisburg West, PA Quadrangle N: 2.43 inches; W: 11.50 inches, Latitude: 40° 15' 48"; Longitude: 76° 57' 57").

All related activities are for the improvements of the Roth Lane Wastewater Treatment Plant expansion in Hampden Township, Cumberland County.

**WATER OBSTRUCTIONS AND ENCROACHMENTS**

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

**E17-431. Department of Transportation, Engineering District 2-0**, 1924 Daisy Street Extension, Clearfield, PA 16830. Application for SR 3005 Section A01, Bridge Replacement Project over West Branch Susquehanna River, Bells Landing, Greenwood Township, **Clearfield County**, ACOE Susquehanna River Basin District, (Mahaffey, PA Quadrangle N: 5.0 inches; W: 4.0 inches).

To remove an existing 189-foot long single span truss bridge and appurtenant structures and to construct and maintain a 4-span continuous composite prestressed concrete I-beam bridge, 95'-0" from abutment No. 1 to Pier No. 1, 92'-0" from Pier No. 1 to Pier No. 2, 92'-0" from Pier No. 2 to Pier No. 3, 92'-0" from Pier No. 3 to Abutment No. 2 with concrete wing walls having a waterway opening of 46.34' from abutment No. 1 to Pier No. 1, 51.9' from Pier No. 1 to Pier No. 2, 51.9' from Pier No. 2 to Pier No. 3, 54.66' from Pier No. 3 to Abutment No. 2. The minimum underclearance will be 7'-5.5" at Abutment No. 2.

Rock, Class R-8 chocked with rock Class R-4, will be permanently placed around Piers No. 1—3. Rock, Class R-8 chocked with rock Class R-4, will be permanently placed along the front face of Abutment No. 1 and radius 5'-0" around wing walls 'A' and 'B.' Rock, Class R-8 chocked with rock Class R-4, will be permanently placed along the front face of Abutment No. 2 and radius 5'-0" around wing walls 'C' and 'D.'

This project proposes to have a minimal impact on West Branch Susquehanna River, which is designated a WWF. This project does propose to impact 0.16 acres of jurisdictional wetlands.

**E53-417. Department of Transportation, Engineering District 2-0**, 1924 Daisy Street Extension, Clearfield, PA 16830. Application for SR 4023, Segment 0120, Offset 1150 +/-, Channel maintenance and bank protection along Elevenmile Creek, Village of Chrystal, **Potter County**, ACOE Pittsburgh District, (Oswayo, PA-NY Quadrangle N: 15.5 inches; W: 3.6 inches).

To perform channel maintenance activities along the Elevenmile Run stream channel adjacent to SR 4030, at segment 0120, Offset 1150 located in Oswayo Township, Potter County. Improvements planned to help minimize the frequency of overtopping and roadway flooding include; channel cleaning approximately 210 LF of densely vegetated and restricted channel and placing riprap rock armor along the same 210 LF section.

**E60-183. Union County Commissioners**, 155 North 15th Street, Lewisburg, PA 17837. Red Bridge, in Hartley Township, **Union County**, ACOE Baltimore District (Hartleton, PA Quadrangle N: 0.5 inch; W: 4.25 inches).

To: 1) refurbish and maintain a 147-foot clear span timber burr-arch through truss covered bridge with an underclearance of 9-foot 4.25-inches over Penns Creek; 2) two temporary clean rock causeways that will have a 30-foot open water (0.1 acre foot print) in Penns Creek; 3) 0.011 acre of riprap and roadway approach waterway encroachment; 4) 0.008 acre of riprap on the north bank; 5) 0.004 acre of permanent wetland impacts for the south roadway approach; 6) 0.005 acre of temporary wetland impacts for the temporary causeways, located 100 feet on T-320 from its intersection with SR 3004. Penns Creek is classified as a WWF at this site.

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

**E02-1559. Department of Transportation, District 11-0**, 45 Thoms Run Road, Bridgeville, PA 15017. To

construct a retaining wall in Ohio Township, **Allegheny County**, Pittsburgh ACOE District (Emsworth, PA Quadrangle: N: 8.4 inches; W: 11.6 inches, Latitude: 40° 33' 6"; Longitude 80° 5' 0"). The applicant proposes to construct and maintain 390 feet of stream relocation; 328-feet long by 8-foot high precast concrete and steel pile retaining wall within to be constructed and maintained 450-foot length of riprap bank stabilization (both banks); and remove a 95-foot long 78-inch diameter CIP culvert and associated fill in Bear Run (TSF). The CIP and fill was installed to temporarily stabilize slope and bank failure that threatened SR 279 and Allegheny County's Lowries Run Road. This project is intended to permanently stabilize the slope failure and stream banks. The project is located approximately 8 miles northwest of Pittsburgh in Ohio Township.

**E26-343. Department of Transportation, District 12**, 825 N. Gallatin Avenue Extension, Uniontown, PA 15401. To construct a bridge in Point Marion Borough, **Fayette County** and Dunkard Township, **Greene County**, Pittsburgh ACOE District (Morgantown, PA Quadrangle: N: 20.75 inches; W: 4.0 inches, Latitude: 39° 44' 22"; Longitude: 79° 54' 12") and between Point Marion Borough, Fayette County to the east and Dunkard Township, Greene County to the west. The applicant proposes to remove the existing SR 88, two lane, approximately 40-foot wide, five-span, steel truss bridge having a total length of approximately 740 foot and having a 100-year flood event minimum clearance of 15.9 feet and to construct and maintain 68 feet upstream and to the south a four span which includes a 414 foot channel span, two lane and sidewalk, steel truss, 43.4 foot total width replacement bridge having a total length of 746.1 feet and having 100-year flood event minimum clearance of 15.9 feet over the Monongahela River (WWF). In addition, construct and maintain for construction of the replacement bridge a temporary causeway and pier; and construct and maintain associated replacement stormwater outfalls to the Monongahela River (WWF). The bridge improvement and relocation project is located approximately 1,400 feet upstream of the confluence with the Cheat River.

**E56-344. Somerset County Commissioners**, 300 North Center Avenue, Somerset, PA 15530. To place and maintain fill in 0.10 acre of wetland in Somerset Township, **Somerset County**, Pittsburgh ACOE District (Somerset, PA Quadrangle: N: 5.95 inches; W: 3.43 inches, Latitude: 40° 1' 58.4"; Longitude: 79° 1' 28.8"). The applicant proposes to place and maintain fill in 0.10 acre of wetland in the watershed of a UNT to Wells Creek (CWF) for the purpose of extending an airport runway. The project is located southwest of the main runway at the Somerset County Airport, south of SR 281, approximately 1.55 miles east of the intersection of US Route 219.

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

**E10-429. Slippery Rock University, Facilities and Planning**, Keister Road, Slippery Rock, PA 16057. Slippery Rock University Challenge Course. Slippery Rock Township, **Butler County**, ACOE Pittsburgh District (Slippery Rock Quadrangle, N: 41° 04' 04"; W: 80° 02' 33").

To restore and maintain 0.884 acre (total impact of 0.933 acre) of wetland previously filled for the construction of a walking trail 1,000 feet north of North Road and approximately 2,000 feet west of Redmond Road. The applicant will restore 0.884 acre of wetland onsite. The



remaining 0.049 acre of impacted wetland not restored onsite is proposed to be mitigated through a contribution to the wetland mitigation fund. This application is in response to a violation and is after the fact.

**E43-341. Lake Latonka Property Owners Association**, 420 Latonka Drive, Mercer, PA 16137. Dock 2, 3 and 10 Replacement in Jackson and Coolspring Townships, **Mercer County**, ACOE Pittsburgh District (Jackson Center, PA Quadrangle N: 41° 16' 49"; W: 80° 10' 55").

To: 1) remove and replace Dock 2 with a 100-foot long by 3.5-foot wide mainframe, having three slips on each side. Total square footage of the new dock will be 660 square feet. 2) remove and replace Dock 3 with a 120-foot long by 3.5-foot wide mainframe, having three slips on each side. Total square footage of the new dock will be 720 square feet. 3) remove and replace Dock 10. The existing mainframe along the shoreline will be used and

eight new slips measuring 20-feet long by 3-feet wide will be added to the structure. Total square footage of the new slips will be 720 square feet.

#### DAM SAFETY

*Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.*

**D35-123. George and Loretta Spangenberg**, 2 Sunrise Boulevard, Lake Ariel, PA 18436. To modify, operate and maintain Spangenberg Lake Dam across a tributary to Jones Creek (HQ-CWF), impacting approximately 30 linear feet of stream channel, for the purpose of rehabilitating the existing dam and spillway to ensure compliance with Commonwealth Regulations (Lake Ariel, PA Quadrangle N: 10.1 inches; W: 10.6 inches) in Jefferson Township, **Lackawanna County**.

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## ACTIONS

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### 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.

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#### I. NPDES Renewal Permit Actions

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0062324	Pike County Environmental, Inc. P. O. Box 127 Matamoras, PA 18336	Westfall Township Pike County	Delaware River 1D	Y
PA0032140P	Department of Conservation and Natural Resources Bureau of State Parks R. R. 1, Box 230 Dalton, PA 18414-9785	Benton Township Lackawanna County	South Branch Tunkhannock Creek 4F	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0111848 IW	Safety Light Corp. 4150A Old Berwick Road Bloomsburg, PA 17815	S. Centre Township Columbia County	Susquehanna River 5D	Y
PA0114324 Sewerage	Herbert L. Morgan DeMorgan Acres R. R. 2, Box 2352 Canton, PA 17724-8609	Canton Township Bradford County	UNT Towanda Creek 4-C	Y
PA0114561 Sewerage	Herrick Township R. R. 3, Box 156 Wyalusing, PA 18853-9558	Herrick Township Bradford County	Cold Creek 4-D	Y
PA0228486 Sewerage	Allen J. Dormuth P. O. Box 52 North Bend, PA 17760-0052	Clinton County Chapman Township	UNT to West Branch Susquehanna River 9B	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N</i>
PA0205524 Sewage	Amy C. Smeltzer 297 Ford City Road Freeport, PA 16229	Armstrong County South Buffalo Township	UNT of Hill Run	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0028428 Amendment No. 1	Brockway Area Sewer Authority 70 Industrial Park Drive Brockway, PA 15824	Brockway Borough Jefferson County	Little Toby Creek 17-A	Y
PA0221589	Cardinal American Corporation—Tel-O-Post Linesville Facility Spectrum Building Suite 219 6060 Rockside Woods Boulevard Independence, OH 44131	Linesville Borough Crawford County	Linesville Creek 20-A	Y
PA0006181	Phoenix Sintered Metals, Inc. P. O. Box 213 Brockway, PA 15824-1644	Brockway Borough Jefferson County	Little Toby Creek 17-A	Y
PA0238465	Johnsonburg Municipal Authority—Silver Creek WTP 520A Market Street Johnsonburg, PA 15845	Johnsonburg Borough Elk County	Silver Creek 17-A	Y

*Northwest Region: Oil and Gas Management Program Manager, 230 Chestnut Street, Meadville, PA 16335-3481.*

<i>NPDES No. (Type)</i>	<i>Facility Name &amp; Address</i>	<i>County &amp; Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0222011 (Ind.)	Big Sandy Oil Company Project 5/Timberline Lease P. O. Box 269 Franklin, PA 16323	Venango County Cranberry Township	Allegheny River 16-E	Y

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


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

**NPDES Permit No. PA0244210**, Industrial Waste, **Crystal, Inc.—PMC**, 601 West Eighth Street, Lansdale, PA 19446. This proposed facility is located in Lansdale Borough, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the discharge of stormwater to a UNT to the West Branch Neshaminy Creek in Watershed Neshaminy-2F.

**NPDES Permit No. PA0052515**, Industrial Waste, **Ambler Borough Water Department**, 122 East Butler Avenue, Ambler, PA 19002-4476. This proposed facility is located in Whitemarsh Township, **Montgomery County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge treated groundwater from a public water supply well into the Wissahickon Creek in Watershed 3F.

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

**NPDES Permit No. PA0248088**, Sewage, **Franklin Township, Adams County**, 55 Scott School Road, Orrtanna, PA 17353. This proposed facility is located in Franklin Township, **Adams County**.

Description of Proposed Action/Activity: Authorization to discharge to UNT Marsh Creek in Watershed 13-D.

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


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

**WQM Permit No. 4806408**, Sewerage, **SPG, Inc., Whispering Hollow South Mobile Home Park**, 139 Country Club Road, Northampton, PA 18067-9802. This proposed facility is located in Allen Township, **Northampton County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit for modifications to the existing sewage treatment facilities at Whispering Hollow South Mobile Home Park.

**WQM Permit No. 4806407**, Sewerage, **SPG, Inc., Whispering Hollow North Mobile Home Park**, 139 Country Club Road, Northampton, PA 18067-9802. This proposed facility is located in Moore Township, **Northampton County**.

Description of Proposed Action/Activity: Issuance of Water Quality Management Permit, for modifications to the existing sewage treatment facilities at Whispering Hollow North Mobile Home Park.

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

**WQM Permit No. 2206406**, Sewage, **West Hanover Township Water and Sewer Authority**, 7901 Jonestown Road, Harrisburg, PA 17112-9728. This proposed facility is located in West Hanover Township, **Dauphin County**.

Description of Proposed Action/Activity: Permit approval for the construction/operation of sewerage facilities consisting of Eight vermicomposting beds within a building; fresh harvest, intermediate and end product covered storage areas and an uncovered drying area. Capacity if 16 wet tons/week of sludge.

**WQM Permit No. 2107401**, Sewage, **Jose Medina, Cumberland Valley School District**, 6746 Carlisle Pike, Mechanicsburg, PA 17050-1796. This proposed facility is located in Silver Spring Township, **Cumberland County**.

Description of Proposed Action/Activity: Permit approval for the construction/operation of sewerage facilities consisting of: a package treatment plant with a comminutor, equalization basin, aeration tank, clarifiers, dosing tank, two sand filters, post aeration, UV disinfection and aerated sludge holding tank at the Green Ridge Elementary School.

**WQM Permit No. WQG02060701**, Sewage, **New Morgan Borough**, 75 Grace Boulevard, Building D, Morgantown, PA 18543. This proposed facility is located in Robeson Township, **Berks County**.

Description of Proposed Action/Activity: Permit approval for the construction/operation of the Robeson Woods Pump Station.

**WQM Permit No. 0107401**, Sewage, **Hamilton Township**, 272 Mummerts Church Road, Abbottstown, PA 17301. This proposed facility is located in Hamilton Township, **Adams County**.

Description of Proposed Action/Activity: Permit approval for the construction/operation of a 0.0273 mgd suction lift pump station to serve 59 proposed homes Alwine Meadows.

**WQM Permit No. 2191401, Amendment 07-1**, Sewage, **Silver Spring Township Authority**, 31 West Main Street, P. O. Box 1001, New Kingston, PA 17072-1001. This proposed facility is located in Silver Spring Township, **Cumberland County**.

Description of Proposed Action/Activity: Permit approval for the modification/operation of a sewerage facilities consisting of: pump station expansion to receive flows from the Silver Spring Commerce Park development and residential connections along East Willow Terrace. The suction line is increased to 4 inches, wear plates and impellers are replaced and sheaves are replaced to increase pump speed to 1,595 rpm.

**WQM Permit No. 2892403, Amendment 06-1**, Sewage, **Five Forks Brethern in Christ Church**, 9244 Five Forks Road, Waynesboro, PA 17268. This proposed facility is located in Quincy Township, **Franklin County**.

Description of Proposed Action/Activity: Permit approval for the replacement of the existing 1,000-gallon dosing tank with an aerated 5,000-gallon flow equalization/dosing tank.

**WQM Permit No. WQG01310701**, Sewage, **Gina R. Kenepp**, 4981 Ice Pond Lane, Alexandria, PA 16611. This proposed facility is located in Porter Township, **Huntingdon County**.

Description of Proposed Action/Activity: Permit approval for the construction/operation of a small flow treatment system to replace a malfunctioning system and serve their single-family residence.

**WQM Permit No. 0106404**, Sewage, **Franklin Township**, 55 Scott School Road, Orrtanna, PA 17353. This proposed facility is located in Franklin, **Adams County**.

Description of Proposed Action/Activity: Permit approval for the construction/operation of sewerage facilities consisting of: provision of public sewage service to Cashtown-McKnightstown area of Franklin Township consisting primarily of 8-inch gravity sewer line and new wastewater treatment facility.

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

**WQM Permit No. 6303404-A1**, **Ted Taylor Builders**, 608 East McMurray Road, Suite 101, McMurray, PA 15317. This existing facility is located in Peters Township, **Washington County**.

Description of Proposed Action/Activity: Permit amendment issuance for installation of sewer lines and pump station upgrade.

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

**WQM Permit No. 2507401**, Sewerage, **McKean Township Sewer Authority**, 9231 Edinboro Road, McKean, PA 16426. This proposed facility is located in McKean Township, **Erie County**.

Description of Proposed Action/Activity: This project is for a pump station and conveyance system to serve the Georgetown Heights Subdivision.

**WQM Permit No. WQG028308**, Sewerage, **Hermitage Municipal Authority**, 800 North Hermitage Road, Hermitage, PA 16148. This proposed facility is located in City of Hermitage, **Mercer County**.

Description of Proposed Action/Activity: This project is for the construction and operation of a pump station, force main, and related appurtenances to serve the Daniel Drive, Darby and Lamor Roads area.

**WQM Permit No. WQG018531**, Sewerage, **Allegheny Valley School**, 1996 Ewings Mill Road, Coraopolis, PA 15108. This proposed facility is located in Liberty Township, **Mercer County**.

Description of Proposed Action/Activity: This project is for the construction and operation of a small flow treatment facility.

**WQM Permit No. WQG018528**, Sewage, **Thomas L. Roberts**, 41 Ball Hill Road, Greenville, PA 16125-4007. This proposed facility is located in Sugar Grove Township, **Mercer County**.

Description of Proposed Action/Activity: A Single-Residence Sewage Treatment Plant.

**WQM Permit No. 2507402**, Sewage, **Laurie Mandel**, 268 Shades Beach 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.

#### **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 &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI010906032	William Burland 1930 Old Bethlehem Road Quakertown, PA 18951	Bucks	Springfield Township	Cooks Creek EV
PAI011503102	Wilkinson Builders 1020 Broad Run Road Landenberg, PA 19350	Chester	Franklin Township	Big Elk Creek HQ
PAI011505012	Vincent Meadows Partners 2500 East High Street Suite 610 Pottstown, PA 19464	Chester	East Vincent Township	Stony Run Creek HQ-TSF
PAI011507002	Oxford Area School District 125 Bell Tower Lane Oxford, PA 19363	Chester	East Nottingham Township	Little Elk Creek HQ-TSF-MF
PAI011507009	John D. Reid 480 West Christine Road Nottingham, PA 19362	Chester	West Nottingham Township	Black Run EV

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI012306008	Storage World 2314 Herb Road Temple, PA 19560	Delaware	Edgmtont Township	Ridley Creek Watershed HQ-TSF
PAI015107001	Canus Corporation 133 Heather Road Suite 202 Bala Cynwyd, PA 19004	Philadelphia	City of Philadelphia	City of Philadelphia Municipal Storm Sewer

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024506022	Pocono EcoIndustrial Park, LLC P. O. Box 1229 Blakeslee, PA 18610	Monroe	Coolbaugh Township	Red Run HQ-CWF
PAS10S084R(1)	Wisteria Commons Senior Housing, LP by Monarch at Wisteria, LLC 720 Limekiln Road New Cumberland, PA 17070 and Oaks Senior Community, LP Shepards in Monroe County, Inc. P. O. Box 302 Cresco, PA 18326	Monroe	Barrett Township	Cranberry Creek HQ-CWF

*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 &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI041403017(2) Revision No. 16	Ian Salada PSU Central Campus—Curtin Road Transportation Center 113 P Physical Plant Building University Park, PA 16803	Centre	State College Borough	Thompson Run HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI064206003	Dr. Steven Herrmann 41 Abbott Road Bradford, PA 16701 and J. A. Luciano & Sons Builders 1 Ichabod Lane Bradford, PA 16701	McKean	Bradford Township	Minard Run EV

## **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 Small Flow Treatment Facilities
PAG-5	General Permit for Discharges From Gasoline Contaminated Groundwater Remediation Systems
PAG-6	General Permit for Wet Weather Overflow Discharges From Combined Sewer Systems (CSO)
PAG-7	General Permit for Beneficial Use of Exceptional Quality Sewage Sludge by Land Application

PAG-8	General Permit for Beneficial Use of Non-Exceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

*General Permit Type—PAG-02*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Upper Southampton Township Bucks County	PAG2000906101	Terry A. Levitt 19 Spruce Drive Holland, PA 18966	Southampton/ Pennypack Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Makefield Township Bucks County	PAG2000905065	Cara Mia, LLC 371 Stoneybrook Road Newtown, PA 18940	Rock Run Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Warwick Township Bucks County	PAG20009040911	Warwick Office Park, LLC 301 Oxford Valley Road, Suite 201A Yardley, PA 19067	UNT Neshaminy Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Falls Township Bucks County	PAG2000906091	Storage Specialists, Inc. 111 North Jackson Street Suite 200 Glendale, CA 91206	UNT Delaware River CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Newtown Township Bucks County	PAG2000906107	KLS Ryan, LP 405 Turtle Lane Langhorne, PA 18940	Newtown Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Falls Township Bucks County	PAG2000906023	The JW McGrath Organization 405 Turtle Lane Langhorne, PA 19047	Mill Creek South WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Wrightstown Township Bucks County	PAG2000906073	Richard Johnson 18 North State Street Newtown, PA 18940	UNT Jericho Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Falls Township Bucks County	PAG2000907025	Water Management Disposal Services of PA, Inc. 1121 Bordentown Road Morrisville, PA 19067	Van Sciver Lake	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Bensalem Township Bucks County	PAG2000907001	SCI Management 1929 Allen Parkway Houston, TX 77019	Poquessing Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Warrington Township Bucks County	PAG2000906014	The Cutler Group, Inc. 5 Apollo Road Suite One Plymouth Meeting, PA 19462	Little Neshaminy Creek WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Southampton Township Bucks County	PAG2000906055	The Cutler Group, Inc. 5 Apollo Road Suite One Plymouth Meeting, PA 19462	Tributary Neshaminy Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

## NOTICES

2019

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Buckingham Township Bucks County	PAG2000907016	Winsome Blue Farm 1861 Swamp Road Furlong, PA 18925	UNT Neshaminy Creek WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Plumstead Township Bucks County	PAG2000907022	Casadonti Homes, Inc. 5 West Washington Avenue Newtown, PA 18940	Geedes Run and Hickory Creek CWF, TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Milford Township Bucks County	PAG2000907008	Carl Morgan 255 Yoder Road Harleysville, PA 19438	UNT Stony Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Whiteland Township Chester County	PAG2001507004	United Mortgage Services, LLC 90 Country Road Tenafly, NJ 07670	West Valley Creek CWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
East Marlborough Township Chester County	PAG2001507009	Evangelical Lutheran Church of St. Michael P. O. Box 178 Unionville, PA 19375	Pocopson Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Newlin Township Chester County	PAG2001506068	Steven Siepser and Suzannah Small 812 Apple Hill Road West Chester, PA 19380-3507	Bucks Run TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Upper Oxford Township Chester County	PAG2001507018	Richard M. Retty 39 Albe Drive Newark, DE 19702	UNT Octoraro Creek I TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Nottingham Township Chester County	PAG2001506081	Herr Foods, Inc. P. O. Box 300 Nottingham, PA 19362-0300	Northeast Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Concord Township Delaware County	PAG2002305017	Honis Properties P. O. Box 607 Concordville, PA 19331	West Branch Chester Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Concord Township Delaware County	PAG2002306057	Longwood Land Development, LLC 3 Mill Road Suite 200 Wilmington, DE 19806	Chester Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Newtown Township Delaware County	PAG2002306053	Bentley Communities, LP 1595 Paoli Pike Suite 202 West Chester, PA 19380	Jilip Run/Darby Creek CWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Concord Township Delaware County	PAG2002306022	Brandolini Company 1301 Lancaster Avenue Berwyn, PA 19312	West Branch Chester Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Newtown Township Delaware County	PAR10J149	National Realty Company 1604 Walnut Street Philadelphia, PA 19103	Crum Creek CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Limerick Township Montgomery County	PAG20046060691	Chelsea Property Group 105 Eisenhower Parkway Roseland, NJ 07068	Schuylkill River WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Upper Frederick Township Montgomery County	PAG2004606168	James Erb and Amy E. Smith 38 Kendall Lane Royersford, PA 19468	Scioto Creek TSF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
East Norriton Township Montgomery County	PAG2004606151	Caracor, LLC 5925 Tilghman Street Suite 600 Allentown, PA 18104	UNT Stony Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Norriton Township Montgomery County	PAG2004606190	Rite Aid Corporation 875 Kings Highway Suite 201 Woodbury, NJ 08096	Schuylkill River CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Salford Township Montgomery County	PAG2004606070	Kemp and Associates 610 West Germantown Pike Suite 321 Plymouth Meeting, PA 19642	West Branch Skippack Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Perkiomen Township Montgomery County	PAG2004606123	Betcher Road Properties, LLC 2526 North Broad Street Colmar, PA 18915	School House Run TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Limerick Township Montgomery County	PAG2004606138	Limerick PF, LTD 401 South Schuylkill Avenue Norristown, PA 19403	UNT Schuylkill River WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Montgomery Township Montgomery County	PAG2004605182	James Connelly 350 North Pottstown Pike Exton, PA 19341	West Branch Neshaminy Creek WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Providence Township Montgomery County	PAG2004606192	Sprango Worcester Associates, LP 506 Bethlehem Pike Fort Washington, PA 19034	Skippack Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Pottstown Borough Montgomery County	PAG2004607006	Wal-Mart Stores, Inc. 2001 S. East 10th Street Department 9 Bentonville, AR 72716	Schuylkill River CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
New Hanover Township Montgomery County	PAG2004606182	James N. Faust 2557 Swamp Pike Pottstown, PA 19646	Sanatoga Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Limerick Township Montgomery County	PAG2004605150	Heritage Building Group 2500 York Road Jamison, PA 18929	Mingo Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Lower Providence Township Montgomery County	PAG2004606181	Woodland Elementary School 1001 Driebel Mill Road Norristown, PA 19401	Mine Run	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
West Norriton Township Montgomery County	PAG2004606207	Harry P. and Seda L. Mirabile 569 East Main Street Norristown, PA 19401	UNT Indian Creek WWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Conshohocken Borough Montgomery County	PAG2004606097	Philomeno and Salamone 545 West Germantown Pike Plymouth Meeting, PA 19462	Schuylkill River CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900



## NOTICES

2021

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Whitemarsh Township Montgomery County	PAG2004606176	Edward and Teresa Deleo P. O. Box 617 3028 Church Road LaFayette Hill, PA 19444	UNT Wissahickon Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG2015107009	Westrum Development Company 370 Commerce Drive Suite 100 Fort Washington, PA 19034	Schuylkill River CWF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG2015107001	School District of Philadelphia 440 North Broad Street Philadelphia, PA 19130	Darby-Cobb Creeks WWF, MF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG2015107003	Norwood-Fontbonne Academy 8891 Germantown Avenue Philadelphia, PA 19118	Wissahickon Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
City of Philadelphia Philadelphia County	PAG2015107004	Norwood-Fontbonne Academy 8891 Germantown Avenue Philadelphia, PA 19118	Wissahickon Creek TSF	Southeast Regional Office 2 East Main Street Norristown, PA 19401 (484) 250-5900
Kingstown Township Luzerne County	PAG2004007003	David Martin Cross Creek Comm. Church 340 Carverton Road Trucksville, PA 18708	Tributary to Toby Creek CWF	Luzerne Co. Cons. Dist. (570) 674-7991
Washington and Heidelberg Townships Lehigh County	PAG2003906034	Joseph Kolarik Kolarik & Rocco Associates 2288 Meadow Lane Emmaus, PA 18049	Mill Creek CWF, MF	Lehigh Co. Cons. Dist. (610) 391-9583
Palmer Township Northampton County	PAG2004807003	Joseph Rizzolino P. O. Box 3177 Easton, PA 18043	Schoeneck Creek WWF	Northampton County Cons. Dist. (610) 746-1971
Pine Grove and Washington Townships Schuylkill County	PAG2005406033	Schuylkill County Commissioners Schuylkill County Courthouse 401 N. 2nd Street Pottsville, PA 17901	Sweet Arrow Lake CWF	Schuylkill Co. Cons. Dist. (570) 622-3742
Todd Township Fulton County	PAG2002907002	OK Property Holdings and Rick Zittle 421 Lincoln Way East Suite B McConnellsburg, PA 17233	Big Cove Creek CWF/Residential	Steve Thomas 216 N. Second Street Suite 15 McConnellsburg, PA 17233 (717) 485-3547, Ext. 109
Borough of Chambersburg Guilford Township Franklin County	PAG2002807006	Sears Holdings 3333 Beverly Road A3.301 B Hoffman Estates, IL 60179	Conococheague Creek CWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074, Ext. 5
Hereford Township Berks County	PAG2000606095	Upper Perkiomen School District John Sheeran 203 West 5th Street East Greenville, PA 18041	Perkiomen Creek TSF	Berks County Conservation Dist. 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657, Ext. 201

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Cumru Township Berks County	PAG2000607006	Governor Mifflin Joint School Authority Mark Naylor 10 South Waverly Street Reading, PA 19607	Angelica Creek CWF	Berks County Conservation Dist. 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657, Ext. 201
Spring Township Berks County	PAG2000606063	Township of Spring Leon Mazurie 2800 Shillington Road Reading, PA 19608	UNT to Cacoosing Creek WWF Little Muddy Creek TSF	Berks County Conservation Dist. 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657, Ext. 201
Exeter Township Berks County	PAG2000607002	SFS Intec, Inc. Eric Murray P. O. Box 6326 Wyomissing, PA 19610	Antietam Creek CWF	Berks County Conservation Dist. 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657, Ext. 201
Upper Bern Township Berks County	PAG2000606016	Robert Ciccone R. G. Ciccone 6866 Christphalt Drive Bath, PA 18014	UNT to Mill Creek TSF	Berks County Conservation Dist. 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657, Ext. 201
Bradford County Athens Township South Waverly Borough	PAG2000807002	Jonathan Brice Eastern Communities Limited Partnership, Inc. 7300 Derry Street Harrisburg, PA 17111	Cayuta Creek WWF	Bradford County Conservation District Stoll Natural Resource Center R. R. 5, Box 5030C Towanda, PA 18848 (570) 265-5539, Ext. 6
Centre County Benner Township	PAG2001405013	Carl Bankert Fisherman's Paradise, LLC Eagle Point, Phase I 2121 Old Gatesburg Road Suite 200 State College, PA 16801	UNT to Spring Creek CWF	Centre County Conservation District 414 Holmes Avenue Suite 4 Bellefonte, PA 16823 (814) 355-6817
Centre County Ferguson Township	PAG2001407004	David Roeshop/ Roeshot Construction Goddard School 2040 Sandy Drive State College, PA 16803	UNT to Big Hollow CWF	Centre County Conservation District 414 Holmes Avenue Suite 4 Bellefonte, PA 16823 (814) 355-6817
Columbia County Briar Creek Borough	PAG2001907003	Stephen White DT Keystone Distribution, R.L.L.L.P. 1000 Commerce Place Berwick, PA 18603	Susquehanna River WWF	Columbia County Conservation District 702 Sawmill Road Suite 204 Bloomsburg, PA 17815 (570) 784-1310, Ext. 102
Lycoming County Hepburn Township	PAG2004106019	Church of Jesus Christ of Latter Day Saints NYNY Project Management Office P. O. Box 318 Ramsey, NJ 07446	Lycoming Creek WWF	Lycoming County Conservation District 542 County Farm Road Suite 202 Montoursville, PA 17754 (570) 433-3003

## NOTICES

2023

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Tioga County Wellsboro Borough	PAG2005907006	Mike Pietropola 134 Meade Street Wellsboro, PA 16901	Morris Branch CWF	Tioga County Conservation District 50 Plaza Lane Wellsboro, PA 16901 (570) 724-1801, Ext. 3
Union County Gregg Township	PAG2006006017	Stephen Hall 155 North 15 Street Lewisburg, PA 17837	WB Susquehanna River WWF	Union County Conservation District Union County Government Center 155 North 15th Street Lewisburg, PA 17837 (570) 524-3860
Cambria County Richland Township	PAG2001107004	Randy Yost McGregor Homes 1931 Frankstown Road Johnstown, PA 15902	UNT Stonycreek River CWF	Cambria County CD (814) 472-2120
Fayette County City of Uniontown	PAG2002607009	Paul Kania Taylor Place Properties, LLC 71 N. Mt. Vernon Avenue Uniontown, PA 15401	Coal Lick Run WWF	Fayette County CD (724) 438-4497
Fayette County Georges Township	PAG2002607010	Atlas America, LLC 311 Rouser Road Moon Township, PA 15108	Georges Creek WWF	Fayette County CD (724) 438-4497
Indiana County Burrell Township	PAG2003206015	Jeffrey Ferris KH Controls Inc. 420 N. Liberty Street Blairsville, PA 15717	Tributary to Black Lick Creek CWF	Indiana County CD (724) 463-8547
Washington County Peters Township	PAG2006307001	Venetia Road Associates, LP P. O. Box 190 Gastonsville, PA 15336	Peters Creek WWF	Washington County CD (724) 228-6774
Washington County Chartiers Township	PAG2006307013 (Renewal of old permit No. PAR10W204)	Chartiers Township 2 Buccaneer Drive Houston, PA 15342	UNT to Chartiers Creek WWF	Washington County CD (724) 228-6774
Washington County Centerville Borough	PAG2006307016	Hoffman Enterprises Wellington Square Suite 104 Greensburg, PA 15601	UNT to Pike Run TSF	Washington County CD (724) 228-6774
Washington County North Strabane Township	PAG2006307021	Meadowlake Associates, LP 2100 Corporate Drive Suite 250 Wexford, PA 15090	Chartiers Creek WWF	Washington County CD (724) 228-6774
Jefferson County Pinecreek Township	PAG2003307001	Jefferson County Enterprise Park Access Road Jefferson County Commissioners Jefferson Place 155 Main Street 2nd Floor Brookville, PA 15825	UNT to Mill Creek CWF	Jefferson Conservation District (814) 849-7463

*General Permit Type—PAG-3*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Berks County Reading City	PAR803621	Norfolk Southern Railway Company— Spring Street Yard 110 Franklin Road, SE Box 13 Roanoke, VA 24042-0013	Schuykill River CWF 3-C	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Berks County Ontelaunee Township	PAR233525	Brenntag Northwest, Inc. Snyder Road Facility P. O. Box 13788 Reading, PA 19612-3788	Willow Creek CWF 3-B	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Lancaster County East Hempfield Township	PAR203596	Fabral, Inc. 3449 Hempland Road Lancaster, PA 17604-4608	West Branch Little Conestoga Creek TSF	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Lawrence Township Clearfield County	PAR304803	Swisher Contracting, Inc. P. O. Box 1223 Clearfield, PA 16830	West Branch Susquehanna River WWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3664
North Huntingdon Township Westmoreland County	PAR806179	Con-way Freight 110 Parkland Plaza Ann Arbor, MI 48103	Turtle Creek to Monongahela River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Forward Township Allegheny County	PAR406104	Kelly Run Sanitation, Inc. 625 Cherrington Parkway Moon Township, PA 15108	Fallen Timber Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Verona Borough Allegheny Township	PAR126108	Lamagna Cheese Company, Inc. 1 Lamagna Drive P. O. Box 303 Verona, PA 15147-0303	Plum Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

*General Permit Type—PAG-4*

<i>Facility Location: Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Sugar Grove Township Mercer County	PAG049324	Thomas L. Roberts 41 Ball Hill Road Greenville, PA 16125-4007	UNT to Crooked Creek 20-A	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Center Township Butler County	PAG048504	Diane M. Spiece 105 Lions Road Butler, PA 16001	Crooked Run 20C	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

NOTICES

2025

*Facility Location:  
Municipality &  
County*

<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Cussewago Township Crawford County	PAG048812 Ralph E. and Janet M. Payne 16440 Hecker Road Edinboro, PA 16412	UNT to Cussewago Creek 16D	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
West Salem Township Mercer County	PAG048503 David W. and Shirley A. McGranahan 504 Orangeville Road Greenville, PA 16125-2910	UNT to Big Run 20A	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Snyder Township Jefferson County	PAG048827 Frank A. Varischetti R. R. 1, Box 94 Brockway, PA 15824	McEwen Run 17C	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Deer Creek Township Mercer County	PAG048437 Robert P. Ziegler 1163 Milledgeville Road Cochran, PA 16314	UNT to Sandy Creek 16-G	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Ridgway Township Elk County	PAG048496 Jane H. and Wayne E. Bryndel 154 Abbey Road Ridgway, PA 15853	UNT to Clarion River 17A	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Liberty Township Mercer County	PAG049326 Allegheny Valley School 1996 Ewings Mill Road Corapolis, PA 15108	UNT to Wolf Creek 20-C	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-5*

*Facility Location:  
Municipality &  
County*

<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Greenville Borough Mercer County	PAG058375 Brownies Service Station Reed Oil Company 511 Montgomery Avenue New Castle, PA 16102	Shenango River 20-A	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*General Permit Type—PAG-8 (SSN)*

*Facility Location &  
County/Municipality*

<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Site Name &amp; Location</i>	<i>Contact Office &amp; Phone No.</i>
City of Pittsburgh Allegheny County	PAG086101 Allegheny County Sanitary Authority 3300 Preble Avenue Pittsburgh, PA 15233-1092	ALCOSAN	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh PA 15222-4745 (412) 442-4000

*General Permit Type—PAG-10*

*Facility Location:*

<i>Municipality &amp; County</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Statewide: Discharge points to be provided to appropriate DEP Regions and the Fish and Boat Commission at least 15 days before any discharge.	New Permit PAG109618	Texas Eastern Transmission, LP 5400 Westheimer Court Houston, TX 77056-5310 Bill Vanederlyn Env'tl Mgr. Kate Mayride Env'tl Scientist Planner, CH2MHILL, Philadelphia	Statewide Use— Water use information to be provided to DEP and the Fish and Boat Commission at least 15 days before any discharge.	DEP Central Office 400 Market Street Harrisburg, PA 17105 (717) 787-8184

*General Permit Type—PAG-12*

<i>Facility Location &amp; Municipality</i>	<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office &amp; Phone No.</i>
Adams County Butler Township	PAG123622	Tim Heckenluber Heckenluber Poultry Farm 413 Heckenluber Road Biglerville, PA 17307	7F	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4802
Franklin County Metal Township	PAG123577	Randy Wimmer Tuscarora Farms 13938 Creek Road Willow Hill, PA 17271	13-C	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4802

**PUBLIC WATER SUPPLY (PWS) PERMITS**

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

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

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

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

**SAFE DRINKING WATER**

**Actions taken under the Pennsylvania Safe Drinking Water Act**

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

**Permit No. 5006501, Public Water Supply.**

Applicant	<b>Department of General Services</b>
Municipality	Tyrone Township
County	<b>Perry</b>
Type of Facility	This PWS application is for the addition of a microfiltration unit to the existing treatment system.
Consulting Engineer	Yves E. Pollart, P. E. RETTEW Associates, Inc. 3020 Columbia Avenue Lancaster, PA 17603
Permit to Construct Issued:	4/17/2007

**Permit No. 0607502 MA, Minor Amendment, Public Water Supply.**

Applicant	<b>Reading Area Water Authority</b>
Municipality	Ontelaunee Township
County	<b>Berks</b>
Type of Facility	Minor repairs and upgrades to screen house and temporary raw water piping to conduct repairs to screen house.

Consulting Engineer Max C. Kurbjun Jr., P. E.  
BCM Engineers  
920 Germantown Pike  
Plymouth Meeting, PA 19462

Permit to Construct 4/9/2007  
Issued:

**Permit No. 3607506 MA, Minor Amendment, Public Water Supply.**

Applicant **Manheim Borough Authority**  
Municipality Manheim Borough  
County **Lancaster**  
Type of Facility Repaint 2 MG big tank  
Consulting Engineer Kirt L. Ervin  
United States Engineering, LLC  
4 Sunrise Court  
Highland, IL 62249

Permit to Construct 4/11/2007  
Issued:

**Permit No. 3607507 MA, Minor Amendment, Public Water Supply.**

Applicant **Manheim Borough Authority**  
Municipality Manheim Borough  
County **Lancaster**  
Type of Facility Repaint 1MG small tank  
Consulting Engineer Kirt L. Ervin  
United States Engineering, LLC  
4 Sunrise Court  
Highland, IL 62249

Permit to Construct 4/11/2007  
Issued:

**Operations Permit issued to Miller Mobile Home Park, 3060068, Ontelaunee Township, Berks County on 4/6/2007 for the operation of facilities approved under Construction Permit No. 0607509 E.**

**Operations Permit issued to Diakon Lutheran Social Ministries, 3060094, Longswamp Township, Berks County on 4/11/2007 for the operation of facilities approved under Construction Permit No. 3060094.**

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

**Permit No. M. A.—1871501—Operation Public Water Supply.**

Applicant **Tylersville Mutual Water Association**  
Township or Borough Logan Township  
County **Clinton**  
Responsible Official Tylersville Mutual Water Association  
c/o Richard T. Miller, Operator  
Box 44  
Tylersville, PA 17783-0044  
Type of Facility Public Water Supply—Operation  
Consulting Engineer N/A  
Permit Issued Date April 17, 2007  
Description of Action Operation of the infiltration gallery for Tylersville Mutual Water Association.

## SEWAGE FACILITIES ACT PLAN APPROVAL

### Plan Approvals Granted under section 5 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.5)

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

*Plan Location: Moss Tract*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Williams Township	655 Cider Press Road Easton, PA 18042	Northampton

*Plan Description:* The approved plan provides for two retail areas, a restaurant and a motel. The sanitary laterals from the proposed buildings will be connected to a private pumping station that will pump the proposed 11,800 gpd of sewage flows through a 4" force main to the existing Township collection system at manhole no. 10. The City of Easton will provide wastewater treatment facilities to the project. Easton Suburban Water Authority will supply public water to the project. The proposed development is located on Cedarville Road, Williams Township, Northampton County. Any required NPDES Permits or WQM Permits must be obtained in the name of Cedarville Center Condominium Association.

## HAZARDOUS SITES CLEAN-UP UNDER THE ACT OF OCTOBER 18, 1988

### Public Notice of Proposed Consent Decree

**Chem-Fab Site  
300 North Broad Street  
Doylestown Borough  
Bucks County, PA**

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (HSCA), (35 P. S. § 6020.1113), has entered into a Consent Decree with 300 North Broad Street, Ltd. (300 NBS), for reimbursement of certain response costs incurred to investigate and remediate hazardous substances released and threatened to be released at the Chem-Fab Site in Doylestown Borough, Bucks County, PA (the site).

Between 1965 and 1995, Chem-Fab, Inc., an electroplating business operated the site and caused the release of hazardous substances on the site. The site is the source of groundwater contamination in certain areas of Doylestown Borough and Doylestown Township. The Department performed an environmental assessment and characterization of the site and its study revealed hexavalent chromium and other hazardous substances in groundwater beneath the site and on adjacent properties. The Department has incurred \$1,337,071.19 in response costs related to investigation of the site and anticipates conducting future response actions to remediate hazardous substances released at the site.

As the owner of the site, 300 NBS is a responsible party under section 701 of HSCA, (35 P. S. § 6018.701). Consequently, the Department has a claim against this limited partnership for response costs incurred at the site. On July 21, 2005, 300 NBS agreed to reimburse the Department in the amount of \$251,518.52 for certain past and future response costs incurred at the site. This agreement was made on the record before the Commonwealth Court and memorialized in an Order dated July 21, 2005, in the matter captioned and docketed as

*Commonwealth of Pennsylvania, Department of Environmental Protection v. 300 North Broad Street, Ltd.*, No. 334 M.D.1999. 300 NBS failed to comply with the July 21, 2005 Order.

It is in the public interest for the Department to resolve its claim against 300 NBS. The Department and 300 NBS have negotiated in good faith and 300 NBS has agreed to pay off the liability required in the Commonwealth Court's July 21, 2005 Order. Thus, the parties have entered into a Consent Decree to resolve the Department's outstanding claims.

This notice is provided under section 1113 of HSCA, (35 P. S. § 6020.1113), which states that, "settlement shall become final upon the filing of the Department's response to significant written comments." The Consent Decree, which contains the specific terms of the agreement is available for public review and comment. The agreement can be examined from 8 a.m. to 4 p.m. at the Department's Southeast Regional Office, located at 2 East Main Street in Norristown, PA by contacting either April Flipse, at (484) 250-5721 or Gina M. Thomas, Esquire at (484) 250-5930. April Flipse and Gina Thomas may also be contacted electronically at [aflipse@state.pa.us](mailto:aflipse@state.pa.us) and [githomas@state.pa.us](mailto:githomas@state.pa.us), respectively. A public comment period on the Consent Decree will extend for 60 days from today's date. Persons may submit written comments regarding the agreement within 60 days from today's date, by submitting them to April Flipse at the above address.

## 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.*

**Rodriguez Res**, Upper Merion Township, **Montgomery County**. Richard D. Trimpi, Trimpi Assoc., 1635 Old Plains Road, Pennsburg, PA 18073 on behalf of Leonora Rodriguez, 546 N. Henderson Road, King of Prussia, PA 19406 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 Standards.

**Ten Tower Bridge**, Conshohocken Borough, **Montgomery County**. Gerald Kirkpatrick, Env. Standards, Inc., 1140 Valley Forge Road, P. O. Box 810, Valley Forge, AP 19482 on behalf of Josh Rubinich, O'Neill Properties Group, 2701 Renaissance Boulevard, 4th Floor, King of Prussia, PA 19406 has submitted a Remedial Investigation Report, Cleanup-Plan and Final Report concerning remediation of site soil contaminated with arsenic. The report is intended to document remediation of the site to meet the Statewide Health Standards and Site Specific Standards.

**PECO Wyncote MGP**, Cheltenham Township, **Montgomery County**. Matthias Ohr, URS, 335 Commerce Drive, Suite 300, Fort Washington, PA 19134, Benjamin E. Henry, URS, 335 Commerce Drive, Suite 300, Fort Washington, PA 19134 on behalf of Michael Heffron, PECO Energy Co., 2301 Market Street, S9-1, Philadelphia, PA 29103 has submitted a Cleanup Plan concerning remediation of site soil contaminated with PAH's and other organics. The report is intended to document remediation of the site to meet the Site Specific Standards.

**Agway Inc.**, Penn Township, **Chester County**. Larry Roach, Groundwater Science Corp., 2601 Marlet Place Street, Suite 310, Harrisburg, PA 7110 on behalf of John Steiner, Agway Liquidating Trust, 5790 Widewaters Parkway, Dewitt, NY 13214 has submitted a Remedial Investigation and Final Report concerning remediation of site soil and groundwater contaminated with pesticide. The report is intended to document remediation of the site to meet the Site Specific Standards and Statewide Health Standards.

**315 West First Avenue Property**, Parkesbury Borough, **Chester County**. Christopher Ward, RT Env. Svc., Inc., 510 Hernon Drive, Suite 306, Bridgeport, NJ 08014 on behalf of Senya Isayeff, Keystone Community Alliance, 550 East Union Street, The Goodwill Business Park, West Chester, PA 19382 has submitted a Final Report concerning remediation of site soil contaminated with other organic. The report is intended to document remediation of the site to meet the Statewide Health Standards.

**Rosenblum/Hetch Prop.**, Lower Merion Township, **Montgomery County**. David Farrington, Brickhouse Env., 515 S. Franklin Street, West Chester PA 19382 on behalf of Mandy Rosenblum and Elizabeth Hecht, 210 Ladbroke Road, Bryn Mawr, PA 19010 has submitted a



Final Report concerning remediation of site soil and groundwater contaminated with no. 2 fuel oil. The report is intended to document remediation of the site to meet the Statewide Health Standards.

*Northeast Region: Ronald S. Brezinski, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**Former Durkee Foods (1001 Eighth Avenue),** City of Bethlehem, **Lehigh County.** Peter Berkhout, Senior Environmental Engineer, Environmental Waste Management Associates, LLC, 100 Misty Lane, Parsippany, NJ 07054 submitted a Final Report (on behalf of his client, Tiger Den Partners, 171 Route 173, Suite 201, Asbury, NJ 08802) concerning the remediation of soils on the eastern half of the property found to have elevated semivolatiles and inorganics due to the placement of railroad ballast, construction debris and coal ash on the property, potential releases from onsite No. 6 and diesel USTS and historical operations. The report was submitted to document attainment of a combined Statewide Health Soil Standard and Site Specific Standard. A summary of the final report was published in *The Morning Call* on March 29, 2007. The future use of the eastern half of the property will be nonresidential.

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

**Cross Keys Church of God, Lack Township, Juniata County.** Patriot Environmental Management, LLC, P. O. Box 629, Douglassville, PA 19518, on behalf of Cross Keys Church of God, R. R. 1, Box 90, East Waterford, PA 17021-9706 and Shaner Energy, Inc., 10787 Station Road, Huntingdon, PA 16652, submitted a Final Report concerning remediation of site soils contaminated with No. 2 fuel oil. The report is intended to document remediation of the site to the Residential Statewide Health Standard. The report was submitted within 90 days of the release date. The property is and will remain a church.

## 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.*

**Concordville Nissan, Concord Township, Delaware County.** Gilbert Marshall, Marshall Geoscience Inc., 170 E. First Avenue, Collegeville, PA 19426 on behalf of Peter Lustgarten, Concordville Nissan, 452 Wilmington-West Chester Pike, Concordville, PA 19331 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with unleaded gasoline and no. 2 fuel and diesel fuel. The Final report demonstrated attainment of the Statewide Health Standards and was approved by the Department on February 28, 2007.

**Ukstins Residence, Richlandtown Borough, Bucks County.** Daniel Caprio, Patriot Env. Management, LLC, P. O. Box 629, Douglassville, PA 19518 on behalf of Mark Ebbert, Rapid Response, Inc., 14 Brick Kiln Court, Northampton, PA 18067 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 Standards and was approved by the Department on April 3, 2007.

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

**Former ENCO Realty Facility, City of Reading, Berks County.** Whittemore and Haigh Engineering, Inc., 200 Bethlehem Drive, Suite 201, Morgantown, PA 19543, on behalf of QMM Properties, LLC, P. O. Box 350, Shillington, PA 19607-0350, submitted a Final Report concerning the remediation of site groundwater contaminated with VOCs, SVOCs and RCRA metals. The final report demonstrated attainment of the Residential Statewide Health Standard, and was approved by the Department on April 4, 2007. This notice corrects the standard attained, which was incorrectly published in a previous issue of the *Pennsylvania Bulletin*.

**Fort Indiantown Gap Army National Guard Training Center Area 11-17**, East Hanover Township, **Lebanon County**. Converse Consultants, 2783 West College Avenue, State College, PA 16801, on behalf of Pennsylvania Department of Military and Veteran Affairs, Environmental Section, Building 11-19, Fort Indiantown Gap, Annville, PA 17003-5002, submitted a Final Report concerning remediation of site soils and groundwater contaminated with No. 2 heating oil from an underground storage tank. The final report demonstrated attainment of the Residential Statewide Health Standard and was approved by the Department on April 13, 2007.

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

**Arrow Trucking Co., I80 MM 178 WB Accident**, Greene Township, **Clinton County**. Northridge Group Inc., 1172 Ridge Road, Northumberland, PA 17857 on behalf of Arrow Trucking Co., 4230 South Elwood Avenue, Tulsa, OK 74107 has submitted a Final Report concerning remediation of site soil contaminated with diesel fuel. The Final Report demonstrated attainment of the Residential Statewide Health Standard and was approved by the Department on April 10, 2007.

**Travel Centers of America-Bloomsburg**, Hemlock Township, **Columbia County**, Apex Companies, LLC, 269 Great Valley Parkway, Malvern, PA 19355 on behalf of Travel Centers of America, 24601 Center Ridge Road No. 200, Westlake, OH 44145-5634 has submitted a Final Report concerning remediation of site groundwater contaminated with 1,1 dichloroethylene and 1,2-dichloroethane. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on April 13, 2007.

**Department of Public Welfare and Department of Health Building**, Danville Borough, **Montour County**. Alliance Environmental Services, Inc., 1820 Linglestown Road, Harrisburg, PA 17110 on behalf of Girard Estate, Stephen Girard Building, 21 South 12th Street, 5th Floor, Philadelphia, PA 19107-3684 has submitted a Final Report concerning remediation of site groundwater contaminated with VOCs associated with chlorinated solvents. The Final Report demonstrated attainment of the Statewide Health Standard and was approved by the Department on April 16, 2007.

#### DETERMINATION OF APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

**Determination of Applicability for General Permit issued Under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and/or the Beneficial Use of Residual Waste Other Than Coal Ash.**

*Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**Permit No. WMGR096, Department of Transportation, District 10-0**, 2550 Oakland Avenue, Indiana, PA 15701. Beneficial use of regulated fill as construction fill for the US Route 22 improvement project in East and West Wheatfield Townships, **Indiana County**. Determination of applicability for residual waste general permit WMGR096 issued in the Regional Office on April 10, 2007.

## AIR QUALITY

**Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.**

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

**46-0027B: Johnson and Johnson Pharmaceutical—Research and Development, LLC** (Welsh and McKean Road, Spring House, PA 19477) on April 10, 2007, to operate three new 350-hp boiler in Lower Gwynedd Township, **Montgomery County**.

**46-0256: Horgan Recycling, Inc.** (2188 Detwiler Road, Harleysville, PA 19348) on April 11, 2007, to operate an asphalt and soil stockpiling in Upper Gwynedd Township, **Montgomery County**.

**09-0193: Basic Chemical Solutions, LLC** (5 Steel Road E., Morrisville, PA 19067) on April 13, 2007, to operate an acid storage tank/control device in Falls Township, **Bucks County**.

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

**05-05022C: Bedford Reinforced Plastics, Inc.** (264 Reynoldsville Road, Bedford, PA 15522-7401) on April 5, 2007, to install three new fiberglass reinforced plastic pultrusion production lines at their facility in East Saint Clair Township, **Bedford County**.

**06-03078B: Brush Wellman, Inc.** (P. O. Box 973, Reading, PA 19603) on April 12, 2007, to construct a beryllium alloy metal strip cleaning line to be controlled by four scrubbers at their Shoemakersville Plant in Perry Township, **Berks County**.

**36-03170: DentaleZ Group** (1816 Colonial Village Lane, Lancaster, PA 17601) on April 12, 2007, to install a liquid vapor degreaser with control at their site in East Lampeter Township, **Lancaster County**.

**Plan Approval Revisions Issued including Extensions, Minor Modifications and Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.13, 127.13a and 127.32.**

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

**09-0177: North Penn Polishing and Plating, Inc.** (40 West Park Avenue, Sellersville, PA 18960) on April 16, 2007, to operate an ultra kool degreaser in Sellersville Borough, **Bucks County**.

**15-0114: Action Manufacturing Co.** (500 Bailey Crossroads Road, Atglen, PA 19310) on April 16, 2007, to operate a thermal treatment unit in West Fallowfield Township, **Chester County**.

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

**01-05029: Reliant Energy Wholesale Generation, LLC** (121 Champion Way, Suite 200, Canonsburg, PA 15317) on February 23, 2007, to construct a natural gas

fired electric generating facility at their Hunterstown Station in Straban Township, **Adams County**. This plan approval was extended.

**67-05047A: Republic Service, Inc.** (4400 Mt. Pisgah Road, York, PA 17402) on April 1, 2007, to install a second enclosed flare in Windsor and Lower Windsor Townships, **York County**. This plan approval was extended.

**09-0180: White Engineering Surfaces Corp.** (One Pheasant Run, Newtown, PA 18940) on March 29, 2007, to operate a batch degreaser in Newtown Township, **Bucks County**.

**09-0180A: White Engineering Surfaces Corp.** (One Pheasant Run, Newtown, PA 18940) on March 29, 2007, to operate a dust collector in Newtown Township, **Bucks County**.

**15-0078D: Centocor, Inc.** (200 Great Valley Parkway, Malvern, PA 19355) on March 29, 2007, to operate an electric generator in East Whiteland Township, **Chester County**.

**09-0156: Jolly Gardener Products, Inc.** (500 East Pumping Station Road, Quakertown, PA 18951) on March 29, 2007, to operate two diesel engines and wood processing in Richland Township, **Bucks County**.

**09-0156A: Jolly Gardener Products, Inc.** (500 East Pumping Station Road, Quakertown, PA 18951) on March 29, 2007, to operate three diesel fired engines in Richland Township, **Bucks County**.

**23-0059: Lyondell Chemical Co.** (3801 West Chester Pike, Newtown Square, PA 19073) on March 29, 2007, to operate a pilot unit in Newtown Township, **Delaware County**.

**23-0001Z: Sunoco, Inc.—R and M** (P. O. Box 426, Marcus Hook, PA 19061-0426) on March 28, 2007, to operate four auxiliary boilers in Marcus Hook Borough, **Delaware County**.

**23-0014F: Kimberly-Clark Corp.** (Front Street and Avenue of the States, Chester, PA 19103) on March 26, 2007, to operate a ventilation system in City Of Chester, **Delaware County**.

**09-0122A: Arkema, Inc.** (2000 Market Street, Philadelphia, PA 19103) on March 28, 2007, to operate a (B66) thermal oxidizer in Bristol Township, **Bucks County**.

**09-0127A: Bracalente Manufacturing Co., Inc.** (20 West Creamery Road, Trumbauersville, PA 18970) on March 27, 2007, to operate eight Degreasers in Trumbauersville Borough, **Bucks County**.

**09-0007B: Waste Management Disposal Services of PA, Inc.** (1121 Bordentown Road, Morrisville, PA 19067) on March 30, 2007, to operate a flare to back-up control device in Falls Township, **Bucks County**.

**09-0024E: Waste Management Disposal Services of PA, Inc.** (1121 Bordentown Road, Morrisville, PA 19067) on March 30, 2007, to operate a flare to back-up control device in Tullytown Borough, **Bucks County**.

**09-0134C: Reed Minerals** (P. O. Box 8888, Camp Hill, PA 17001) on March 26, 2007, to operate a replacement dust collector in Falls Township, **Bucks County**.

**23-0089: FPL Energy Marcus Hook, LP** (P. O. Box 426 Delaware Avenue and Green Street, Marcus Hook, PA 19061) on March 30, 2007, to operate a 750 megawatt (MW) combined cycle in Marcus Hook Borough, **Delaware County**.

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

**01-05029: Reliant Energy Wholesale Generation, LLC** (121 Champion Way, Suite 200, Canonsburg, PA 15317) on February 23, 2007, to construct a natural gas fired electric generating facility at their Hunterstown Station in Straban Township, **Adams County**. This plan approval was extended.

**67-05047a: Republic Service, Inc.** (4400 Mt. Pisgah Road, York, PA 17402) on April 1, 2007, to install a second enclosed flare in lower Windsor Township, **York County**. This plan approval was extended.

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

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

**46-00012: Philadelphia Newspapers, Inc.** (800 River Road, Conshohocken, PA 19428-2632) on April 12, 2007, for renewal of their Title V Operating Permit in Upper Merion Township, **Montgomery County**. The initial permit was issued on 11-7-2001. The facility prints and distributes daily and weekly news publications. As a result of potential emissions of VOCs and NOx, the facility is a major stationary source as defined in Title I, 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 reflect any change in air emissions from the facility. The facility is not subject to Compliance Assurance Monitoring under 40 CFR Part 64.

**46-00081: Markel Corp.** (435 School Lane, Plymouth Meeting, PA 19462) on April 12, 2007, for renewal of the Title V Operating Permit in Plymouth Township, **Montgomery County**. The initial permit was issued on 10-25-2001. The facility is a primary producer of fluoropolymer tubing and coated wire, plastic tubing, coated fiberglass sleeving and specialty tubing products that emits VOCs. The major emissions are VOCs and the facility is subject to the Title V permitting requirements adopted in 25 Pa. Code Chapter 127, Subchapter G. The proposed Title V Operating Renewal does not reflect any change in air emissions from the facility. The facility is subject to Compliance Assurance Monitoring under 40 CFR Part 64.

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

**65-00354: Sunoco Partners Marketing & Terminals, LP** (1801 Market Street, 26/10 PC, Philadelphia, PA 19103) on April 10, 2007, to operate their Delmont Terminal in Salem Township, **Westmoreland County**. This is a Title V Operating Permit Renewal.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, Facilities Permitting Chief, (814) 332-6940.*

**24-00127: National Fuel Gas Supply Corp.—Lamont Station** (5422 Highland Road, Kane, PA 16735) on April 12, 2007, the Department reissued Title V Operating Permit in Jones Township, **Elk County**. This notice is to announce the reissuance of the Title V Operating Permit for this natural gas transmission station. The facility is a major facility due to its potential to emit NOx.

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

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

**29-03007: Mellott Wood Preserving Co., Inc.** (1398 Sawmill Road, P. O. Box 209, Needmoore, PA 17238-0209) on April 11, 2007, for their wood-fired boilers at their facility in Belfast Township, **Fulton County**. This is a renewal of the State-only operating permit.

**44-05016: Lewistown Cabinet Center, Inc.** (P. O. Box 507, Reedsville, PA 17084) on April 12, 2007, to operate their cabinet finishing system in Armagh Township, **Mifflin County**.

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

**11-00252: C & C Smith Lumber Co., Inc.** (197 Tower Road, Summerhill, PA 15958) on April 10, 2007, to operate three wood fired boilers that burn sawdust and produce steam to dry the lumber. The lumber is predominantly used in the furniture manufacturing industry. The facility also recycles the sawdust from the lumber mill to produce pellets for the wood stove industry at their facility in Croyle Township, **Cambria County**.

**04-00570: Midland Slag Processor** (303A Smith Ferry Road, Midland, PA 15059) on April 12, 2007, to operate a slag processing facility in Hopewell Township, **Beaver 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.**

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

**11-00332: Northern Star Generation, LLC** (243 Rubisch Road, Ebensburg, PA 15931) on April 9, 2007, to correct certain typographical errors in the TVO, specifically change the names of the Responsible Official and the Permit Contact, and remove source 034, as it is no longer in operation at their Cambria CoGen facility located in Cambria Township, **Cambria County**. This is an Administrative Amendment to the Title V Operating Permit.

**03-00076: Peoples Natural Gas Co.—Girty Compressor Station** (1201 Pitt Street, Pittsburgh, PA 15221-2029) on April 10, 2007, to modify their Title V operating permit to account for the construction of two dehydration systems. Each unit will consist of a desiccant-pellet dehydrator which will have no associated emissions, a 35 kW electric generator and two chillers with a total heat input rating of 0.949 mmBtu/hr at their facility located in South Bend Township, **Armstrong County**.

**ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS**

**Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining**

**Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21).** The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

*Coal Permits Actions*

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

**Permit Number: 11841603 and NPDES Permit No. PA0235377, AMFIRE Mining Company, LLC**, (One Energy Place, Latrobe, PA 15650), to renew the permit for the Portage Plant in Portage Township, **Cambria County** and related NPDES permit. No additional discharges. Application received December 7, 2006. Permit issued April 6, 2007.

**Permit Number: 32841307 and NPDES Permit No. PA0092193, Tanoma Coal Company, Inc.**, (One Energy Place, Latrobe, PA 15650), to renew the permit for the Tanoma Mine in Rayne Township, **Indiana County** and related NPDES permit for reclamation only. No additional discharges. Application received June 29, 2006. Permit issued: April 6, 2007.

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

**05060101 and NPDES No. PA0262226. Ferlitch Construction Company, Inc.**, 1655 Juniata Lane, Box 205, Altoona, PA 16602, commencement, operation and restoration of a bituminous surface mine in Broadtop Township, **Bedford County**, affecting 95.0 acres. Receiving stream: Six Mile Run classified for the following use: WWF. There are no potable water supply intakes within 10 miles downstream. Application received July 21, 2006. Permit issued: April 9, 2007.

**11970103 and NPDES No. PA0234460. T. J. Mining, Inc.**, P. O. Box 370, Carrolltown, PA 15722, permit renewal for reclamation only of a bituminous surface mine in Cresson Township, **Cambria County**, affecting 35.5 acres. Receiving stream: Burgoon Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received March 26, 2007. Permit issued: April 12, 2007.

*Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.*

**03860111 and NPDES Permit No. PA0589144. State Industries, Inc.** (P. O. Box 1022, Kittanning, PA 16201). Revision to allow the beneficial use of coal ash to an existing bituminous surface mine, located in East Franklin Township, **Armstrong County**, affecting 667.4 acres. Receiving streams: UNTs to Allegheny River. Revision received: November 6, 2006. Revision permit issued: April 6, 2007.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**41940101 and NPDES No. PA0219843. Fisher Mining Company** (40 Choate Circle, Montoursville, PA 17754), permit renewal for the continued operation and restoration of a bituminous surface mine in Pine and McHenry Townships, **Lycoming County**, affecting 640.0 acres. Receiving streams: Buckeye Run, Otter Run to Little Pine creek, classified for the following use: HQ-CWF. There are no potable water supply intakes within 10 miles downstream. Application received: July 6, 2006. Permit issued: April 5, 2007.

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

**54940203T and R2. Wilbur White Coal Company**, (44 South Maple Avenue, Pottsville, PA 17901), transfer and renewal of an existing anthracite coal refuse reprocessing operation in Butler Township, **Schuylkill County** affecting 23.0 acres, receiving stream: none. Transfer Application received March 27, 2006 and Renewal Application received February 28, 2007. Transfer and Renewal issued: April 10, 2007.

*Knox District Office: P. O. Box 669, Knox, Pennsylvania 16232, (814) 797-1191.*

**24030102 and NPDES Permit No. PA0242322. AMFIRE Mining Company, LLC** (One Energy Place, Latrobe, PA 15650) Transfer of an existing bituminous strip operation from Energy Resources, Inc. in Fox Township, **Elk County** affecting 83.2 acres. Receiving streams: UNT No. 1 to Mill Run. Application received: December 22, 2006. Permit Issued: April 9, 2007.

**33050106 and NPDES Permit No. PA0258032. Original Fuels, Inc.** (P. O. Box 343, Punxsutawney, PA 15767) Transfer of an existing bituminous strip and auger operation in Knox and Oliver Townships, **Jefferson County** affecting 75.3 acres. Receiving streams: UNT to Sandy Creek. Application received: January 11, 2007. Permit Issued: April 5, 2007.

**16010103 and NPDES Permit No. PA0242021. RFI Energy, Inc.** (555 Philadelphia Street, Indiana, PA 15701) Renewal of an existing bituminous strip and tipple refuse disposal operation in Perry Township, **Clarion County** affecting 136.5 acres. This renewal is issued for reclamation only. Receiving streams: UNTs to the Allegheny River and UNTs to the Clarion River. Application Received: February 21, 2007. Permit Issued: April 11, 2007.

**16-06-08. Neiswonger Construction, Inc.** (17592 Route 322, Strattanville, PA 16258) Proposal to enter into a Government Financed Reclamation Construction Contract on a 13.4 acre site in Clarion Township, **Clarion County**. The proposal includes remining 7.6 acres of coal incidental to the project as well as eliminate 900 feet of hazardous abandoned highwall with associated spoil piles. Receiving streams: UNT to Little Piney Creek; UNT to Little Mill Creek; UNT to Douglass Run. Application received: June 19, 2006. Contract Issued: April 12, 2007.

**37060104. Cemex, Inc.** (840 Gessner, Suite 1400, Houston, TX 77024) Commencement, operation and restoration of a bituminous strip operation in Shenango Township, **Lawrence County** affecting 48.7 acres. Receiving streams: UNT to McKee Run. Application received: September 1, 2006. Permit Issued: April 12, 2007.

*Noncoal Permits Actions*

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

**Permit Number 28960301 and NPDES No. PA0223735. New Enterprise Stone & Lime Company,**

**Inc.**, P. O. Box 77, New Enterprise, PA 16664, renewal of NPDES Permit, Fannett Township, **Franklin County**. Receiving streams: UNT to Dry Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received February 21, 2007. Permit issued: April 11, 2007.

*Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**25072802. Edinger Trucking & Snow Removal** (1151 Wattsburg Road, Route 8, Wattsburg, PA 16442). Commencement, operation and restoration of a small noncoal operation in Greene Township, **Erie County** affecting 10.0 acres. Receiving streams: UNT to LeBoeuf Creek. Application received: February 9, 2007. Permit Issued: April 4, 2007.

**10010309. Annandale Sandstone** (219 Goff Station Road, Boyers, PA 16020) Renewal of NPDES Permit No. PA0241938 in Venango Township, **Butler County** affecting 17.6 acres. Receiving streams: UNT to Seaton Creek and Seaton Creek. Application received: February 12, 2007. Permit Issued: April 4, 2007.

**25042802. Mervin Troyer** (7400 Route 19, Union City, PA 16438) Commencement, operation and restoration of a small noncoal sand and gravel operation in Waterford Township, **Erie County** affecting 5.0 acres. Receiving streams: UNT to French Creek. Application received: July 21, 2004. Permit Issued: April 9, 2007.

**24030102 and NPDES Permit No. PA0242322. AMFIRE Mining Company, LLC** (One Energy Place, Latrobe, PA 15650) Transfer of an existing bituminous strip operation from Energy Resources, Inc. in Fox Township, **Elk County** affecting 83.2 acres. Receiving streams: UNT No. 1 to Mill Run. Application received: December 22, 2006. Permit Issued: April 9, 2007.

**33050106 and NPDES Permit No. PA0258032. Original Fuels, Inc.** (P. O. Box 343, Punxsutawney, PA 15767) Transfer of an existing bituminous strip and auger operation in Knox and Oliver Townships, **Jefferson County** affecting 75.3 acres. Receiving streams: UNT to Sandy Creek. Application received: January 11, 2007. Permit Issued: April 5, 2007.

**16010103 and NPDES Permit No. PA0242021. RFI Energy, Inc.** (555 Philadelphia Street, Indiana, PA 15701) Renewal of an existing bituminous strip and tipple refuse disposal operation in Perry Township, **Clarion County** affecting 136.5 acres. This renewal is issued for reclamation only. Receiving streams: UNTs to the Allegheny River and UNTs to the Clarion River. Application Received: February 21, 2007. Permit Issued: April 11, 2007.

**16-06-08. Neiswonger Construction, Inc.** (17592 Route 322, Strattanville, PA 16258) Proposal to enter into a Government Financed Reclamation Construction Contract on a 13.4 acre site in Clarion Township, **Clarion County**. The proposal includes remining 7.6 acres of coal incidental to the project as well as eliminate 900 feet of hazardous abandoned highwall with associated spoil piles. Receiving streams: UNT to Little Piney Creek; UNT to Little Mill Creek; UNT to Douglass Run. Application received: June 19, 2006. Contract Issued: April 12, 2007.

**37060104. Cemex, Inc.** (840 Gessner, Suite 1400, Houston, TX 77024) Commencement, operation and restoration of a bituminous strip operation in Shenango Township, **Lawrence County** affecting 48.7 acres. Receiving streams: UNT to McKee Run. Application received: September 1, 2006. Permit Issued: April 12, 2007.

**25072802. Edinger Trucking & Snow Removal** (11511 Wattsburg Road, Route 8, Wattsburg, PA 16442). Commencement, operation and restoration of a small noncoal operation in Greene Township, **Erie County** affecting 10.0 acres. Receiving streams: UNT to LeBoeuf Creek. Application received: February 9, 2007. Permit Issued: April 4, 2007.

**10010309. Annandale Sandstone** (219 Goff Station Road, Boyers, PA 16020) Renewal of NPDES Permit No. PA0241938 in Venango Township, **Butler County** affecting 17.6 acres. Receiving streams: UNT to Seaton Creek and Seaton Creek. Application received: February 12, 2007. Permit Issued: April 4, 2007.

**25042802. Mervin Troyer** (7400 Route 19, Union City, PA 16438) Commencement, operation and restoration of a small noncoal sand and gravel operation in Waterford Township, **Erie County** affecting 5.0 acres. Receiving streams: UNT to French Creek. Application received: July 21, 2004. Permit Issued: April 9, 2007.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**41940801. Vernice Vaughn** (2657 Bottle Run Road, Williamsport, PA 17701), noncoal mining operation in Old Lycoming Township, **Lycoming County**. Restoration of 1.0 acre completed. Receiving streams: Bottle Run, tributary to Lycoming Creek. Application received: October 30, 2006. Final bond release: April 6, 2007.

**41990801. Harry C. Grimes** (R. R. 5, Heshbon Road, Williamsport, PA 17701), noncoal mining operation in Loyalsack Township, **Lycoming County**. Restoration of 1.0 acre completed. Receiving streams: Lycoming Creek, tributary to West Branch Susquehanna River. Application received: March 10, 2007. Final bond release: April 10, 2007.

**14050302 and NPDES No. PA0256285. Cynthia E. Russell** (208 Laurel Run Road, Cursensville, PA 16833), transfer of an existing large noncoal industrial minerals permit from Raducz Stone Corporation (284 Rockdale Road, Butler, PA 16002), in Howard Township, **Centre County**, affecting 117.5 acres. Receiving streams: Lick Run (HQ-CWF) to Bald Eagle Creek (WWF) (Sayers Dam). There are no potable water supply intakes within 10 miles downstream. Application received: March 8, 2007. Permit issued: April 10, 2007.

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

**49060802. Chillisquaque Mountain Stone**, (729 Hookies Grove Road, Northumberland, PA 17857-9545), commencement, operation and restoration of a quarry operation in Point Township, **Northumberland County** affecting 2.0 acres, receiving stream: none. Application received July 3, 2006. Permit issued: April 11, 2007.

**49062801. Lorrie K. Hartman**, (955 Crawford Road, Watsontown, PA 17777), commencement, operation and restoration of a quarry operation in Delaware Township, **Northumberland County** affecting 2.0 acres, receiving stream: none. Application received October 23, 2006. Permit issued: April 11, 2007.

**35060803. Eddie's Excavating and Landscaping, Inc.**, R. R. 1, Box 1418A, Route 435, Gouldsboro, PA 18424), commencement, operation and restoration of a quarry operation in Covington Township, **Lackawanna County** affecting 5.0 acres, receiving stream: none. Application received November 30, 2006. Permit issued: April 11, 2007.

**58070802. Frank Kamarauskas, Jr.**, (R. D. 4, Box 4420, Montrose, PA 18801), commencement, operation and restoration of a quarry operation in Apolaccon Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received January 3, 2007. Permit issued: April 11, 2007.

**58070805. Brandon J. Hunsinger**, (R. R. 1, Box 221, Springville, PA 18844), commencement, operation and restoration of a quarry operation in Rush Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received January 22, 2007. Permit issued: April 13, 2007.

#### ACTIONS ON BLASTING ACTIVITY APPLICATIONS

**Actions on applications under the Explosives Acts of 1937 and 1957 (43 P.S. §§ 151–161); and 25 Pa. Code § 211.124 (relating to blasting activity permits). Blasting activity performed as part of a coal or noncoal mining activity will be regulated by the mining permit for that coal or noncoal mining activity.**

#### *Blasting Permits Actions*

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

**28074117. David H. Martin Excavating, Inc.**, (4961 Cumberland Highway, Chambersburg, PA 17201-9655), blasting activity permit issued for commercial development in Chambersburg Borough, **Franklin County**. Blasting activity permit end date is March 26, 2008. Permit issued: April 2, 2007.

**28074118. M & J Explosives, Inc.**, (P. O. Box 608, Carlisle, PA 17013-0608), blasting activity permit issued for residential development in Chambersburg Borough, **Franklin County**. Blasting activity permit end date is April 30, 2008. Permit issued: April 2, 2007.

**21074129. Keystone Blasting Services**, (381 Reifsnnyder Road, Lititz, PA 17543), blasting activity permit issued for commercial site development in North Newton Township, **Cumberland County**. Blasting activity permit end date is May 30, 2007. Permit issued: April 2, 2007.

**21074130. Newville Construction Services, Inc.**, (408 Mohawk Road, Newville, PA 17241-9424), blasting activity permit issued for residential development in Upper Allen Township, **Cumberland County**. Blasting activity permit end date is March 30, 2008. Permit issued: April 2, 2007.

**01074107. Newville Construction Services, Inc.**, (408 Mohawk Road, Newville, PA 17241-9424), blasting activity permit issued for commercial development in Cumberland Township, **Adams County**. Blasting activity permit end date is March 30, 2008. Permit issued: April 2, 2007.

**28074119. Geological Tech., Inc.**, (P. O. Box 70, Falling Waters, WV 25419-0070), blasting activity permit issued for residential development in Antrim Township, **Franklin County**. Blasting activity permit end date is March 28, 2008. Permit issued: April 6, 2007.

**01074108. Dyno Nobel, Inc.**, (1320 Galiffa Driver, Donora, PA 15033), blasting activity permit issued for commercial development in Straban Township, **Adams County**. Blasting activity permit end date is April 30, 2008. Permit issued: April 6, 2007.

**21074131. Dyno Nobel, Inc.**, (1320 Galiffa Driver, Donora, PA 15033), blasting activity permit issued for residential development in Silver Spring Township, **Cumberland County**. Blasting activity permit end date is April 30, 2008. Permit issued: April 6, 2007.

**21074132. Dyno Nobel, Inc.**, (1320 Galiffa Driver, Donora, PA 15033), blasting activity permit issued for residential development in Hampden Township, **Cumberland County**. Blasting activity permit end date is April 30, 2008. Permit issued: April 6, 2007.

*Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500*

**04074001. Al Neyer, Inc.** (302 West 3rd Street, Suite 800, Cincinnati, OH 45202). Blasting activity permit for construction of the Beaver Turnpike Distribution Center, located in Big Beaver Borough, **Beaver County**, with an expected duration of 1 year. Permit issued: April 11, 2007.

*Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**62074004. AB Resources PA, LLC** (7000 S. Edgerton Road, Suite 102, Brecksville, OH 44141) Blasting activity permit for gas and oil exploration in Mead Township, **Warren County**. This blasting activity permit will expire on August 1, 2007. Application received: April 9, 2007. Application Issued: April 9, 2007.

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

**06074106. Warren's Excavating & Drilling, Inc.**, (P. O. Box 1022, Honey Brook, PA 19344), construction blasting for Narrow Fabrics in West Reading Borough, **Berks County** with an expiration date of April 15, 2008. Permit issued: April 9, 2007.

**22074108. Douglas Explosives, Inc.**, (P. O. Box 77, Philipsburg, PA 16866), construction blasting for Laura Acres in Swatara Township, **Dauphin County** with an expiration date of April 10, 2008. Permit issued: April 9, 2007.

**36074134. Warren's Excavating & Drilling, Inc.**, (P. O. Box 1022, Honey Brook, PA 19344), construction blasting for a single dwelling in Paradise Township, **Lancaster County**. Permit issued: April 9, 2007.

**36074135. Warren's Excavating & Drilling, Inc.**, (P. O. Box 1022, Honey Brook, PA 19344), construction blasting for Crossings at Rocky Springs in West Lampeter Township, **Lancaster County** with an expiration date of April 15, 2008. Permit issued: April 9, 2007.

**36074136. Warren's Excavating & Drilling, Inc.**, (P. O. Box 1022, Honey Brook, PA 19344), construction blasting for Graystone Road in East Petersburg Borough, **Lancaster County** with an expiration date of April 15, 2008. Permit issued: April 9, 2007.

**38074106. Keystone Blasting Service**, (381 Reifsnyder Road, Lititz, PA 17543), construction blasting for blasting of a ridge in South Lebanon Township, **Lebanon County** with an expiration date of June 30, 2007. Permit issued: April 9, 2007.

**09074107. Rock Work, Inc.**, (1257 DeKalb Pike, Blue Bell, PA 19422), construction blasting for Deep Run Creek in Bedminster Township, **Bucks County** with an expiration date of April 11, 2008. Permit issued: April 10, 2007.

**35074107. Hayduk Enterprises, Inc.**, (257 Riverside Drive, Factoryville, PA 18419), construction blasting for a single dwelling in Mayfield Borough, **Lackawanna**

**County** with an expiration date of December 31, 2007. Permit issued: April 10, 2007.

**39074106. Hayduk Enterprises, Inc.**, (257 Riverside Drive, Factoryville, PA 18419), construction blasting for Cedar Hill Cemetery in Hanover Township, **Lehigh County** with an expiration date of April 30, 2008. Permit issued: April 10, 2007.

**39074108. Schlouch, Inc.**, (P. O. Box 69, Blandon, PA 19510), construction blasting for Lehigh Valley Hospital Road Widening in Salisbury Township, **Lehigh County** with an expiration date of April 10, 2008. Permit issued: April 10, 2007.

**39074109. Allan A. Myers, Inc. d/b/a Independence Construction Materials**, (P. O. Box 98, Worcester, PA 19490), construction blasting for Estates at Coldwater in Lower and Upper Macungie Townships, **Lehigh County** with an expiration date of March 28, 2008. Permit issued: April 10, 2007.

**48074103. American Rock Mechanics, Inc.**, (7531 Chestnut Street, Zionsville, PA 18092), construction blasting for Pheasant Ridge Estates in Moore Township, **Northampton County** with an expiration date of April 30, 2008. Permit issued: April 10, 2007.

**52074112. Hayduk Enterprises, Inc.**, (257 Riverside Drive, Factoryville, PA 18419), construction blasting for Hemlock Farms Development in Dingman, Blooming Grove and Porter Townships, **Pike County** with an expiration date of April 30, 2008. Permit issued: April 10, 2007.

**52074115. Holbert Explosives, Inc.**, (237 Mast Hope Plank Road, Lackawaxen, PA 18435), construction blasting for commercial development in Milford Township, **Pike County** with an expiration date of April 10, 2008. Permit issued: April 10, 2007.

**35074108. Austin Powder Company**, (25800 Science Park Drive, Cleveland, OH 44122), construction blasting at Montage Mountain in Moosic Borough, **Lackawanna County** with an expiration date of April 10, 2008. Permit issued: April 13, 2007.

**36074137. Warren's Excavating & Drilling, Inc.**, (P. O. Box 1022, Honey Brook, PA 19344), construction blasting for a single dwelling in Manheim Township, **Lancaster County** with an expiration date of April 11, 2008. Permit issued: April 13, 2007.

**46074109. American Rock Mechanics, Inc.**, (7531 Chestnut Street, Zionsville, PA 18092), construction blasting for Hawthorne Estates in New Hanover Township, **Montgomery County** with an expiration date of December 31, 2009. Permit issued: April 13, 2007.

## 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.

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**Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P. S. § 679.302) and The Clean Streams Law (35 §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).**

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*Permits, Environmental Assessments and 401 Water Quality Certifications Issued*

**WATER OBSTRUCTIONS AND ENCROACHMENTS**

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

**E48-378. Paul J. Connolly, Jr., Bath Supply Company, Inc.**, 457 Race Street, Bath, PA 18014. Bath Borough, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain a 8-inch diameter stormwater outfall structure in the floodway of Monocacy Creek. The work is associated with a warehouse addition to the existing Bath Supply Company plumbing supply business located west of the intersection of Union Street and Barber Street. (Catasauqua PA Quadrangle N: 18.2 inches; W: 2.9 inches).

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

**E08-442. Game Commission**, P. O. Box 220, Dallas, PA 18612. Water Obstruction and Encroachment Permit in Franklin Township, **Bradford County**, ACOE Susquehanna River Basin District (Shunk, PA Quadrangle N: 41° 37' 29"; W: 76° 29' 31").

To construct and maintain 400 linear feet of rip-rap protection and four R-8 rock barbs along the left bank and remove 200 linear feet of gravel a width of 10 feet along the right bank of Schrader Creek located in Franklin Township, Bradford County. This project proposes to have a minimal impact on Schrader Creek, which is, designated an Exceptional Value Waterway. This project does not propose to impact any jurisdictional wetlands. This permit also includes 401 Water Quality Certification.

**E60-180. Union County Industrial Development Corporation**, Union County Government Center, 155 North 15th Street, Lewisburg, PA 17837. Project Central Pennsylvania, in Gregg Township, **Union County**, ACOE Baltimore District (Allenwood, PA Quadrangle N: 22.7 inches; W: 3.8 inches).

To construct, operate and maintain: 1) 0.412 Acre of Isolated Wetland Impact associated with the excavation for proposed construction, N: 41° 07' 45"; W: 76° 54' 27"; 2) 0.189 Acre of Jurisdictional Wetland Impact associated with roadway and utility line construction, N: 41° 07' 44"; W: 76° 54' 30"; 3) 0.054 Acre of Jurisdictional Wetland Impact associated with roadway and pipe outfall construction, N: 41° 07' 44"; W: 76° 54' 30"; 4) 0.006 Acre of Temporary Jurisdictional Wetland Impact associated with sanitary sewer and nature trail construction, N: 41° 07' 38"; W: 76° 54' 33"; 5) 0.043 Acre of Temporary Jurisdictional Wetland Impact associated with sanitary sewer construction, N: 41° 07' 37"; W: 76° 54' 38"; 6) 0.056 Acre of Jurisdictional Wetland Impact associated with roadway and pipe inlet construction, N: 41° 07' 47"; W: 76° 54' 32"; 7) 0.032 Acre of Temporary Jurisdictional Wetland Impact associated with sanitary sewer construction, N: 41° 07' 49"; W: 76° 54' 34"; 8) 0.046 Acre of Jurisdictional Wetland Impact associated with stormwater management basin pipe outfall and energy dissipation pool construction, N: 41° 07' 57"; W: 76° 54' 01"; 9) 0.013 Acre of Jurisdictional Wetland Impact associated with future roadway construction, N: 41° 07' 59"; W: 76° 54' 02"; 10) 0.025 Acre of Jurisdictional Wetland Impact associated with utility pole relocation, N: 41° 07' 58"; W: 76° 53' 59"; 11) an 87-foot long 18-inch diameter HPDE culvert for a permanent wetland road crossing to maintain flow of water in the wetland; 12) excavation of approximately 14,000 cubic yards of earthen material out of the floodway to create a permanent 10-Acre Foot wetland habitat area; 13) a 2,500 feet long by 40 feet wide by 4 feet deep trapezoidal water diversion swale located in the 100-year floodway immediately upstream of the flood fringe stormwater pond, N: 41° 07' 23"; W: 76° 53' 50"; 14) a Stormwater Basin Outfall System in the floodway comprised of a 125 feet long by 5 feet deep by 45 feet wide R-8 riprap lined trapezoidal channel in the 100-year floodway and twin 106 feet long 60-inch diameter aluminized steel culvert pipes with Type D-W concrete endwall and R-7 riprap to reduce the energy of the stormwater as it discharges above the normal pool elevation of the West Branch Susquehanna River, N: 41° 07' 15"; W: 76° 53' 49"; 15) a 30-foot temporary stream channel disturbance for the placement of a concrete encased 8-inch diameter steel gas line crossing 6 feet below a UNT to the West Branch Susquehanna River, N: 41° 07' 25"; W: 76° 54' 00"; 16) 0.022 Acre of Isolated Wetland Disturbance for an access road for the construction of an overhead electric line, N: 41° 07' 44"; W: 76° 54' 30"; 17) 0.01 Acre Temporary Jurisdictional Wetland Disturbance for an addition of a guy wire for stability of an overhead electric pole, N: 41° 07' 47"; W: 76° 54' 32". This project proposes to have



0.818 acre of permanent wetland impacts, 0.111 acre of temporary wetland impacts, 30 linear feet of stream impacts and is proposing 1.471 acres of wetland mitigation. The increased mitigation acreage is to account for 0.646 acre of potential secondary wetland impacts. The above-mentioned encroachments are proposed to facilitate the construction of a 38.11-acre distribution warehouse and its associated parking lots and infrastructure located in the northeast corner of the Great Stream Commons Industrial Park 1 mile north from the village of Allenwood off of SR 0015.

#### ENVIRONMENTAL ASSESSMENTS

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

**EA17-005. The Clearfield Foundation**, P. O. Box 250, Clearfield, PA 16830. Wetland creation and acid precipitation abatement project on State Gamelands No. 34 in Benezette Township, **Elk County**, ACOE Baltimore District.

The applicant proposes to construct, operate and maintain 13.75 acres of created wetlands on State Game Lands No. 34, within the headwaters of the Mosquito Creek Watershed (HQ-CWF). The Mosquito Creek Watershed is severely impacted by acid precipitation. The wetland creation will incorporate aquatic and terrestrial habitat improvements including alkaline addition and food plot creation. Wetland creation will result in three separate impacts totaling 200 linear feet to a UNT to

Mosquito Creek. The impacts will result from the placement of water control structures to capture hydrology for the wetland creation. The UNT has a drainage area of 190 acres and experiences intermittent subsurface flow within the project boundaries. (The Knobs Quadrangle; Latitude N: 41° 14' 6.18"; Longitude W: 78° 17' 0.95").

#### WATER QUALITY CERTIFICATIONS

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

Certification request initiated by: Department of the Army, Baltimore District, United States Corps of Engineers, P. O. Box 1715, Baltimore, Maryland 21203. ACOE Baltimore District.

*WQC Project Description:* The proposed action is to remove approximately 58,000 cubic yards of gravel, sand and other earthen materials from the Tioga Levee above and below the mouth of the Corey Creek Conduit (approximately 5,000 feet by 100 feet). This material will be moved to a previously used upland placement site. An additional 12,000 cubic yards (approximately 3 acre area) of sediment materials will be removed from the Corey Creek Conduit Intake and placed at a previously used upland placement site. Multiple work sites associated with this project will be located in Mansfield Borough north and south of the SR 6 bridge crossing over the Tioga River. Work will also take place above and below the Corey Creek Conduit located on Mansfield 7.5' Quadrangle, N: 11.0 inches; W: 11.3 inches.

#### 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, 504, 1101—1102) and under 25 Pa. Code Chapter 245, Subchapter C, have been issued by the Bureau of Waste Management, Director, P. O. Box 8763, Harrisburg, PA 17105-8763.**

<i>SSIP Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Tank Type</i>	<i>Tank Capacity</i>
07-54-004	Green Renewable Energy, Ethanol & Nutrition-Holding, LLC 1904 Tollgate Road Palm, PA 18070 Attn: Jeffrey L. Dershem	Schuylkill	Frailey and Porter Townships	6 ASTs storing petroleum products	8,930,000 gallons total

#### SPECIAL NOTICES

##### Notice of Public Hearing

The Department of Environmental Protection (Department) has scheduled a public hearing to receive testimony and comments on a major modification permit application submitted by WBLF Acquisition Co., LLC for the Western Berks Community Landfill facility located in Cumru Township, Berks County. The hearing will be held on Tuesday, June 5, 2007 at 7 p.m. at the Cumru Township Building, 1775 Welsh Road, Mohnton, PA 19540.

Persons intending to testify at the hearing should register by June 1, 2007 by calling Stefanie Muzic at (717) 705-4703. If the Department does not receive any testimony registration requests by June 1, 2007, the public hearing will be cancelled. The comment period will remain open until June 22, 2007. Written comments may be submitted during that time to John Oren, Pennsylvania Department of Environmental Protection,

Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, or by email at joren@state.pa.us.

All testimony should be to the point. Each individual will have up to 10 minutes for his/her presentation. To ensure that all speakers have a fair and equal opportunity to present their testimony, relinquishing of time will be prohibited. Further details relating to the procedures to be followed at the hearing will be outlined at the beginning of the proceedings.

An appointment may be scheduled to review the permit application at the Southcentral Regional Office in Harrisburg by contacting the File Room at (717) 705-4732 between the hours of 8 a.m. and 4 p.m., Monday through Friday.

Persons with a disability who wish to attend the hearing but require an auxiliary aid, service or other accommodations to participate in the proceedings, please contact the Department for assistance. TDD users may use the AT&T Relay Services at (800) 654-5984.

### Public Meeting and Public Hearing Invitation

#### Public Hearing for NPDES Permit No. PAS10S119 Proposed Alpine Rose Resorts, Eldred Township, Monroe County

The Department will hold a public hearing to accept comment on revisions to an Individual NPDES Permit Application No. PAS10S119 for the discharge of stormwater from construction activities at the proposed Alpine Rose Resorts, Eldred Township, Monroe County. The revisions include an Antidegradation Analysis as per a decision of the Environmental Hearing Board in this case.

The public hearing will be conducted on Thursday, May 31, 2007, at 7 p.m. at the Eldred Elementary School, Kunkletown Road, Kunkletown, Eldred Township, Monroe County by the 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 Richard Muller, Jr., President, Alpine Rose Resorts, Inc. The NPDES permit application proposes the discharge of stormwater from construction activities to Aquashicola Creek.

The Department requests that individuals wishing to testify at the hearing submit a written notice of intent to Alpine Rose Resorts Hearing, Department of Environmental Protection, Water Management Program, 2 Public Square, Wilkes-Barre, PA 18711. 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. PAS10S119. Written copies of oral testimony are requested. Relinquishing 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 at (570) 826-2511 or 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 Monroe County Conservation District Office, Stroudsburg, PA (570) 629-3060. For further information, contact Mark Carmon of the Department's Northeast Regional Office at (570) 826-2511.

[Pa.B. Doc. No. 07-749. Filed for public inspection April 27, 2007, 9:00 a.m.]

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### Bid Opportunities

**BOGM 07-7, Cleaning Out and Plugging Two Abandoned Gas Wells, (Deborah Nicholas and James E. Berry Properties), Kiskiminetas Township, Armstrong County.** The principal items of work include cleaning out and plugging two abandoned gas wells, estimated to be 7,500 feet in depth, to Department

specifications, preparing and restoring well sites and mobilizing and demobilizing plugging equipment. The estimated plugging time is 120 hours. Bid documents cost \$10 per set and will not be mailed until payment has been received. A prebid conference is planned for this project but a date has not been set. Please contact the Construction Contracts Section at (717) 787-7820 or joelmiller@state.pa.us for more information on this bid.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 07-750. Filed for public inspection April 27, 2007, 9:00 a.m.]

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### Bid Opportunities

Update to the following contract advertisements previously published at 37 Pa.B. 1738 and 1739 (April 14, 2007):

Contract No. OSM 03(3498)101.1  
Contract No. OSM 10(7000)101.1  
Contract No. OSM 10(2922)101.1

The advertisements for the previously referenced contracts incorrectly reference the bid opening date as May 15, 2007. The bid opening date should read May 17, 2007.

Contact the Construction Contracts Section at (717) 787-7820 or joelmiller@state.pa.us for more information on this bid.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 07-751. Filed for public inspection April 27, 2007, 9:00 a.m.]

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### Draft Coastal and Estuarine Land Conservation Plan; Public Comment Period

The Department of Environmental Protection (Department) has developed a draft Coastal and Estuarine Land Conservation Plan (CELCP). CELCP was created by an Act of Congress in 2002 to provide funding for coastal land conservation. To qualify to receive funds under CELCP, the Act requires states to develop and submit to the National Oceanic and Atmospheric Administration (NOAA) for approval, a CELC plan that provides an assessment of priority conservation needs and guidance for nominating and selecting land conservation projects within the state.

The CELCP document is available on the Department's website at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keywords: "Coastal Zone Management Program/Coastal Zones") or can be obtained by contacting the Water Planning Office at (717) 772-4785.

Comments on the draft plan may be submitted to Jeff Dewey, Department of Environmental Protection, Water Planning Office, Rachel Carson State Office Building, P. O. Box 2063, Harrisburg, PA 17105-2063, [jdewey@state.pa.us](mailto:jdewey@state.pa.us). The Department must receive comments on the draft plan by May 29, 2007.

Following the 30-day public comment period, the Department will review submitted comments, prepare a written comments and response document and prepare a final Plan, which will be submitted to the United States Commerce Department. The availability of the final Plan will be announced in a future edition of the *Pennsylvania Bulletin*.

Questions concerning the draft plan should be directed to Jeff Dewey at (717) 772-5619 or at the e-mail address provided previously.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 07-752. Filed for public inspection April 27, 2007, 9:00 a.m.]

### **Proposed Revision to the State Implementation Plan for the State College (Centre County) 8-Hour Ozone Nonattainment Area; Public Hearing**

Ground-level ozone concentrations above the Federal health-based standard are a serious human health threat and can also cause damage to crops, forests and wildlife. The State College 8-Hour Ozone Nonattainment Area has met the health-based National ambient air quality standard for ozone based on 2003-2005 concentrations. Therefore, the Department of Environmental Protection (Department) plans to submit a request to the United States Environmental Protection Agency (EPA) to redesignate this nonattainment area to attainment of the 8-hour ozone National ambient air quality standard (NAAQS). The Department is seeking public comment on the 8-hour ozone redesignation request, the 2002 base year inventory and a State Implementation Plan revision setting forth a Maintenance Plan, which demonstrating that the area can maintain the health-based ozone standard for the next 10 years as required under section 175A(a) of the Federal Clean Air Act (42 U.S.C.A. § 7505a). The Maintenance Plan, once approved by the EPA, will also establish new motor vehicle emission budgets for purposes of transportation conformity.

This proposal is available on the Department's website at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (choose "Air Plans") or through the contact persons listed.

The Department will hold a public hearing to receive comments on the proposals on Wednesday, May 30, 2007, at 10 a.m. at the Centre Region Council of Governments Building, Forum Room, 2643 Gateway Drive, State College, PA 16801. Persons wishing to present testimony at the hearing should contact Yvette House, P. O. Box 8468, Harrisburg, PA 17105, (717) 787-9495 or [yhouse@state.pa.us](mailto:yhouse@state.pa.us) to reserve a time. Persons who do not reserve a time will be able to testify as time allows. Witnesses should keep testimony to 10 minutes and should provide two written copies of their statement at the hearing.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation to participate in the proceeding should contact Yvette House at (717) 787-9495 or [yhouse@state.pa.us](mailto:yhouse@state.pa.us). TDD users may contact the AT&T Relay Service at (800) 654-5984 to discuss how the Department can best accommodate their needs.

The Department must receive comments no later than June 1, 2007. Written comments should be sent to the

attention of J. Wick Havens, Chief, Division of Air Resource Management, Bureau of Air Quality, P. O. Box 8468, Harrisburg, PA 17105-8468, or [jhavens@state.pa.us](mailto:jhavens@state.pa.us). Use "State College Ozone SIP" as the mail addressee or in the subject line.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 07-753. Filed for public inspection April 27, 2007, 9:00 a.m.]

### **Small Water Systems Technical Assistance Center Advisory Board; Meeting Cancellation**

The Small Water Systems Technical Assistance Center Advisory Board's (Board) regular quarterly meeting scheduled for May 17, 2007, from 10 a.m. to 3 p.m. in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA is cancelled. The next meeting of the Board is scheduled for August 16, 2007 (see 36 Pa.B. 8001, 8005 (December 30, 2006) for meeting details).

Questions concerning the cancellation of the May 17, 2007, meeting or the next regularly scheduled Board meeting may be directed to Ray Braun at (717) 772-2186 or [rbraun@state.pa.us](mailto:rbraun@state.pa.us). The agenda and meeting materials for the August 16, 2007, meeting of the Board will be available on the Department of Environmental Protection's website at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (DEP Keywords: "Public Participation, Participate").

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Department at (717) 772-2186 or through the AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 07-754. Filed for public inspection April 27, 2007, 9:00 a.m.]

## **DEPARTMENT OF HEALTH**

### **Availability of Funds for Traumatic Brain Injury (TBI) Peer Relations Mini-Grants**

The Bureau of Family Health (Bureau), Division of Child and Adult Health Services is accepting applications to support education and awareness of the causes and consequences of traumatic brain injury (TBI) among youth. It is entitled: Traumatic Brain Injury (TBI) Childhood Education and Awareness Peer Relations Program. Funding for up to \$4,500 is available to support education and awareness of traumatic brain injury as it impacts the TBI survivor and peers. Activities would educate all students/youth about the cognitive and emotional changes associated with brain injury, explore peer relationships, model positive attitudes and introduce concepts surrounding compensatory strategies.

For the purpose of this funding opportunity, a TBI is defined as an insult to the brain, not of a degenerative or congenital nature, caused by an external physical force that may produce a diminished or altered state of consciousness, which results in impairment of cognitive

abilities or physical functioning or in the disturbance of behavioral or emotional functioning. These impairments may be either temporary or permanent and cause partial or total functional disability or psychosocial maladjustment.

Eligible applicants are Pennsylvania public and private organizations, foundations or community-based agencies recognized by Federal Tax ID number. Individuals may not apply. Informal groups without Federal Tax ID numbers are encouraged to partner with a sponsor organization who may apply on behalf of the group.

Project funds must be used to reimburse purchases and activities occurring between July 1, 2006 and June 30, 2007. Applicants may apply for funding to cover multiple purchases/activities, not to exceed \$4,500.

Completed applications will be accepted up to the due date, May 14, 2007. Awards will be made after that date, and will be contingent upon the availability of funds and Department of Health (Department) approval. Copies of application forms and other background information are available on the Department's website [www.health.state.pa.us](http://www.health.state.pa.us) (search words: mini-grant, brain injury).

Completed applications will be scored by an independent review panel. Rating factors include the following:

1. The need for the awareness and educational program is justified.
2. The audience of the proposed activity meets the intended target.
3. The activities meet at least 3 of the 5 learning objectives, which are:
  - a. Building peer relationships between children with head injuries and other children in the classroom, group or community setting.
  - b. Recognizing and supporting the use of coping mechanisms, adaptive equipment, therapies, and the like, utilized by students/children with head injuries throughout their day.
  - c. Intervening and providing support to children with brain injuries and their peers during potentially distressing situations.
  - d. Preventing head injuries/TBI/concussions.
  - e. Acknowledging the similarities of "bad behavior" actions/choices between head injured and nonhead injured children while recognizing, developing and utilizing the different supports required to address these actions/choices of the head injury student through training, education and awareness.
4. The proposed budget and purchases are reasonable.
5. The proposed activity will have an ongoing, systemic benefit to the community.

Applicants will be notified of approval/disapproval in writing within 30 days of the due date.

To request application materials or for additional information related to this initiative, contact Danielle M. Tedesco, TBI Program Administrator, Bureau of Family Health, Division of Child and Adult Health Services, Health and Welfare Building, 7th Floor East, 7th and Forster Streets, Harrisburg, PA 17120, (717) 772-2762, fax (717) 772-0323, [dtedesco@state.pa.us](mailto:dtedesco@state.pa.us).

Individuals with a disability who require an alternative format of this notice or of the application materials (for example, large print, audiotape, Braille) contact Danielle M. Tedesco in the Bureau of Family Health at (717)

772-2762 or for speech and/or hearing impaired persons, V/TT (717) 783-6514 or Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 07-755. Filed for public inspection April 27, 2007, 9:00 a.m.]

### Pennsylvania Cancer Control, Prevention and Research Advisory Board Meeting

The Pennsylvania Cancer Control, Prevention and Research Advisory Board, established under the Pennsylvania Cancer Control, Prevention and Research Act (35 P. S. § 5633), will hold a meeting on Wednesday, June 27, 2007, from 7:45 a.m. to 2 p.m., at the Dixon University Center, 2986 North Second Street, Harrisburg, PA, 17110.

For additional information, contact Kathleen A. Zitka, Chief, Department of Health, Comprehensive Cancer Control Section, Room 1011, Health and Welfare Building, Harrisburg, PA at (717) 787-5251.

Persons with disabilities desiring to attend the meeting and requiring an auxiliary aid, service or other accommodation to do so contact Kathleen A. Zitka at (717) 787-5251 or for speech and/or hearing impaired persons at V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT).

This meeting is subject to cancellation without notice.

CALVIN B. JOHNSON, M. D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 07-756. Filed for public inspection April 27, 2007, 9:00 a.m.]

## DEPARTMENT OF REVENUE

### Pennsylvania Gold Rush '07 Instant Lottery Game

Under the State Lottery Law (72 P. S. §§ 3761-101—3761-314) and 61 Pa. Code § 819.203 (relating to notice of instant game rules), the Secretary of Revenue hereby provides public notice of the rules for the following instant lottery game:

1. *Name:* The name of the game is Pennsylvania Gold Rush '07.

2. *Price:* The price of a Pennsylvania Gold Rush '07 instant lottery game ticket is \$10.

3. *Play Symbols:* Each Pennsylvania Gold Rush '07 instant lottery game ticket will contain one play area featuring a "WINNING NUMBERS" area and a "YOUR NUMBERS" area. The play symbols and their captions located in the "WINNING NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THRTN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN) and 30 (THIRTY). The play symbols and their captions located in

the "YOUR NUMBERS" area are: 1 (ONE), 2 (TWO), 3 (THREE), 4 (FOUR), 5 (FIVE), 6 (SIX), 7 (SEVEN), 8 (EIGHT), 9 (NINE), 10 (TEN), 11 (ELEVN), 12 (TWLV), 13 (THR TN), 14 (FORTN), 15 (FIFTN), 16 (SIXTN), 17 (SVNTN), 18 (EGHTN), 19 (NINTN), 20 (TWENT), 21 (TWYONE), 22 (TWYTWO), 23 (TWYTHR), 24 (TWYFOR), 25 (TWYFIV), 26 (TWYSIX), 27 (TWYSVN), 28 (TWYEGT), 29 (TWYNIN), 30 (THIRTY), Gold Coin symbol (GLDCN), Gold Nugget symbol (GLDNGT) and a Gold Bar symbol (GLDBAR).

4. *Prize Symbols:* The prize symbols and their captions located in the "YOUR NUMBERS" area are: \$5<sup>00</sup> (FIV DOL), \$10<sup>00</sup> (TEN DOL), \$15\$ (FIFTN), \$20\$ (TWENTY), \$50\$ (FIFTY), \$100 (ONE HUN), \$200 (TWO HUN), \$500 (FIV HUN), \$1,000 (ONE THO), \$5,000 (FIV THO), \$20,000 (TWY THO) and \$250,000 (TWHNFYTH).

5. *Prizes:* The prizes that can be won in this game are: \$5, \$10, \$15, \$20, \$50, \$100, \$200, \$500, \$1,000, \$5,000, \$20,000 and \$250,000. The player can win up to ten times on the ticket.

6. *Approximate Number of Tickets Printed For the Game:* Approximately 6,000,000 tickets will be printed for the Pennsylvania Gold Rush '07 instant lottery game.

7. *Determination of Prize Winners:*

(a) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$250,000 (TWHNFYTH) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$250,000.

(b) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$20,000 (TWY THO) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$20,000.

(c) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$5,000 (FIV THO) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5,000.

(d) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$1,000 (ONE THO) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$1,000.

(e) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Coin symbol (GLDCN), and a prize symbol of \$1,000 (ONE THO) appears under the Gold Coin symbol (GLDCN) on a single ticket, shall be entitled to a prize of \$1,000.

(f) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Nugget symbol (GLDNGT), and a prize symbol of \$500 (FIV HUN) appears under the Gold Nugget symbol (GLDNGT) on a single ticket, shall be entitled to a prize of \$1,000.

(g) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$500 (FIV HUN) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$500.

(h) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Coin symbol (GLDCN), and a prize symbol of \$500 (FIV HUN) appears under the Gold Coin symbol (GLDCN) on a single ticket, shall be entitled to a prize of \$500.

(i) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar symbol (GLDBAR), and a prize symbol of \$100 (ONE HUN) appears under the Gold Bar symbol (GLDBAR) on a single ticket, shall be entitled to a prize of \$500.

(j) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Nugget symbol (GLDNGT), and a prize symbol of \$200 (TWO HUN) appears under the Gold Nugget symbol (GLDNGT) on a single ticket, shall be entitled to a prize of \$400.

(k) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$100 (ONE HUN) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$100.

(l) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Coin symbol (GLDCN), and a prize symbol of \$100 (ONE HUN) appears under the Gold Coin symbol (GLDCN) on a single ticket, shall be entitled to a prize of \$100.

(m) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Nugget symbol (GLDNGT), and a prize symbol of \$50\$ (FIFTY) appears under the Gold Nugget symbol (GLDNGT) on a single ticket, shall be entitled to a prize of \$100.

(n) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar symbol (GLDBAR), and a prize symbol of \$20\$ (TWENTY) appears under the Gold Bar symbol (GLDBAR) on a single ticket, shall be entitled to a prize of \$100.

(o) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$50\$ (FIFTY) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$50.

(p) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Coin symbol (GLDCN), and a prize symbol of \$50\$ (FIFTY) appears under the Gold Coin symbol (GLDCN) on a single ticket, shall be entitled to a prize of \$50.

(q) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Bar symbol (GLDBAR), and a prize symbol of \$10<sup>00</sup> (TEN DOL) appears under the Gold Bar symbol (GLDBAR) on a single ticket, shall be entitled to a prize of \$50.

(r) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Nugget symbol (GLDNGT), and a prize symbol of \$20\$ (TWENTY) appears under the Gold Nugget symbol (GLDNGT) on a single ticket, shall be entitled to a prize of \$40.

(s) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$20\$ (TWENTY) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$20.

(t) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Coin symbol

(GLDCN), and a prize symbol of \$20\$ (TWENTY) appears under the Gold Coin symbol (GLDCN) on a single ticket, shall be entitled to a prize of \$20.

(u) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Nugget symbol (GLDNGT), and a prize symbol of \$10<sup>.00</sup> (TEN DOL) appears under the Gold Nugget symbol (GLDNGT) on a single ticket, shall be entitled to a prize of \$20.

(v) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$15\$ (FIFTN) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$15.

(w) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$10<sup>.00</sup> (TEN DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$10.

(x) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Coin symbol (GLDCN), and a prize symbol of \$10<sup>.00</sup> (TEN DOL) appears under the Gold Coin symbol (GLDCN) on a single ticket, shall be entitled to a prize of \$10.

(y) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols is a Gold Nugget symbol (GLDNGT), and a prize symbol of \$5<sup>.00</sup> (FIV DOL) appears under the Gold Nugget symbol (GLDNGT) on a single ticket, shall be entitled to a prize of \$10.

(z) Holders of tickets upon which any one of the "YOUR NUMBERS" play symbols matches any of the "WINNING NUMBERS" play symbols and a prize symbol of \$5<sup>.00</sup> (FIV DOL) appears under the matching "YOUR NUMBERS" play symbol, on a single ticket, shall be entitled to a prize of \$5.

8. *Number and Description of Prizes and Approximate Odds:* The following table sets forth the approximate number of winners, amounts of prizes and approximate odds of winning:

*When Any Of Your Numbers Match Any Of The Winning Numbers, Win With Prize(s) Of:*

	<i>Win:</i>	<i>Approximate Odds Are 1 In:</i>	<i>Approximate No. Of Winners Per 6,000,000 Tickets</i>
\$10	\$10	40	150,000
\$10 w/Gold Coin	\$10	40	150,000
\$5 w/Gold Nugget	\$10	40	150,000
\$5 × 2	\$10	15	400,000
\$20	\$20	120	50,000
\$20 w/Gold Coin	\$20	120	50,000
\$10 w/Gold Nugget	\$20	120	50,000
\$10 × 2	\$20	120	50,000
\$15 + \$5	\$20	20	300,000
\$50	\$50	200	30,000
\$50 w/Gold Coin	\$50	600	10,000
\$5 × 10	\$50	600	10,000
\$10 × 5	\$50	600	10,000
\$10 w/Gold Bar	\$50	300	20,000
\$20 w/Gold Nugget + \$10	\$50	120	50,000
\$100	\$100	600	10,000
\$100 w/Gold Coin	\$100	600	10,000
\$10 × 10	\$100	600	10,000
\$20 × 5	\$100	600	10,000
\$50 × 2	\$100	600	10,000
\$20 w/Gold Bar	\$100	600	10,000
\$50 w/Gold Nugget	\$100	600	10,000
\$500	\$500	4,800	1,250
\$500 w/Gold Coin	\$500	4,800	1,250
\$200 w/Gold Nugget + \$100	\$500	4,800	1,250
\$50 × 10	\$500	4,800	1,250
\$100 × 5	\$500	4,800	1,250
\$100 w/Gold Bar	\$500	4,800	1,250
\$1,000	\$1,000	12,000	500
\$1,000 w/Gold Coin	\$1,000	12,000	500
\$100 × 10	\$1,000	12,000	500
\$100 w/Gold Bar + \$500	\$1,000	12,000	500
\$500 w/Gold Nugget	\$1,000	12,000	500
\$5,000	\$5,000	60,000	100
\$500 × 10	\$5,000	60,000	100
\$20,000	\$20,000	240,000	25
\$250,000	\$250,000	600,000	10

Gold Coin (GLDCN) = Win prize shown under it automatically.  
 Gold Nugget (GLDNGT) = Win double the prize shown under it.  
 Gold Bar (GLDBAR) = Win five times the prize shown under it.

Prizes, including top prizes, are subject to availability at the time of purchase.

9. *Retailer Incentive Awards:* The Lottery may conduct a separate Retailer Incentive Game for retailers who sell Pennsylvania Gold Rush '07 instant lottery game tickets. The conduct of the game will be governed by 61 Pa. Code § 819.222 (relating to retailer bonuses and incentives).

10. *Unclaimed Prize Money:* For a period of 1 year from the announced close of Pennsylvania Gold Rush '07, prize money from winning Pennsylvania Gold Rush '07 instant lottery game tickets will be retained by the Secretary for payment to the persons entitled thereto. If no claim is made within 1 year of the announced close of the Pennsylvania Gold Rush '07 instant lottery game, the right of a ticket holder to claim the prize represented by the ticket, if any, will expire and the prize money will be paid into the State Lottery Fund and used for purposes provided for by statute.

11. *Governing Law:* In purchasing a ticket, the customer agrees to comply with and abide by the State Lottery Law (72 P. S. §§ 3761-101—3761-314), 61 Pa. Code Part V (relating to State Lotteries) and the provisions contained in this notice.

12. *Termination of the Game:* The Secretary may announce a termination date, after which no further tickets from this game may be sold. The announcement will be disseminated through media used to advertise or promote Pennsylvania Gold Rush '07 or through normal communications methods.

THOMAS W. WOLF,  
*Acting Secretary*

[Pa.B. Doc. No. 07-757. Filed for public inspection April 27, 2007, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Finding Berks County

Under section 2002(b) of The Administrative Code of 1929 (71 P. S. § 512(b)), the Chief Engineer for Highway Administration, makes the following written finding:

The Department of Transportation (Department) plans to replace the S-Bridge (SR 3061, Section TLP) in Marion Township, Berks County. The project will require the removal of the National Register of Historic Places Listed S-Bridge and the use of land from the Tulpehocken Creek Historic District, a section 2002 resource within the project limits.

Mitigation measures will be taken to minimize harm to the Tulpehocken Creek Historic District including providing aesthetic treatments for the new bridge, planting historically sensitive landscaping, documenting the bridge's demolition, providing the opportunity for local historic organizations to reuse the stones from the original bridge, and providing an education booklet on the history of the Tulpehocken Settlement.

The Chief Engineer 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 1929, and has concluded

that there is no feasible and prudent alternative to the project as designed and all reasonable steps have been taken to minimize such effect.

No adverse environmental effect is likely to result from this project.

M. G. PATEL, P. E.,  
*Chief Engineer*

[Pa.B. Doc. No. 07-758. Filed for public inspection April 27, 2007, 9:00 a.m.]

### Sale of Land No Longer Needed for Transportation Purposes

The Department of Transportation (Department), District 9-0, 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 list of the properties available for sale by the Department:

*Parcel No. 104.* (Duncansville New Hope Baptist Church) located in Allegheny Township, Blair County. The parcel contains 33,051 square feet of unimproved land situated at 2290 Old Route 220 North Business, Duncansville, PA 16635. Estimated fair market value is \$200,000.

*Parcel No. 70.* (Thomas W. and Mary E. Kurtz) located in Greenfield Township, Blair County. The parcel contains 11.061 acres of unimproved land situated at a point 320 feet south of mile marker 19 and extending to a point 960 feet north of mile marker 19 along the south side of the northbound lanes of I-99 (L. R. 1061-B02). Estimated fair market value is \$2,475.

*Parcel No. 72.* (Harry and Sue B. Lingenfelter) located in Greenfield Township, Blair County. The parcel contains two landlocked tracts; one containing 6.029 acres, and the other containing 77.235 acres of unimproved land situated at a point 300 feet north of mile marker 19 and extending to a point 4,500 feet north of mile marker 19 along the southbound and northbound lanes of I-99 (L. R. 1061-B02). Estimated fair market value is \$10,085.

Interested public entities are invited to express their interest in purchasing the sites within 30 calendar days from the date of publication of this notice to Barry Clancy, Property Manager, Department of Transportation, R/W Unit, 1620 North Juniata Street, Hollidaysburg, PA 16648-1080.

ALLEN D. BIERHLER, P. E.,  
*Secretary*

[Pa.B. Doc. No. 07-759. Filed for public inspection April 27, 2007, 9:00 a.m.]

## ENVIRONMENTAL HEARING BOARD

### BP Products North America, Inc. v. DEP; EHB Doc. No. 2005-032-L

The Department of Environmental Protection (Department) and BP Products North America, Inc. (BP) have agreed to a settlement of the previous matter. The

Department issued an individual NPDES Permit PA 0205028 on January 10, 2005, effective February 1, 2005. The NPDES Permit authorizes discharges from BP's Petroleum Marketing Terminal in Hempfield Township, Westmoreland County to an unnamed tributary of Jacks Run. The NPDES Permit contains interim and final effluent limitations. The final effluent limitations become effective 3 years after the effective permit date. BP appealed issuance of the NPDES Permit challenging, *inter alia*, the imposition of final effluent limitations for benzene, other organics and metals on the discharge.

The parties have agreed to a settlement, the major provisions of which include:

1. The Department will modify the final limits of the NPDES Permit to Monitor and Report.

2. BP will submit a full and complete application for a Water Management Part II permit to authorize modifications BP made to its oil water separator.

Copies of the full agreement are in the possession of: Zelda Curtiss, Assistant Regional Counsel, Commonwealth of Pennsylvania, Department of Environmental Protection, Office of Chief Counsel, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4262 and David G. Mandelbaum, Esquire, Ballard Spahr Andrews & Ingersoll, LLP, 1735 Market Street, 51st Floor, Philadelphia, PA 19103-7599, (215) 864-8102 and at the offices of the Environmental Hearing Board, and may be reviewed by any interested person on request during normal business hours.

Individuals believing himself aggrieved by the previous settlement has a right to appeal to the Environmental Hearing Board, Second Floor, Market Street State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457. Appeals must be filed within 30 days of this publication.

If information concerning this notice is required in an alternative form, contact the Secretary to the Board at (717) 783-3483. TDD users may telephone the Board through the AT&T Pennsylvania Relay Service at (800) 654-5984.

The Environmental Hearing Board is empowered to approve this settlement if no objection is timely filed with the Board.

MICHAEL L. KRANCER,  
*Chairperson*

[Pa.B. Doc. No. 07-760. Filed for public inspection April 27, 2007, 9:00 a.m.]

#### **Elementis Pigments, Inc. v. DEP; EHB Doc. No. 2007-099-L**

Elementis Pigments, Inc. has appealed the issuance by the Department of Environmental Protection of an NPDES permit to Elementis Pigments, Inc. for a facility in Easton City, Northampton County.

A date for the hearing on the appeal has not yet been scheduled.

The appeal is filed with the Environmental Hearing Board (Board) at its office on the Second Floor, Rachel Carson State Office Building, 400 Market Street, P. O. Box 8457, Harrisburg, PA 17105-8457 and may be reviewed by any interested party on request during normal business hours. If information concerning this notice is

required in an alternative form, contact the Secretary to the Board at (717) 787-3483. TDD users may telephone the Board through the AT&T Pennsylvania Relay Center at (800) 654-5984.

Petitions to intervene in the appeal may be filed with the Board by interested parties under 25 Pa. Code § 1021.81 (relating to intervention). Copies of the Board's rules of practice and procedure are available upon request from the Board.

MICHAEL L. KRANCER,  
*Chairperson*

[Pa.B. Doc. No. 07-761. Filed for public inspection April 27, 2007, 9:00 a.m.]

## **HEALTH CARE COST CONTAINMENT COUNCIL**

### **Meetings Scheduled**

The Health Care Cost Containment Council has scheduled the following meetings: Wednesday, May 2, 2007, Data Systems Committee meeting—10 a.m., Education Committee meeting—1 p.m.; Thursday, May 3, 2007, 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 Cherie Elias, Health Care Cost Containment Council, 225 Market Street, Harrisburg, PA 17101, (717) 232-6787 at least 24 hours in advance so that arrangements can be made.

MARC P. VOLAVKA,  
*Executive Director*

[Pa.B. Doc. No. 07-762. Filed for public inspection April 27, 2007, 9:00 a.m.]

## **INDEPENDENT REGULATORY REVIEW COMMISSION**

### **Notice of Comments Issued**

Section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)) provides that the Independent Regulatory Review Commission (Commission) may issue comments within 30 days of the close of the public comment period. The Commission comments are based upon the criteria contained in section 5.2 of the Regulation Review Act (71 P. S. § 745.5b).

The Commission has issued comments on the following proposed regulations. The agency must consider these comments in preparing the final-form regulation. The final-form regulation must be submitted within 2 years of the close of the public comment period or it will be deemed withdrawn.



<i>Reg No.</i>	<i>Agency/Title</i>	<i>Close of the Public Comment Period</i>	<i>IRRC Comments Issued</i>
2-152	Department of Agriculture Dog Law Enforcement 36 Pa.B. 7596 (December 16, 2006)	3/16/07	4/16/07
19-9	Department of Corrections State Intermediate Punishment 37 Pa. B. 786 (February 17, 2007)	3/19/07	4/18/07

**Department of Agriculture Regulation  
#2-152 (IRRC #2559)  
Dog Law Enforcement  
April 16, 2007**

We submit for your consideration the following comments on the proposed rulemaking published in the December 16, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P. S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P. S. § 745.5a(a)) directs the Department of Agriculture (Department) to respond to all comments received from us or any other source.

**1. General—Statutory authority; Fiscal impact; Protection of public health and safety; Need; Reasonableness; Consistency with other regulations and statutes; Implementation procedure; Legislative review; Clarity.**

The proposed regulation generated an exceptional level of interest. The Department is to be commended for extending the public comment period to 90 days. More than 16,000 comments on this proposed regulation were received. Although many expressed support for the goals of this proposed regulation, there was also concern among both supporters and opponents. Our comments include both a detailed review of specific provisions in the proposed regulation and discussion of general concerns.

*Fiscal impact v. Benefit; Need for change*

In the Preamble to the proposed regulation, the Department stated the costs of compliance with this proposed regulation will range from \$5,000 to \$20,000 per existing kennel. Numerous commentators, including members of the General Assembly, asserted that this regulation would impose far-reaching costs on all kennels and the public. Based on the comments received, it appears that the fiscal impact estimates presented by the Department were significantly understated. Legislators who commented include: Senators Jake Corman, Stewart J. Greenleaf, J. Barry Stout and Robert C. Wonderling, and Representatives Bob Bastian, Karen Boback, Mark Keller, Mike Fleck, Michael K. Hanna and Michael B. Carroll.

Commentators provided a wide range of cost estimates for the renovations, new construction and additional staff that would be necessary to comply with the proposed regulation. These estimates were vastly greater than those of the Department. These costs are expected to far exceed what could be recovered by increasing purchase prices or adoption fees for puppies or dogs.

Many asserted that nonbreeding kennels, including those operated by local Humane Societies, rescue shelters

and other nonprofit organizations, would be forced to close their doors to unwanted, abused or stray dogs. This unintended consequence of the proposed regulation carries a significant impact on public health and safety beyond our capacity to estimate in the limited period of our review. Supporters of the proposed regulation are genuinely concerned with the condition and suffering of this same dog population, which includes displaced, unwanted or unhealthy dogs purchased or rescued from poorly run kennels.

The crucial question is how to correct existing problems and protect dog health and safety in the most cost-effective way. In order to aid our review, Commission staff asked the Department to provide the name and location of kennels that currently meet the requirements of the proposed regulation. Although there are kennels that currently meet most of the proposed changes, the Department is unable to identify one privately operated kennel that meets all of the proposed requirements and standards.

The Department needs to explicitly identify the problems that it seeks to resolve. What are the number and type of existing complaints concerning dog health and safety, or human health, safety and welfare that are not being addressed by the existing regulations? To what extent are these problems related to enforcement? Does the Department have access to information on complaints or problems documented under the "puppy lemon law" (Act 27 of 1997) or via other sources? What specifically have dog wardens or other Department employees observed in performing their duties that could be improved via changes in the rules? Has the Department gathered information concerning the frequency and costs of care and medical treatment for dogs with problems that can be attributed to conditions at Pennsylvania kennels? Finally, what is the need for this rule?

Furthermore, the Department needs to explain how the provisions of the proposed regulation will solve the identified problems. What evidence or scientific research is available that supports and documents the benefits of the new rules? This same question was asked in a joint letter dated March 15, 2007, from Representatives Bastian, Boback, Keller and Fleck. Will the benefits outweigh the costs? Are there cost-effective alternatives that will produce similar benefits? Essentially, the Department needs to document the need for change and how its proposals will efficiently accomplish its objectives.

*Next steps for this rulemaking*

Given the considerable public involvement and legislative interest in this proposed regulation and the strong support for major revisions in the rulemaking, the Department should work to guarantee full public review of proposed revisions. We strongly encourage the Department to organize stakeholder meetings with representatives from all types of kennels to develop a full understanding of their operations, dogs and clients. In this way, it can develop standards that will protect the health and safety of dogs while simultaneously recognizing the unique functions at different kennels. The Department should work with affected parties, experts, concerned citizens, and the General Assembly to develop improved ideas for achieving its policy objectives without imposing unnecessary or unreasonable financial burdens.

Section 902 of the Dog Law (Law) (3 P. S. § 459-902) requires that the Department hold a public hearing before it promulgates final regulations. The Department could use this hearing as one opportunity for input. We

urge the Department to make proposed revisions available for the public and legislators to review before the hearing. Interested parties could submit written comments and participate in the hearing. The Department should also publish an Advanced Notice of Final Rule-making and provide an opportunity for public comment to resolve any remaining issues before submitting a final-form regulation.

*“One-size-fits-all” approach*

This proposed regulation seeks to manage all kennels with one uniform set of requirements. A consistent theme offered by commentators is that one size does not fit all. Large commercial breeders, small home-based breeders, rescue organizations, shelters, research laboratories, boarding kennels, sporting kennels, and other kennel operations, cover a broad range of facilities of various sizes and functions.

Section 102 of the Law (3 P.S. § 459-102) sets forth several different statutory definitions for kennels. Hence, the rationale for placing all kennels together under one regulatory scheme appears to be at odds with the recognition in the enabling statute that not all kennels are alike. We recommend that the regulation reflect the statute and acknowledge differing conditions at a variety of kennels. Alternatively, if the Department opts to retain the uniform “one-size-fits-all” program in the final-form regulation, it will need to set forth a detailed justification in its response to comments.

*Role of Federal law and regulations*

There is disagreement between commentators and the Department over the relationship between the proposed regulation and federal regulations and law. The U.S. Department of Agriculture (USDA) promulgates regulations for kennels that engage in interstate commerce under the authority of the Animal Welfare Act (7 U.S.C. §§ 2131–2159). Some supporters of the proposed regulation and Department staff assert that the proposed regulation is consistent with the Animal Welfare Act and federal regulations. On the other hand, other commentators, including members of the General Assembly, declare that the regulation exceeds the federal rules and standards. Many commentators recommend that the Department base the revisions in the proposed regulation on the federal regulations or simply reference the federal regulations in Chapter 21.

The Department needs to identify precisely where the provisions of its proposed regulation meet or exceed provisions of the federal regulations. If a proposed provision is more stringent than its federal counterpart, the Department should explain the compelling interest, need or reason for exceeding the federal rule.

*Major revision of existing Chapter 21: Format, Structure and Clarity*

Given the scope of the amendments to Chapter 21, this proposed regulation represents a major revision and a new direction. A pervasive problem is the attempt to fold several new provisions into the existing provisions of Chapter 21. Commentators expressed concerns not only with the substance of the proposed regulation but also with its format, and sometimes redundant and conflicting language.

For example, even though there are specific sections entitled “Sanitation” and “Food, water and bedding,” provisions for “sanitation” and “bedding” are repeated in other sections. The effect is confusing for interpretation, implementation and enforcement. Another problem is that

standards for similar subjects are scattered into different sections. The “space” requirements for “primary enclosures” are in one section entitled “Space.” Another section entitled “Shelters” contains some requirements for flooring in “primary enclosures.” Other sections are entitled “Ventilation in indoor facilities,” “Lighting in indoor facilities,” and “Temperature control.” Requirements for outdoor or indoor facilities are scattered in different sections. Rather than trying to integrate new provisions into an antiquated structure, the Department should consider starting from scratch and reformatting Chapter 21 with input from both stakeholders and the General Assembly.

*Recordkeeping requirements*

Several commentators, including members of the General Assembly, expressed concern with the extensive recordkeeping requirements. They assert that the Department has exceeded its authority in requiring certain records to be kept, and contend that the recordkeeping requirements found in the Law are “straightforward as enumerated, and without an additional general provision for the secretary to require anything further . . . .” Provisions related to recordkeeping include Sections 21.14(a)(5)(vii)(C) and (D), 21.23(e)(v), 21.24(f)(8) and 21.41(e).

Other commentators claim that the extensive recordkeeping requirements in this proposed regulation would be onerous because of the need to increase staff, without adding any extra benefit.

Section 207(c) of the Law provides a specific list of the information that is to be maintained in records by a kennel. The Department should justify why it is adding to this list.

If these requirements are retained, the Department could accomplish its goal and reduce the burden on the regulated community by allowing kennels to create a standard operating procedure and using a checklist to ensure that those protocols are followed.

*Alternatives to reduce fiscal impact*

There are alternatives that the Department could examine to minimize the costs that will be imposed by this proposed regulation. These alternatives include the following:

*Grace period:* When new regulations require major renovations, promulgating agencies often give existing facilities a specific time period in which they can bring their operations into compliance with the new requirements. For example, USDA regulations included extended timeframes for compliance at 9 CFR 3.6(a)(2)(xii). In contrast, the Preamble of this proposed regulation states that its effective date will be upon publication of the final-form regulation in the *Pennsylvania Bulletin*. There is no mention of how soon existing facilities will be expected to comply with the new requirements.

*Grandfather clause:* Another method used in law and regulations is an exemption for existing facilities. Existing facilities would be allowed to operate under the current standards. When they renovate or expand their facilities, they would then be required to comply with the new regulations. Another option would be to require that an existing facility have a clean record without violations in order to qualify for the exemption.

*Plan of correction:* Another way to encourage cooperation between regulated entities and an agency is to provide for plans of correction. The plan would set

forth a specific time period in which the kennel will correct deficiencies and bring its facility into compliance. If the kennel fails to complete the plan of correction within the specified time period, the Department could proceed with other enforcement options including court action and fines. This type of provision could be placed in Section 21.4 relating to penalties. An example is in the existing regulations of the Department of Health at 28 Pa. Code § 1009.4(c).

If the Department plans to promulgate this proposed regulation, it should consider moderating the costs of the transition. Any one or all of the above suggestions could be added to the final-form regulation to assist kennels in meeting the new standards.

#### *Research facilities*

Section 218 of the Law provides:

Research facilities in the Commonwealth that are currently under Federal Government inspection shall be exempt from State inspection if they have undergone no less than one Federal Government inspection within the past 12 months.

Given this statement in the Law, the Department should explain its authority to inspect and establish new requirements for research facilities.

#### **2. Section 21.1. Definitions.—Statutory authority; Fiscal impact; Reasonableness; Consistency with other regulations and statutes; Implementation procedure; Clarity.**

##### *Establishment*

The proposed regulation adds a new definition for the term “establishment” to clarify the kennel requirements in Section 206 of the Law. However, many commentators found the definition of “establishment” to be “very convoluted,” as it refers to both “premises” (including land and facilities) and a “person.”

Along with the word “person,” the new definition includes the words “individual, ... organization, business or operation.” The use of these words is unnecessary since the term “persons” is defined in the Law (3 P. S. § 459-102) as including individuals, corporations or other associations.

Commentators question the need for this definition. We agree. The Law does not include a definition of “establishment.” However, it does define “kennel” as:

Any establishment wherein dogs are kept for the purpose of breeding, hunting, training, renting, research or vivisection, buying, boarding, sale, show or any other similar purpose and is so constructed that dogs cannot stray therefrom. (3 P. S. § 459-102)

The Law also includes separate definitions for different types of kennels. Furthermore, Section 206(a) of the Law (3 P. S. § 459-206(a)) states:

A kennel license is required to keep or operate any establishment that keeps, harbors, boards, shelters, sells, gives away or in any way transfers a cumulative total of 26 or more dogs of any age in any one calendar year.

Since the Law delineates when a place or person needs a kennel license, we do not see the need for the definition of the term “establishment.” In addition, the terms “kennel” and “establishment” are used interchangeably throughout the proposed and existing regulations. The Department needs to select one term when it is referring

to a place that is or should be licensed as a kennel and use that term consistently. The final-form regulation should incorporate or cross-reference the statutory definitions and language set forth in the Law to clarify who and what is covered by the licensure requirements.

*Kennel, Boarding kennel, Breeding kennel, Dealer kennel, Nonprofit kennel, Pet shop-kennel, Private kennel, Research kennel*

Section 102 of the Law (3 P. S. § 459-102) contains a general definition for the term “kennel” and separate definitions for seven different types of kennels. However, none of these statutory definitions are included or referenced in the existing regulations or in this proposed regulation. These terms and their statutory definitions should be incorporated or cross-referenced into Chapter 21 to differentiate among the various types of kennels and the standards that apply uniquely to each type. The generic term “kennel” and its statutory definition could be used for requirements that apply to all kennels.

Commentators have also expressed concern with how long a dog needs to be in a kennel to be counted as one of the minimum of 26 dogs during a year. The definition of “boarding kennel” in the Law (3 P. S. § 459-102) states that it is a kennel where “dogs are housed or trained for compensation by the day, week or a specified or unspecified time.” Hence, the statute appears to give some latitude on this subject. As it reviews suggestions for setting a minimum time period for a dog to be counted as one of the minimum 26, the Department should consider the growing industry of “dog day care centers” where pet owners may leave their dogs while the owners go to work. If a place houses 26 or more dogs while the dogs’ owners go to work, and keeps no dogs overnight, should this business be licensed as a kennel and subject to inspection?

A related concern was also expressed by the Sporting Dog Defense Coalition (SDDC). What is the Department’s intent concerning licensure for kennels that house dogs temporarily for field trials, training or hunting events?

##### *Sanitize*

The Pennsylvania Society for Biomedical Research (PSBR), Merck & Co., Inc., Research Laboratories and GlaxoSmithKline recommend that the regulation use the definition of “sanitize” found in the federal regulations at 9 CFR 1.1. We agree.

##### *Temporary home*

Several commentators questioned the intent of this new definition. It is also unclear whether the Department would have authority to impose requirements on a place that does not house the minimum of 26 dogs at some point within a year. If a kennel owner or operator is placing some of its dogs in different facilities, then such a situation should be addressed through substantive provisions that apply to licensed kennels. Unless the Department can explain the need for this definition, it should be deleted from the final-form regulation.

#### **3. Section 21.3. Enforcement and compliance.—Protection of public health and safety; Consistency with statute; Reasonableness.**

Some commentators suggested that Section 21.3 of the regulation be amended to allow police officers to enforce the regulations. Section 901(a) of the Law begins with this sentence:

The secretary, through State dog wardens, employees of the department and police officers, shall be charged with the general enforcement of this law.

Since the Law authorizes it, the Department should provide direction for the role of police officers in enforcement in the final-form regulation.

**4. Section 21.4. Penalties.—Statutory authority; Consistency with statute and regulation; Need; Reasonableness; Clarity.**

The proposed regulation amends this existing section in Chapter 21. In the Preamble, the Department states that the new language “is intended to clarify the Secretary’s powers, duties and enforcement options.” We have identified concerns with the following provisions.

*Subsection (1)(iii)*

We have four concerns with this subsection.

First, as noted by the Pennsylvania Federation of Dog Clubs (PFDC), this subsection conflicts with proposed Section 21.14(a)(3)(i). Subsection 21.4(1)(iii) does not permit a facility to operate without first getting a license while Subsection 21.14(a)(3)(i) states that only upon reaching the 26 dogs per year threshold is a facility required to be licensed. The Department should reconcile the language in these sections for consistency. A similar concern applies to Section 21.14(a)(4).

Second, the Department should explain the need for and intent of the amendments to Subsection (1)(iii)(B). Specifically, what is the “issuance of a Notice of Violation and time period to comply, or an order, or both . . . .”?

Third, we question the statutory authority for the new language in Subsection (1)(iii)(B) which would allow the Secretary to impose a fine with the issuance of an administrative order. In contrast, Section 207(a.1) of the Law (3 P.S. 459-207(a.1)) states that the Department may seek the imposition of a fine in a suit in equity in Commonwealth Court. The Department needs to explain its authority for this provision or delete the new language in Subsection (1)(iii)(B) from the final-form regulation.

Fourth, Subsections (1)(iii)(A), (B) and (C) are practically identical to Sections 21.14(a)(4)(i), (ii) and (iii). The only exception is that Section 21.14(a)(4)(ii) does not mention the possible imposition of a “fine of not less than \$100 and not more than \$500.” There is no need for this repetition. If necessary, other sections in the regulation can refer to the penalties provisions in Section 21.4.

*Subsection (1)(iv)*

We have three concerns with this subsection.

First, the proposed regulation is replacing “may” with “will” in Subsection (1)(iv). It is unclear why this change is being proposed. Section 211(a) of the Law reads:

**(a) General powers of secretary.**—The secretary *may* revoke or suspend a kennel license or out-of-state dealer license or refuse to issue a kennel license or out-of-state dealer license for any one or more of the following reasons: [Emphasis added.]

\* \* \* \* \*

(5) the person holding or applying for a license has been convicted of any law relating to cruelty to animals.

The proposed language change would force the Secretary to automatically revoke, suspend or deny a kennel license when a licensee or applicant was convicted of any violation of 18 Pa.C.S. § 5511. The proposed regulation would also automatically deny a license to anyone who was convicted of a violation of 18 Pa.C.S. § 5511 within the last ten years. The Department should provide a

detailed justification for these changes. Alternatively, the Department could incorporate the statutory language from Section 211 of the Law.

Second, Representatives Bastian, Boback, Keller and Fleck expressed concerns with new language in this subsection. They noted that the main paragraph in Subsection (1)(iv) refers only to convictions under Pennsylvania law. They questioned whether this language would limit the ability of the Department to revoke, suspend or deny licenses for kennel operators convicted in other states. In contrast, the language in Section 211(a)(5) of the Law allows licensure revocation, suspension or denial when the applicant or license holder “has been convicted of any law relating to cruelty to animals.” The proposed regulation refers only to “any law relating to cruelty to animals” in Subsection (1)(iv)(E) pertaining to convictions that are more than ten years old. The Department should clarify the language to reflect the statute.

Third, the Department should explain whether a revoked license may be reinstated, and if so, how.

*Subsection (1)(v)(B)(I)*

We have three concerns with this subsection.

First, it is one long sentence and should be reformatted for clarity. The Department should refer to Chapter 7, entitled “Enumerations” in the *Pennsylvania Code and Bulletin Style Manual* for guidance in formatting this subsection. In this case, the subsection would use a list of items to enumerate the conditions for the return of a seized dog. There are other long paragraphs in the proposed regulation that could be reformatted into enumerated lists.

Second, the enumeration of this subsection would have to elaborate on several issues. As proposed, it reads:

If the person whose kennel license or out-of-State dealer license has been revoked, suspended or denied and whose dog has been seized and impounded provides the Department with satisfactory evidence or assurances that the dog will receive adequate care, ***which may include an inspection by a State dog warden or employee of the Department of the premises and buildings in which the dog will be housed***, a plan of care and kennel maintenance, a signed sworn letter from a licensed veterinarian attesting to oversee the care, or other information related to care of the dog as the Department may reasonably require, and the person has paid all costs of transportation, care and feeding related to the seizure and impoundment of the dog, the Department may allow the person to retrieve the seized and impounded dog. [Emphasis added.]

It is unclear how an inspection by a state official could be “included” as a part of the “evidence or assurances” by the dog owner. In addition, what would constitute “assurances that the dog will receive adequate care”?

Finally, what “other information related to care of the dog” might the Department require? How will the regulated kennel or person be notified of the need for “other information”? A similar concern applies to Subsection (2)(iii)(C).

*Subsection (1)(v)(C)(II)*

Under this subsection, how can the facility be determined to be able to provide “adequate” care if its license has been revoked, suspended or denied?

*Subsection (1)(vi)(B)(III)*

This subsection contains the word “timely,” when referring to the payment of the reasonable costs. In order to provide guidance to the regulated community, the word “timely” should be replaced with a specific timeframe. The same concern applies to Subsection (2)(iii)(B).

*Subsection (2)(iii)*

Subsection (2)(iii)(C) contains the phrase: “the dangerous dog shall be forfeited to some entity other than the Department.” Does the term “entity” refer to facilities such as the Humane Society?

*Subsection (2)(v)*

Commentators have recommended that this subsection be amended to apply to attacks that are unprovoked. They also suggest that “unprovoked” be defined in the Definitions section. Did the Department consider adding “unprovoked” to this subsection?

**5. Section 21.14. Kennel licensure provisions.— Statutory authority; Fiscal impact; Consistency with statutes and regulations; Need; Reasonableness; Implementation procedure; Clarity; Legislative review.**

This is a new section that the Department is adding to Chapter 21. It addresses kennel licensure requirements in Sections 206 and 207 of the Law. As stated in the Preamble, “it provides more specifics with regard to the intent and enforcement of the kennel licensure provisions of the act and sets forth the substantive provisions of the regulations which relate to the new definitions of ‘establishment’ and ‘temporary home’ set forth in these regulations.” We identified the following concerns:

*Subsection (a)(1)*

This subsection references different classes of kennels that are listed in Section 206(a) of the Law. These different classes of kennels are not listed in the proposed or existing regulation. There is only a vague reference in Section 21.2 (relating to scope) of the existing regulation to the types of kennels in Section 206 of the Law. This new subsection should include a reference to the different classes of kennels in Section 206(a) of the Law.

Section 206(a) of the Law includes the following statement: “The application forms and kennel licenses shall be as designated by the secretary.” However, there is no mention of an application form in the proposed or existing regulations. The final-form regulation should set forth the contents of these forms and indicate the type of information that kennel applicants would need to provide. The regulation should also indicate how potential applicants can obtain copies of the form.

*Subsection (a)(3)*

We agree with PFDC that this subsection should clarify whether dogs that stop by a kennel during the day, dogs that accompany their owner overnight or dogs that stay overnight without a fee be counted as part of the 26-dog threshold. We raised a similar question above in the discussion of the definition of “kennel.” Also, can a dog be counted more than once towards the cumulative total regardless of how many times it returns in a year? This subsection should be amended to clearly state the Department’s intent.

*Subsection (a)(3)(i), (ii) and (iii)*

We have three concerns with this subsection.

First, this subsection appears to require a kennel to have the capacity to keep the total number of dogs that

would be kept, harbored, boarded, sheltered, sold, given away or in any way transferred annually, even though the facility may never have that number of dogs physically present at any one time. This raised a lot of concern from commentators including legislators. Does the Department intend for kennels to have facilities to keep the total numbers of dogs that it keeps in a year? If so, it should provide its authority to do so and explain why this is a reasonable requirement. If not, this subsection should be amended to clearly state the Department’s intent.

Second, under this subsection, must these standards be met immediately upon the arrival of the 26th dog, or will the establishment be given a specific period of time to come into compliance? If it must immediately be in compliance, facilities that are below the 26-dog threshold will have to comply with these requirements by default because they potentially could reach the 26-dog threshold within the calendar year.

One possible solution is to amend the regulation to require that any facility, which plans to meet or exceed the 26-dog threshold in year, must apply for a kennel license at least 30 or 60 days (the regulation can specify a time period that the Department determines to be sufficient) before the date when it will meet the statutory minimum.

Third, what is the impact of this subsection and Subsections (a)(3)(iii) and (iv) on private homes? Given the statutory definitions of “nonprofit kennel” and “private kennel,” it appears to be the intent of the Law that any residence or home that meets or exceeds the 26-dog limit in a year must obtain a kennel license. Hence, people, including volunteers in rescue organizations, who keep 26 or more dogs at their homes, need to obtain kennel licenses.

However, what is not clear is the authority of the Department to treat each “temporary home” as a “separate kennel location” when these homes do not have 26 or more dogs in a year. Furthermore, what authority does the Department have to inspect homes or places that do not meet or exceed the 26-dog limit? It is also unclear how the licensure provisions would cover a rescue network organization, which does not have a central kennel facility for housing dogs, but coordinates the assignment to separate foster homes of more than 26 dogs or puppies in a year. If none of the foster homes in the network kept 26 or more dogs in a year, what authority would the Department have to inspect any part of the network?

We understand the Department’s need to monitor dogs that kennels or rescue networks may transfer to foster homes or temporary homes. However, the Department should work with stakeholder groups from kennels, shelters operated by local Humane Societies or Societies to Prevent Cruelty to Animals (SPCAs), and rescue networks, to develop a workable system that achieves the Department’s objectives.

*Subsection (a)(5)*

We have four concerns with this subsection.

First, we agree with Representatives Bastian, Boback, Keller and Fleck who suggested that the Department replace the word “dispersed” with the term from the Law, “dispensed.”

Second, the terms “stray dog” and “rescued dog” used in Subsection (a)(5) should be defined in the final-form regulation.

Third, this subsection should clearly state where records must be held. Must they be kept at the kennel or, for facilities with multiple locations, may they be kept at a central location?

Finally, do the requirements of this subsection apply to dogs that are bred internally and are not intended to be transferred to another location?

*Subsection (a)(5)(iii)(B)(III)*

This subsection requires a kennel to record the “. . . organization, agency or person that last owned the dog . . .” How would the kennel know who owned a stray dog in every instance? What if the dog does not have a collar, microchip or other identifying information? How does this affect shelters and Humane Societies who are expected to accept dogs with no questions asked?

*Subsections (a)(5)(vii)(C) and (D)*

The information required under these subsections should not be applied to boarding kennels that are returning a dog to its owner.

*Subsection (a)(5)(vii)(D)*

Commentators assert that the only veterinary record that matters is the current vaccination status of the dog and a certificate indicating the dog is in sound health at the time of surrender to the kennel. We agree.

*Subsection (b)*

This provision raises numerous questions. How can a kennel know if the other kennel is licensed in all cases? How are they to know if the other kennel is supposed to be licensed if they do not deal with 26 or more dogs in one year? How are shelters or rescue groups, that receive dogs at random, supposed to determine where a dog came from in all cases? In addition, shelters or rescue groups often provide shelter for dogs from places that are operating with suspended or revoked licenses or without any licenses at all. Where will these dogs go if the shelters cannot take them due to this provision? Will research facilities in Pennsylvania be prevented from sharing dogs with out-of-state research facilities?

Further, the commentators feel that it is not the responsibility of consumers to enforce compliance with the law. We agree. The Department should amend this section to eliminate the requirement that kennels verify that every kennel they deal with is licensed. Another alternative would be to require that kennels report such incidents if they are aware of them.

*Subsection (c)*

Under this subsection, a kennel must ensure that the dog entering the Commonwealth is accompanied by a health certificate and must keep a copy of that certificate in its records. What must the kennel do in circumstances when a dog does not have a health certificate, such as when dogs are seized out-of-state and brought to a rescue kennel or humane society in the Commonwealth?

Also, PFDC questions how recently the health certificate must have been issued.

This should be clearly stated in the final-form regulation. This section also requires that the dog with the health certificate be at least seven weeks of age and be vaccinated for rabies in accordance with the Rabies Prevention and Control in Domestic Animals and Wildlife Act (3 P. S. §§ 455.1—455.12). Under Section 455.8(a) of the Rabies Prevention and Control in Domestic Animals and Wildlife Act, dogs are required to be vaccinated when they are over three months of age. The Pennsylvania

Professional Pet Breeders Association (PPPBA) questioned whether Subsection (c) is now requiring that dogs be vaccinated at seven weeks of age if they are being transported into the state or at over three months pursuant to state law. If it is the former, the Department needs to explain its authority for lowering the minimum age for vaccination. Either way, the provision needs to be clarified.

**6. Section 21.21. Dog quarters.—Need; Reasonableness; Implementation procedure; Clarity.**

The Pennsylvania Farm Bureau (PFB) stated that this section lacks a clear definition of “indoor facility” and “outdoor facility.” The Department should clarify these terms in the final-form regulation. In addition, this section includes statements about the following subjects:

- “sanitary conditions” and “readily sanitized.”
- standards for “primary enclosures” and other kennel facilities.
- drainage standards including “adequate drains and gutters.”

All these subjects are addressed in other sections. In the final-form regulation, the Department should streamline provisions to increase clarity and allow for easier implementation.

*Subsection (d)*

PPPBA, PFB and PFDC raised questions with this subsection. They stated that commercially produced exits are built to ensure that the entryway and exit is as tall as the dog’s shoulder. Would the Department consider this to be “unfettered clearance” out of an enclosure?

Also, PFDC asserts that this subsection is inconsistent with Subsection (e). It questions how a dog can have unfettered clearance out of a cage if it is stacked and recommends that cages not be stacked. Is there a way for a dog to have “unfettered clearance” out of an enclosure if the cages are stacked?

*Subsection (e)*

We have four concerns dealing with this subsection.

First, the Department should insert language that establishes the procedure for obtaining Department approval for an “other device approved by the Department.”

Second, can the Department’s intended goals be accomplished by permitting the stacking of cages? Some commentators suggested that the stacking of primary enclosures should be prohibited under this subsection.

Third, the SDDC also expressed concern as to whether its members could continue to use “airline style” crates for housing their dogs at hunting events and field trials?

Finally, does the Department anticipate any conflict between the trays, walls or partitions required in this section and the air flow requirements elsewhere in the proposed regulation? PPPBA and PFB stated that the requirements in this subsection would negatively impact the air flow requirements in Section 21.26, by restricting cross ventilation.

**7. Section 21.22. Housing.—Need; Reasonableness; Clarity.**

This is another example of an area that could be improved through reorganization of Chapter 21. The subject matter of this section is more related to the health and safety of dogs rather than “housing.”

*Subsection (d)*

PFDC questions what qualifies a dog as a puppy and further states that the American Kennel Club considers any dog less than one year of age to be a puppy. The Department should define “puppy” in the final-form regulation.

Also, commentators questioned why this subsection does not include a provision similar to Subsection (e) that allows for a release by the treating veterinarian. The Department should state why it includes a quarantine of 14 days for puppies when there is no specific quarantine period for dogs in Subsection (e).

**8. Section 21.23. Space.—Need; Reasonableness; Consistency with other regulations; Clarity.**

This is another existing section in Chapter 21. It is entitled “Space” and contains standards for “primary enclosures” even though Section 21.24, which is entitled “Shelters,” also contains provisions related to “primary enclosures.” Provisions for “primary enclosures” should be located in one section. We also question why the exercise requirements in Subsection (e) are in this section. For clarity, the Department should consider putting the requirements and standards for exercise into a separate section.

*Subsections (a), (b) and (e)*

These subsections deal with space requirements in primary enclosures and exercise requirements. Commentators, including legislators, raised numerous concerns with these subsections. In particular, the amendments to Subsection (b) relating to floor space generated concerns regarding fiscal impact. The proposed regulation doubles the floor space and requires exercise time for dogs. In contrast, the federal regulations require additional floor space only if dogs are housed individually and do not have the opportunity for regular exercise. As stated above, the Department needs to explain the “compelling” reason for exceeding the federal requirements. What is the scientific or accepted animal husbandry basis for the new provisions in this section? This provision could also create difficulties for rescue organizations or foster homes that keep dogs in crates for a few hours during each day.

*Subsection (e)*

The Pet Industry Joint Advisory Council and members of the General Assembly questioned why the existing language granting space exemptions for certain pet shop kennels is being deleted. This is not specifically addressed in the Preamble. The Department should provide a clear explanation when it submits the final-form regulation.

Also, commentators expressed extensive concerns on the exercise provisions contained under this subsection. How did the Department choose 20 minutes as the amount of time a dog needs for exercise on a daily basis? How can facilities comply with these requirements during times of inclement weather? Did the Department consider requiring exercise to be tailored to the dogs and the conditions under which the exercise takes place? Were other methods of achieving exercise for dogs considered? Did the Department consider that different breeds of dogs require different types of exercise or exercise might include running on grass or near water? How is it inhumane to exercise a 35 pound dog with a 36 pound dog? Has the Department considered adding a waiver from the provisions of Subsection (e)(iii) for dogs of the same owner that are taken to a boarding kennel or doggie day care? Under Subsection (e)(iv), why is the Depart-

ment the entity that gives an exemption from exercise for a dog? Wouldn't it be more appropriate for a veterinarian to do so?

If this subsection remains unchanged, we have three concerns.

First, Subsection (e)(ii)(B) is one of the first provisions to refer to fencing in the proposed regulation. This subsection begins with this standard: “Fencing must be adequate to prevent dogs from escaping from the exercise area...” There are no requirements for fencing in the existing provisions in Chapter 21. What is “adequate”? Dogs can find ways over, around, through or under a fence. Who will determine what is adequate to prevent dogs from escaping?

Second, Subsections (e)(iii)(A)—(D) delineate exercise areas for different sizes of dogs. Subsection (e)(iii)(D) is the only one that mentions “giant sized dogs” which are a separate category from “large” dogs. At the end of this subsection, it states that these dogs may not be put in the same exercise area with dogs from the other three categories. Subsections (e)(iii)(A), (B) and (C) exclude only two of the other categories but fail to mention “giant” dogs. For consistency, the term “giant” needs to be added to the end of Subsections (e)(iii)(A), (B) and (C).

Finally, under Subsection (e)(v), how long must a kennel operator maintain the daily records of exercise for each dog? To be consistent with proposed Section 21.14(a)(5) and Section 207(c) of the Law, which requires other kennel records to be maintained for two years, the Department should add a timeframe for maintaining records to this section.

**9. Section 21.24. Shelter, housing facilities and primary enclosures.—Consistency with other regulations; Need; Reasonableness; Clarity.**

In the proposed regulation, this section is entitled as “Shelter, housing facilities and primary enclosures.” However, extensive amendments to this section cover subjects related to “outdoor housing facilities.” This is another area that should be reorganized.

*Subsection (b)*

Under Subsection (b), how was the 50 degree temperature threshold for newborn or very young pups determined? PFDC states that this is too low for young dogs. The Department needs to reexamine this requirement and amend or delete it from the final-form regulation.

*Subsection (b)(1)*

Representatives for both dog rescue organizations and the commercial breeders have criticized this subsection as vague, subjective and unhelpful. Subsection (b)(1)(iv) is lengthy and confusing. The Department needs to delete or clarify the provisions under Subsection (b)(1) in the final-form regulation.

*Subsection (b)(2)*

This subsection contains contradictory provisions. How can exercise areas have both a “flat and level surface” and a 1/8 inch slope? The Department should amend this language to be consistent.

Also, other commentators have suggested that this subsection is too prescriptive and does not permit other methods of obtaining the goal. How did the Department determine the slope requirements contained in this provision? A similar concern also applies to Subsections (a)(3), (b)(8) and (f)(11)(vii).

*Subsection (b)(4)*

PFDC indicated that the requirement for dry bedding at all times is unreasonable. What happens if a dog is playing in the rain or decides to mark his territory? Would the operator be in violation without first having an opportunity to correct the situation? A similar concern applies to Subsection (b)(6)(iv).

*Subsection (b)(6)(iv)*

PPPBA and PFDC question what the Department means when it requires "additional clean and dry bedding." For clarity, the Department should amend the language in this subsection to plainly state an achievable standard.

*Subsection (b)(7) and (b)(8)*

Both Subsections (b)(7) and (b)(8) consist of long and confusing paragraphs. If they are retained in the final-form regulation, they should be rewritten and reformatted as enumerated lists to clarify the Department's objectives.

*Subsection (b)(9)*

This subsection contains one sentence: "Outdoor facilities must be fenced and be constructed to minimize or prevent vermin, animal, insect and pest infestation and other vectors of disease." It is unclear what type of fencing would meet this requirement. Does the Department plan to offer guidance to licensees so that they know when their outdoor facilities meet these criteria?

*Subsection (b)(10)*

How did the Department determine the standard of cleaning these facilities every 24 hours?

*Subsection (b)(11)*

Commentators question the Department's determination that grass runs and exercise areas, under this subsection, create inhumane conditions for the dogs. They claim that this provision has no basis in proper animal husbandry practices, serves no purpose and would be difficult to implement. It is a major concern for rescue groups and smaller breeding kennels that are raising and training dogs to be pets in homes with grass lawns. It may also create a major problem for sporting groups that engage in hunting events or field trials. The Department should explain why it is inappropriate for dogs to exercise on grass surfaces.

*Subsection (c)*

There were several comments on this subsection dealing with tethers. The USDA eliminated tethering from its regulations in 1997. Under current federal rules, only temporary tethering of a dog due to health or other reasons is permitted and the licensee must first obtain approval of the Animal and Plant Health Inspection Service. When it first proposed this approach in 1996, the USDA asserted:

Our experience in enforcing the Animal Welfare Act has led us to conclude that continuous confinement of dogs by a tether is inhumane. A tether significantly restricts a dog's movement. A tether can also become tangled around or hooked on the dog's shelter structure or other objects, further restricting the dog's movement and potentially causing injury. [*Federal Register*, July 2, 1996, 61 FR 34387]

The proposed regulation would allow a dog to be attached to a primary enclosure by a tether. Why are tethers used? How long or frequently is a dog attached to a tether? Is it necessary? Why would the reasons for the

federal prohibition not apply to dogs in Pennsylvania? The Department should explain its rationale for retaining provisions for tethering in Chapter 21.

*Existing Subsection (d)*

Several groups and individuals, including members of the Dog Law Advisory Board and a veterinarian who is also a professor of behavioral medicine, expressed the opinion that the Department should not allow kennels to use metal strand or wire floors. Commentators offered research and other evidence that such flooring causes harm to dogs and their offspring. The Department should explain why it is retaining provisions that enable kennels to use metal strand or wire floors in primary enclosures.

*Subsections (f)(5) and (7)*

PSBR stated that these subsections are unreasonable because many facilities hold trash, waste and dead animals in a designated area or room in the "housing facility," but is separate from animal holding areas. It contends that this method would be prohibited if these rooms were emptied on an as-needed-basis and not necessarily every day. Compliance with the new standard would be costly and burdensome. It further suggests that if the intent is to merely keep contaminated materials separated from the dogs, then the Department should use more accurate language than "housing facility." We agree.

*Subsection (f)(8)(ii)*

Commentators expressed concern with the clarity of the term "housing facility" contained in this subsection. They asked if this is intended to mean the immediate area in which the dogs are housed or the entire facility. The Department should define this term and use it consistently throughout the regulation.

*Subsection (f)(9)*

PSBR questioned if all animal husbandry procedures will be required to use potable water. Since some procedures that can be done safely with non-potable water, the Department should explain what types of water are permitted to be used for certain procedures.

*Subsection (f)(11)*

The Humane Society of the Harrisburg Area (HSHA) stated that this subsection would single-handedly put it out of business because of the cost entailed in replacing its drainage system. Are there other ways to accomplish the Department's goal without imposing such burdensome requirements on the regulated community?

*Subsections (f)(11)(i) and (f)(16)*

These subsections use the vague term "adequate." This term should be replaced with language that will clearly guide licensees.

*Subsection (f)(11)(ii)*

Numerous commentators, including legislators, asserted that six inch drains are not needed in all instances in order to accomplish adequate drainage, and construction that would bring facilities into compliance with the proposed regulation would be costly. The Department should amend this subsection to allow various types of drainage to accomplish its intended goal. A similar concern applies to Subsections (f)(11)(iii) and (iv).

*Subsection (f)(11)(v)*

PSBR stated that sanitizing drains on a daily basis is not required to maintain the health of animals. Unless the Department has evidence to support its position, this requirement should be deleted.



Also, PSBR questions why flushing can only be done with potable water. Has the Department considered allowing the use of grey water, which is environmentally friendly?

*Subsection (f)(15)*

PFDC declared that this subsection is not reasonable in a licensed kennel in a home environment because such chemicals might be stored in a kitchen. The Department should consider providing an exception for such facilities.

*Subsection (f)(16)*

Commentators, including legislators, question what the need is for washing areas to specifically be required. This should be clearly explained in the final-form regulation.

*Subsection (f)(18)*

Commentators differed on the frequency of the sanitization of kennel facilities. The Department should explain the rationale for sanitation every 24 hours.

**10. Section 21.25. Temperature control.—Need; Reasonableness; Clarity.**

PPPBA and PFB suggested that the kennel's veterinarian determine and approve the temperature ranges mentioned under this section. We agree. This also applies to Sections 21.26, 21.27, 21.28 and 21.29.

Also, a commentator questioned what constitutes "outdoor and sheltered housing facilities." These terms should be defined in the final-form regulation.

*Subsection (c)*

Does the Department intend to prohibit the use of ventilation for cooling under this subsection?

Also, do the requirements of this subsection apply only to indoor facilities or do they also include outdoor facilities? This should be clearly stated in the final-form regulation.

*Subsection (d)*

Commentators have suggested that this subsection is too prescriptive, does not permit radiant heating and does not establish healthy standards for dogs. How did the Department determine the slab temperature requirements contained in this provision? Further, the Department should permit alternate types of heating sources, such as radiant heat.

**11. Section 21.26. Ventilation in housing facilities.—Need; Reasonableness; Clarity.**

Commentators, such as PFDC and HSHA, assert that this entire section is filled with engineering standards that are needlessly technical and confusing. We encourage the Department to simplify these requirements so they are easily understood by all members of the regulated community.

*Subsection (a)*

PFB stated that the term "Sheltered housing facility" is unclear and should be defined. We agree.

Commentators assert that Subsections (a)(1), (2), (3) and (4) are overly prescriptive, unclear and should be deleted. Further, they state that there are other methods available to accomplish the Department's intent. The Department should explain the rationale behind these provisions.

*Subsection (a)(2)*

The American SPCA suggested that this subsection should be amended to require 12-15 air changes per hour.

How did the Department determine that the rule for six air changes per hour is appropriate?

*Subsection (a)(4)*

Why is a storage building required to have a ventilation system?

*Subsection (a)(5)*

PSBR asserted that the second sentence of this subsection is unreasonable for research facilities. These facilities are designed without windows for security, biosecurity and scientific reasons. They further stated that, for instances where systems malfunction, these facilities have a redundant system in place to ensure ventilation. We suggest that research facilities be exempted from this requirement.

*Subsection (b)*

How can outdoor facilities be required to have ventilation and cooling?

**12. Section 21.27. Lighting and electrical systems.—Reasonableness; Clarity.**

We have three concerns with this section.

First, how can people who operate their kennels in their homes comply with Subsection (a)(1), with regard to lighting levels? How did the Department determine the lighting levels contained in this subsection?

Second, under Subsection (a)(2), it is not apparent whether lighting must be available to see the dogs outside at night or if the outside area must be illuminated all night.

Finally, PSBR suggested that in Subsection (b) facilities should be held to the building code that was in place at the time that they were constructed or renovated. Has the Department based these standards on existing building codes?

**13. Section 21.28. Food, water and bedding.—Need; Reasonableness; Clarity.**

Commentators have offered several suggestions on this section, such as maintaining the current language on the frequency of providing water to dogs and the sanitization of self-waterers and self-feeders. How did the Department determine that the standards contained in the proposed regulation would best benefit dogs?

Another concern with format and structure is the opening paragraph of this section which reads:

Contagious diseases, including infectious canine hepatitis, leptospirosis and parvovirus are spread through the urine of dogs and rats and stools, vomit and urine of dogs. To protect the health, safety and welfare of dogs housed in kennels, the cleaning and sanitation requirements in this section shall be followed.

Because this narrative does not set forth any new specific requirements or standards for kennels, it belongs in the Preamble. The same clarity concern applies to the new opening paragraph for Section 21.29 relating to sanitation.

**14. Section 21.29. Sanitation.—Reasonableness; Clarity.**

*Subsection (1)*

PFDC questioned whether this subsection would include the entire house, if it is a home-based kennel, when it uses the term "all interior surfaces." This should be clearly explained in the final-form regulation.

*Subsection (4)*

This subsection requires that stool be removed from the kennel runs "as often as necessary." The same subsection requires stool to be removed from primary enclosures on a daily basis. Why not use the same standard for both runs and enclosures? Should both be cleaned whenever they are soiled?

*Subsection (7)*

Must the veterinarian approval be in writing?

**15. Section 21.30. Condition of dog.—Reasonableness; Clarity.**

PPPBA and PFDC stated that there are times when a dog shows signs of infectious or contagious disease, but is being treated for that condition. Consequently, they suggested that this section be amended to permit dog wardens to order veterinary checks only when the operator cannot provide proof of adequate, ongoing medical care. We agree.

**16. Section 21.41. General requirements.—Clarity.***Subsection (c)*

This subsection states that records shall be provided to the Department upon request. Will this request be written? What timeframe will the kennel be given to supply the records?

*Subsection (e)(3)*

PSBR indicated that the time is not typically noted in veterinary care records except for certain medications, such as analgesics. The time of veterinary care, under Subsection (e)(5), is also not typically noted. Why has the Department required that these times be recorded?

It further asserts that the information required by Subsections (e)(3), (4), (5) and (7) are already part of the veterinary record and are not needed as separate items. Why is the Department requiring these items to be separately recorded if they are readily available in the veterinary record?

**17. Section 21.42. Bills of sale.—Need; Reasonableness; Clarity.**

Regarding Subsection (b), commentators expressed concern that it will be extremely difficult for an operator to know whether the other person in a dog transaction should be licensed as a kennel. They further state that unless the kennel has purchased, sold or transferred 26 or more dogs in a calendar year to the individual, it is impossible to know if the person is required to be a licensed facility. We agree. The Department should clearly state how it intends kennel operators to know that they are dealing with an unlicensed kennel.

Also, the Department should explain how it is reasonable for this provision to be applied to shelters and rescue groups. These types of kennels often receive dogs randomly, sometimes without knowing where they came from.

**18. Kennel employees.—Consistency with other regulations; Need; Reasonableness; Clarity.**

Currently, there is no provision in Chapter 21 relating to employees or staffing at kennels. However, the federal regulations at 9 CFR 3.12 set forth this requirement:

Each person subject to the Animal Welfare regulations (9 CFR parts 1, 2, and 3) maintaining dogs and cats must have enough employees to carry out the level of husbandry practices and care required in this subpart. The employees who provide for husbandry

and care, or handle animals, must be supervised by an individual who has the knowledge, background, and experience in proper husbandry and care of dogs and cats to supervise others. The employer must be certain that the supervisor and other employees can perform to these standards.

The Department should seek input from stakeholders representing the different types of kennels and experts in animal behavior on what would be the appropriate ratio of employees per number of dogs and include the minimum staffing levels in the final-form regulation.

**19. Section 23.6. Stray dogs.—Clarity.**

This section uses the terms "grant recipient," "releasing agency" and "agency releasing the dog." It appears that these are one in the same. If this is the case, a consistent term should be used throughout the section.

**20. Section 25.2. Dog Disposition Record.—Clarity.**

Subsection (2) requires that a form be completed by the enforcement officer and held on file by the kennel. The final-form regulation should specify how long a kennel must retain this form.

**21. Section 25.3. Claims for fees.—Need; Reasonableness; Clarity.**

This section starts with the phrase "The Department will develop a reimbursement form . . ." The Department should both develop the actual form and change the language to reflect this in the final-form regulation or delete the language altogether.

Subsection (2) references the Department's website in Section 21.13. However, no website address is listed in the contact information in that section. We recommend the Department add the website address to Section 21.13.

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**Department of Corrections Regulation  
#19-9 (IRRC #2590)**

**State Intermediate Punishment**

**April 18, 2007**

We submit for your consideration the following comments on the proposed rulemaking published in the February 17, 2007 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Department of Corrections (Department) to respond to all comments received from us or any other source.

**1. Section 97.102. Definitions.—Consistency with statute; Clarity.***DOTP—Drug Offender Treatment Program*

The statute (42 Pa.C.S.A. § 9903) references "... the terms and conditions listed in section 9905 (relating to drug offender treatment program)." In the regulation, the Department added language to replace the statutory cross-reference to "Section 9905." However, the language added to the regulation does not fully encompass the statute. We recommend that the regulatory definition fully reflect the statute.

*Eligible offender*

The phrase "Subject to section 9721(a.1) (relating to sentencing generally)," in the statutory definition (42 Pa. C.S.A. § 9903) was omitted in the regulation. Again, we recommend that the regulatory definition fully reflect the statute.

**2. Section 97.103. Commitment for assessment.—Need; Protection of the public health, safety and welfare.**

*Nonregulatory language*

The last sentence of Subsection (a) states, "The court is encouraged to order a presentence investigation at or prior to the time the inmate is committed for evaluation." This is nonregulatory language and is unenforceable. Regulations establish binding norms of general applicability and future effect. Therefore, we recommend deleting this sentence from the regulation.

*"Current or previously administered medications"*

Paragraph (b)(6) requires "A notice of current or previously administered medications." The Department should address three concerns with this phrase. First, the word "or" should be replaced with the word "and" to ensure a full history of medications. Second, it is not clear what is required by the notice of "previously administered" medications. How far back must this history go? Finally, does "medications" include just prescription medication or over-the-counter medications such as aspirin?

**3. Section 97.104. Assessment of addiction and other treatment needs.—Protection of the public health, safety and welfare; Clarity.**

*Vague phrases*

There are several vague phrases in subsection (a). Specifically, we have the following concerns:

- What "Nationally recognized assessment instrument" does the Department find acceptable?
- What procedures will the Department find acceptable to meet the requirement for an instrument to be "normed and validated on the Department's inmate population"?
- What qualifications does the Department require for a person to be a "recognized expert in those matters"?
- What qualifications does the Department accept for "persons skilled in the treatment of drug and alcohol addiction and trained to conduct assessments"?

We recognize that these phrases are in the statute (42 Pa.C.S.A. § 9904(b)(1)). However, the regulation should identify the Department's interpretation of the specific types of certification, licensure, education, degrees, or experience necessary to meet these requirements.

*Cross-reference*

Subsection (d) states, in part, that "The act provides that the court may not modify or alter the terms of the Department's proposed DOTP without the agreement of the Department and attorney for the Commonwealth." A cross-reference to 42 Pa.C.S.A. § 9904(f) should be added.

**4. Section 97.113. Treatment sanctions.—Clarity.**

*"Or other drugs"*

Subsection (a) triggers proceedings for a participant who tests positive for the use of alcohol "or other drugs . . ." This provision is unclear because there are

many classifications of drugs such as over-the-counter drugs, prescription drugs and illegal drugs. The regulation should specify what "other drugs" will trigger proceedings.

ARTHUR COCCODRILLI,  
*Chairperson*

[Pa.B. Doc. No. 07-763. Filed for public inspection April 27, 2007, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Conseco Senior Health Insurance Company 25% Rate Increase Filing for Several LTC Policy Forms; Rate Filing

Conseco Senior Health Insurance Company is requesting approval to increase the premium 25% on several Long Term Care policy forms issued in the Commonwealth. The company is requesting a 25% increase on the following forms which were originally issued by American Travelers: ATL-LTC-1, ATL-LTC-3, ATL-LTC-6 and ATL-LTC-89. The company also is requesting a 25% increase on the following forms which were originally issued by Transport Life: 11001, 11006, 10955 and 10967. A total of 10,099 Pennsylvania policyholders will be affected by this rate adjustment.

Unless formal administrative action is taken prior to July 11, 2007, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Scroll down the home page and click on "Consumer Information" located on the left side. Next scroll down to "General Information," located in the middle of the page, and click on "Notices." The pdf copy of this filing is located at the link "Filing.pdf" following the name of the filing.

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Insurance Department's Harrisburg office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, [jlaverty@state.pa.us](mailto:jlaverty@state.pa.us) within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

RANDOLPH L. ROHRBAUGH,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 07-764. Filed for public inspection April 27, 2007, 9:00 a.m.]

## OFFICE OF ATTORNEY GENERAL

### Public Meeting

A meeting of the Lobbying Disclosure Regulation Committee (Committee) established under act of November 1, 2006 (P. L. 1213, No. 134) (Act 134) effective January 1, 2007, will be held on Thursday, May 3, 2007, at 9 a.m. in Hearing Room 1 of the North Office Building, Harrisburg, PA.

The purpose of the meeting will be for the Committee to consider regulations under Act 134 and to receive public comments. Visit [www.attorneygeneral.gov](http://www.attorneygeneral.gov) for more information and to view a copy of the complete agenda.

THOMAS CORBETT,  
*Attorney General*

[Pa.B. Doc. No. 07-765. Filed for public inspection April 27, 2007, 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 of Directors on Tuesday, May 8, 2007, 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.

MICHAEL C. DOERING,  
*Interim Administrator*

[Pa.B. Doc. No. 07-766. Filed for public inspection April 27, 2007, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Extension of the Fuel Cost Recovery Surcharge Special Permission 28207

Public Meeting held  
April 13, 2007

*Commissioners Present:* Wendell F. Holland, Chairperson;  
James H. Cawley, Vice Chairperson; Kim Pizzingrilli;  
Terrance J. Fitzpatrick

#### Order

*By the Commission:*

Tristate Household Goods Conference, Inc., (Tristate) a tariff publishing agency, represents approximately 275 PUC household good carriers. Substantially large increases in the cost of diesel fuel, which were unanticipated, motivated Tristate to request the implementation of the Fuel Cost Recovery Surcharge. The Fuel Cost Recovery Surcharge Special Permission 28207 was approved in Public Meeting held April 17, 2003, extended in Public Meeting held April 15, 2004, and extended again in Public Meeting held April 7, 2005. The extension was approved for duration of 1 year unless changed, cancelled or extended. The current surcharge grants approval to temporarily increase the Tristate tariff to recover temporarily increased fuel costs when transporting household goods for moves more than 40 miles (weight and distance)

and moves that are 40 miles or less (hourly) by the use of a Fuel Cost Recovery Surcharge.

The surcharge is determined by a formula which attempts to approximate the amount of fuel used on a particular trip and multiplies that amount by the increased cost of fuel, allowing the carrier to recover only the additional fuel charges incurred. The formula includes the following constant factors: (1) base price per gallon of fuel<sup>1</sup>; (2) average vehicle fuel consumption of 5 miles per gallon; and (3) a terminal factor which allows the carrier to recover the additional cost of fuel used in traveling to and from the carrier's terminal to the origin point of the move. The formula also includes one variable factor, the current month's diesel fuel price.<sup>2</sup>

Moves of 40 miles or less will be divided into 4 categories according to average mileage: 5 mile average for trips ranging from 1 to 10 miles, 15 mile average for trips ranging from 10 to 20 miles, 25 mile average for trips ranging from 20 to 30 miles, and 35 mile average for trips ranging from 30 to 40 miles. An example calculation for an 8 mile move is as follows<sup>3</sup>:

Origin of move to destination 8 miles	= 5 miles average
Terminal factor	= 40 miles
Total miles	= 45 miles
Average miles per gallon	= 5
Fuel used	= 9 gallons
DOE current Fuel Price as of 3/17/03	= \$1.949
Base fuel Price	= \$1.267
Fuel price difference	= \$ .682
Gallons × Fuel price difference	= 9 × .682
	= \$6.14

Moves of more than 40 miles will be calculated using actual mileage from the move's origin to destination and return. An example calculation for a 100 mile move is as follows:

Origin of move to destination	= 100 miles
Empty Return (dest. to origin)	= 100 miles
Terminal factor	= 40 miles
Total miles	= 240 miles
Average miles per gallon	= 5
Fuel used	= 48 gallons
DOE current Fuel Price as of 3/17/03	= \$1.949
Base fuel Price	= \$1.267
Fuel price difference	= \$ .682
Gallons × Fuel price difference	= 48 × .682
	= \$32.75

On February 6, 2007, Tristate filed a request to again extend the Fuel Cost Recovery Surcharge. The request was filed in response to the volatile nature of the petroleum market, which continues to produce unanticipated increases in diesel fuel prices.

In support of the request for extension, Tristate has submitted data from the Department of Energy for the

<sup>1</sup> The proposed base price is \$1.267, which was the price of a gallon of diesel fuel according to the Department of Energy report of Retail On-Highway Diesel Prices for the Central Atlantic Region as of February 15, 2002. Tristate proposes this as a base price since fuel prices have steadily increased from that date.

<sup>2</sup> This figure is determined by the Department of Energy's report of Retail On-Highway Diesel Prices for the Central Atlantic Region. The current month's diesel fuel price will be effective beginning the 15th day of each month through the 14th day of the subsequent month.

<sup>3</sup> All fuel surcharges shall be calculated and provided to the customer as part of the Estimate of Charges.

Central Atlantic Region. The average price of diesel fuel for the period of January 2006 to December 2006 was \$2.81 per gallon. During that time, prices ranged from \$2.59 per gallon to \$3.10 per gallon.

Additional support for an extension can be found in the March 14, 2007 edition of *Short Term Energy Outlook*, in which the Department of Energy reported that several factors will result in continued price fluctuations in the market. Instability in the relations with OPEC nations has kept the prices of crude at a high level. Demand was also increased as a result of greater need for home heating oil.

The Federal Department of Transportation has responded to the escalating fuel costs for interstate transportation by approving a fuel surcharge on a similar sliding scale. The Federal Fuel Surcharge became effective May 15, 2000, and continues in effect.

Under 66 Pa.C.S. § 1301, the Commission is required to ensure that all rates charged by a public utility are just and reasonable. Additionally, the Pennsylvania Public Utility Commission (Commission) is obligated to address industry-wide problems "without creating a chaotic rate structure impossible to manage or police." *Emergency Fuel Surcharge*, 47 Pa. P.U.C. 389,391 (1974). The current surcharge addresses the problem of rising fuel costs, while being just and reasonable in that carriers are compensated only for the additional cost of the fuel used.

Based on our review, it appears that the extension of the Fuel Cost Recovery Surcharge for transportation of household goods is necessary and is an appropriate means to address this regulatory problem and will result in just and reasonable rates. In order to prevent financial hardship it is imperative that Pennsylvania household goods carriers be afforded an opportunity to temporarily adjust rates to offset escalating fuel costs using the proposed extended Fuel Cost Recovery Surcharge and, accordingly, we shall allow the proposed extended surcharge to become effective for a period of 1 year unless changed, cancelled or further extended. *Therefore*,

*It Is Ordered That:*

1. Tristate members rendering service under authority of this Commission shall charge a Fuel Cost Recovery Surcharge on transportation provided for over 40 mile charges and for 40 miles or less hourly charge in accordance with all other tariff rules of this Commission. The Fuel Recovery Surcharge is to be extended effective April 18, 2007.

2. The Extended Fuel Recovery Surcharge shall be in effect for 1 year to April 18, 2008, unless changed, cancelled or further extended by the Commission.

3. Copies of this order shall be served by the Secretary to the Office of Consumer Advocate and Office of Small Business Advocate. The Secretary shall forward this Order to the *Pennsylvania Bulletin* for publication.

4. Each carrier shall post a copy of this Extended Fuel Cost Recovery Surcharge along with the original Fuel Cost Recovery Surcharge dated April 17, 2003, in a conspicuous place. In addition, each carrier shall include the surcharge as a separate line item of the Estimate of Charges provided to prospective shippers.

5. The rates collected to the Extended Fuel Cost Recovery Surcharge are subject to refund in the event that any formal complaints are filed, within 30 days of the date of publication of this order, and are successful in challenging the surcharge.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 07-767. Filed for public inspection April 27, 2007, 9:00 a.m.]

### Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities). A protest shall indicate whether it applies to the temporary authority application, the permanent authority application, or both. Filings must be made with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, with a copy served on the applicant by May 21, 2007. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

#### **Applications of the following for approval to *begin operating as common carriers for transportation of persons as described under each application.***

**A-00123647. Carol M. Wood** (1640 Fiat Street, Pittsburgh, PA 15210)—certificate of public convenience to begin to transport, as a common carrier, by motor vehicle, persons in limousine service, from points in the County of Allegheny, to points in Pennsylvania and return, excluding service that is under the jurisdiction of the Philadelphia Parking Authority.

**A-00123650. Langhorne Cab Co., Inc.** (71 Durham Road, Penndel, PA 19047)—certificate of public convenience to begin to transport, as a common carrier, by motor vehicle, persons upon call or demand service, from points in Fairless Hills, Falls Township, Levittown, Makefield Township, Morrisville, Tullytown, and Yardley, all within Bucks County.

**A-00123661. Russel L. Reynolds, t/a R. L. Reynolds Amish Hauling** (8635 SR 405, Milton, Northumberland County, PA 17847)—persons in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in the township of Turbot, Northumberland County and within an airline radius of 50 statute miles of the limits thereof, to points in Pennsylvania, and return.

**A-00123663. Bonnie Lynn Peters** (2880 Stumptown Road, Ronks, Lancaster County, PA 17572)—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.

**A-00123665. Butler Ambulance Service, Co.** (106 First St., Butler, PA 16001)—certificate of public convenience to begin to transport, as a common carrier, persons in paratransit service, from points in the County of Butler, to points in Pennsylvania, and return.

**Applications of the following for approval to begin operating as a broker for transportation of persons as described under each application.**

**A-00123649. 2 Sisters Travel, Inc.** (1846 Homeville Road, West Mifflin, PA 15122)—for a brokerage license evidencing the Commission's approval of the right and privilege to operate as a broker, to arrange for the transportation of persons between points in Pennsylvania.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 07-768. Filed for public inspection April 27, 2007, 9:00 a.m.]

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**Telecommunications**

**A-310554F7003. Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company and RCN Telecom Services, Inc.** Joint petition of Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company and RCN Telecom Services, Inc. for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company and RCN Telecom Services, Inc., by its counsel, filed on April 11, 2007, 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. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Commonwealth Telephone Company d/b/a Frontier Communications Commonwealth Telephone Company and RCN Telecom Services, 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. 07-769. Filed for public inspection April 27, 2007, 9:00 a.m.]

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**Transfer of Control**

**A-140000F0003. Laurel Pipe Line Company, LP.** Application of Laurel Pipe Line Company, LP for approval of the transfer, by sale, of all of the equity interests in Mainline Management, LLC, which transaction will constitute a Transfer of a "Controlling Interest" as defined by 52 Pa. Code (relating to public utilities).

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code on or before May 14, 2007. 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.

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:* Laurel Pipe Line Company, LP

*Through and By Counsel:* David B. MacGregor, Esquire, Andrew S. Tubbs, Esquire, Post & Schell, PC, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, PA 19103-2808 and Howard L. Meyers, Esquire, Kenneth M. Kulak, Esquire, Morgan, Lewis and Bockius, LLP, 1701 Market Street, Philadelphia, PA 19103-2921

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 07-770. Filed for public inspection April 27, 2007, 9:00 a.m.]

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**Transmission Lines**

**A-110172; A-110172F0002; A-110172F0003; A-110172F0004; G-00071229. Trans-Allegheny Interstate Line Company (TrAILCo).** Application of Trans-Allegheny Interstate Line Company (TrAILCo) for approval to locate and construct three 138 kV transmission lines, one 500 kV transmission line and related facilities, collectively, the Trans-Allegheny Interstate Line (TrAIL), in portions of Washington and Greene Counties, PA. In addition, the applicant asks the Pennsylvania Public Utility Commission (Commission) to grant to TrAILCo: 1) an exemption from municipal zoning regulation with respect to the construction of buildings; 2) authority as a public utility in this Commonwealth; 3) authorization to exercise certain eminent domain authority in this Commonwealth; and 4) approval of certain arrangements between TrAILCo and an affiliated utility, West Penn Power Company, needed to facilitate the siting and construction of TrAIL.

Formal protests and petitions to intervene must be filed on or before May 29, 2007, 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 and a copy provided to the administrative law judge. 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:* Trans-Allegheny Interstate Line Company (TrAILCo)

*Through and By Counsel:* W. Edwin Ogden, Esquire, Alan Michael Seltzer, Esquire, Ryan, Russell, Ogden & Seltzer, PC, 1150 Berkshire Boulevard, Suite 210, Wyomissing, PA 19610-1208

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 07-771. Filed for public inspection April 27, 2007, 9:00 a.m.]

# STATE BOARD OF NURSING

**Bureau of Professional and Occupational Affairs v.  
Nina Magagnotti Recupero, LPN; Doc. No. 0242-  
51-2007**

On March 9, 2007, Nina Magagnotti Recupero, LPN, of Kittanning, Armstrong County, was suspended for up to 1 year, based on her violation of the Controlled Substance, Drug, Device and Cosmetic Act.

Individuals may obtain a copy of the adjudication by writing to Thomas A. Blackburn, Board Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

This adjudication and order represents the final State Board of Nursing (Board) decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a petition for review with that court in accordance with the Pennsylvania Rules of Appellate Procedure. Individuals who take an appeal to the Commonwealth Court must serve the Board with a copy of the petition for review. The Board contact for receiving service of appeals is the previously named Board counsel.

MARY E. BOWEN, R. N., CRNP,  
*Chairperson*

[Pa.B. Doc. No. 07-772. Filed for public inspection April 27, 2007, 9:00 a.m.]

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# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 121, 129 AND 145]

### Clean Air Interstate Rule

The Environmental Quality Board (Board) proposes to amend Chapters 121, 129 and 145 (relating to general provisions; standards for sources; and interstate pollution transport reduction) to read as set forth in Annex A.

The proposed rulemaking incorporates by reference, with some exceptions, the Clean Air Interstate Rule (CAIR) (nitrogen oxides) NO<sub>x</sub> Annual Trading Program and CAIR NO<sub>x</sub> Ozone Season Trading Program model rules, as a means of mitigating the interstate transport of fine particulates and NO<sub>x</sub>. The proposed rulemaking also incorporates by reference the CAIR Sulfur Dioxide (SO<sub>2</sub>) Trading Program model rules as a means of mitigating the interstate transport of fine particulates and SO<sub>2</sub>. The proposed rulemaking establishes general provisions and the applicability, allowance and supplemental monitoring, recordkeeping and reporting provisions and makes other related amendments. The CAIR NO<sub>x</sub> trading programs in the proposed rulemaking will supersede the Commonwealth's existing NO<sub>x</sub> Budget Trading Program.

This proposed rulemaking was adopted by the Board at its meeting on February 20, 2007.

#### A. Effective Date

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

#### B. Contact Persons

For further information, contact James A. Stoner, Chief, Stationary Sources Section, Bureau of Air Quality, P. O. Box 8468, Rachel Carson State Office Building, Harrisburg, PA 17105-8468, (717) 772-3921; or Kristen M. Campfield, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) website at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (select Public Participation).

#### C. Statutory Authority

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

#### D. Background and Purpose

The purpose of this proposed rulemaking is to establish a program to limit the emission of nitrogen oxides (NO<sub>x</sub>) and SO<sub>2</sub> from electric generating facilities of 25 megawatts or greater. This proposed rulemaking also extends existing NO<sub>x</sub> emission permit limits for certain boilers, stationary combustion turbines and stationary internal combustion engines; and provides for the allocation of

NO<sub>x</sub> allowances to cogeneration units that did not receive SO<sub>2</sub> allowances under the Federal Acid Rain Program and to certain renewable energy and energy efficiency units.

The Clean Air Act (CAA) (42 U.S.C.A. §§ 7401—7642) contains a number of requirements to address fine particles (PM<sub>2.5</sub>) and 8-hour ozone National ambient air quality standards (NAAQS), including requirements that states address interstate transport that contributes to nonattainment. The United States Environmental Protection Agency (EPA) concluded that emissions in certain upwind states result in amounts of transported PM<sub>2.5</sub> and ozone and emission precursors for both (namely, NO<sub>x</sub> as a precursor for PM<sub>2.5</sub> and ozone, and SO<sub>2</sub> as a precursor for PM<sub>2.5</sub>) that contribute significantly to nonattainment in downwind states. The EPA determined that this Commonwealth is both an upwind and downwind state.

Section 110(a)(1) of the CAA (42 U.S.C.A. § 7410(a)(1)) requires that states submit state implementation plans (SIPs) to meet the applicable requirements of section 110(a)(2) of the CAA within 3 years after the promulgation of a new or revised NAAQS or within a shorter period as the EPA may provide. Under section 110(a)(1) of the CAA, states are required to submit SIPs that satisfy the requirements of section 110(a)(2)(D)(i) of the CAA, regarding interstate transport of pollution. In 1997, the EPA adopted a NAAQS for fine particulate matter (PM<sub>2.5</sub>) at 62 FR 38652 (July 18, 1997) and 8-hour ozone at 62 FR 38855 (July 18, 1997). On April 25, 2005, the EPA made National findings that states failed to submit the required SIPs to address interstate transport with respect to the PM<sub>2.5</sub> and 8-hour ozone NAAQS. 70 FR 21147 (April 25, 2005). Publication of the EPA's findings started a 2-year time clock under section 110(c)(1) of the CAA in which the EPA would promulgate a Federal Implementation Plan (FIP) for a state that failed to submit an SIP approved by the EPA that satisfies the interstate transport requirements in section 110(a)(2)(D)(i) of the CAA within the 2 years.

On May 12, 2005, the EPA published the final CAIR rule in which the EPA issued findings that 28 states and the District of Columbia contribute significantly to nonattainment of the PM<sub>2.5</sub> or 8-hour ozone NAAQS, or both, in downwind states. 70 FR 25162 (May 12, 2005) as amended at 71 FR 25328 (April 28, 2006). The EPA required these states and the District of Columbia to submit revised SIPs that include control measures to reduce emissions of SO<sub>2</sub> or NO<sub>x</sub>, or both, that significantly contribute to nonattainment of the PM<sub>2.5</sub> and 8-hour ozone NAAQS in downwind states. A state subject to the CAIR may independently determine which emissions sources to subject to controls and which control measures to adopt. The EPA included statewide emission reduction levels in the final rulemaking, as well as model rules for multistate cap and trade programs for annual SO<sub>2</sub> and NO<sub>x</sub> emissions for PM<sub>2.5</sub> and for seasonal NO<sub>x</sub> emissions for ozone. In the rulemaking, the EPA also revised the Acid Rain Program regulations, particularly the regulatory provisions governing the SO<sub>2</sub> cap and trade program, to streamline that program and facilitate its interaction with the CAIR model SO<sub>2</sub> cap and trade program. The EPA also specified that the NO<sub>x</sub> SIP Call cap and trade program, known as the NO<sub>x</sub> Budget Trading Program, will be replaced by the CAIR NO<sub>x</sub> Ozone Season Trading Program.

By way of background, the NO<sub>x</sub> SIP Call was promulgated in 1998 as the EPA's principal effort to reduce

interstate transport of precursors for both the 1-hour and 8-hour ozone NAAQS. 63 FR 57356 (October 27, 1998). The NO<sub>x</sub> SIP Call followed on the heels of the Ozone Transport Commission's (OTC) NO<sub>x</sub> Budget Trading Program, which was developed and adopted by the OTC member states, including the Commonwealth, as a regional approach to reducing NO<sub>x</sub> from large fossil-fueled combustion units. The Commonwealth adopted the OTC NO<sub>x</sub> Budget Trading Program in §§ 123.101–123.121 (relating to NO<sub>x</sub> allowance requirements). In the EPA's NO<sub>x</sub> SIP Call, the EPA imposed seasonal NO<sub>x</sub> reduction requirements on 22 states in the eastern part of the country (including the Commonwealth) and the District of Columbia. States subject to the NO<sub>x</sub> SIP Call submitted SIPs incorporating the NO<sub>x</sub> SIP Call requirements. The Commonwealth adopted the NO<sub>x</sub> Budget Trading Program in Chapter 145, Subchapter A (relating to NO<sub>x</sub> budget trading program) in response to the EPA's NO<sub>x</sub> SIP Call.

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health is adversely affected. The EPA concluded that there is an association between ambient ozone concentrations and increased hospital admissions for respiratory ailments, such as asthma. Further, although children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to ambient ozone while engaged in activities that involve physical exertion. Though the symptoms are often temporary, repeated exposure could result in permanent lung damage. The implementation of measures to address ozone air quality nonattainment in this Commonwealth is necessary to protect the public health.

In addition to causing adverse health effects, the EPA concluded that ozone affects vegetation and ecosystems, leading to reductions in agricultural crop and commercial forest yields; reduced growth and survivability of tree seedlings; and increased plant susceptibility to disease, pests and other environmental stresses, such as harsh weather. In long-lived species, these effects may become evident only after several years or even decades and have the potential for long-term adverse impacts on forest ecosystems. Ozone damage to the foliage of trees and other plants can also decrease the aesthetic value of ornamental species used in residential landscaping, as well as the natural beauty of parks and recreation areas. The economic value of some welfare losses due to ozone can be calculated, such as crop yield loss from both reduced seed production and visible injury to some leaf crops, such as lettuce, spinach, tobacco, as well as visible injury to ornamental plants, such as grass, flowers, shrubs. Other types of welfare loss may not be quantifiable, such as reduced aesthetic value of trees growing in heavily visited parks.

Fine particles, or PM<sub>2.5</sub>, are associated with a number of serious health effects, including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work and restricted activity days), lung disease, decreased lung function, asthma attacks and certain cardiovascular problems such as heart attacks and cardiac arrhythmia. The EPA estimated that attainment of the PM<sub>2.5</sub> standards would prolong tens of thousands of lives and would prevent, each year, tens of thousands of hospital admissions as well as hundreds of thousands of doctor visits, absences from work and school and respiratory illnesses in chil-

dren. Individuals particularly sensitive to fine particle exposure include older adults, people with heart and lung disease and children.

A number of petitions for review have been filed in the Federal Court of Appeals for the District of Columbia Circuit challenging various aspects of the CAIR. The cases have been consolidated into *State of North Carolina v. EPA*, Case No. 05-1244, which addresses CAIR-specific issues, and *Sierra Club v. EPA*, Case No. 06-1221, which addresses the EPA's response to North Carolina's petition to reduce interstate transport of fine particulate matter and ozone. It is possible that a ruling by the Court will lead to revisions to the CAIR by the EPA.

The EPA set two phases of NO<sub>x</sub> and SO<sub>2</sub> reductions in the CAIR, which are addressed in this proposed rulemaking. The first phase of NO<sub>x</sub> reductions begins in 2009 (covering 2009-2014) and the first phase of SO<sub>2</sub> reductions starts in 2010 (covering 2010-2014). The second phase of reductions for both NO<sub>x</sub> and SO<sub>2</sub> starts in 2015 (covering 2015 and thereafter). The EPA's emissions reduction requirements are based on controls that the EPA identified as being highly cost effective for electric generating units (EGUs).

Under the CAIR, states' SIP revisions were due by September 11, 2006. The Commonwealth proposes to submit the proposed rulemaking, once adopted, to the EPA as an SIP revision to satisfy the EPA's CAIR SIP requirements.

In the event that a state does not submit its SIP revision on time, the EPA issued a FIP for each state covered by the CAIR on April 28, 2006 (71 FR 25328). The FIPs are designed to regulate EGUs in affected states and to achieve emission reduction requirements established by the CAIR until states have approved SIPs to achieve the reductions. As the control requirement for FIPs, the EPA adopted the model trading rules provided in the CAIR, with minor changes to account for Federal rather than state implementation. The EPA stated that there are no sanctions associated with being subject to a CAIR FIP.

The EPA designed the model rules in the CAIR to parallel the NO<sub>x</sub> SIP Call model trading rules in 40 CFR Part 96 (relating to NO<sub>x</sub> budget trading program and CAIR NO<sub>x</sub> and SO<sub>2</sub> trading programs for state implementation plans) and to coordinate with the Acid Rain Program. To have the EPA administer the trading programs and for sources to be able to trade allowances with sources in other states, the EPA requires states to adopt the model rules, with flexibility to modify sections regarding NO<sub>x</sub> allowance allocations and determine whether to include individual unit opt-in provisions. Once the CAIR NO<sub>x</sub> Ozone Season Trading Program is operating, the EPA will no longer administer the NO<sub>x</sub> SIP Call trading program.

Under the model rules, states will allocate the CAIR NO<sub>x</sub> annual allowances and the CAIR NO<sub>x</sub> Ozone Season allowances. The Department's proposed rulemaking specifies how allowances will be calculated. The NO<sub>x</sub> Budget Trading Program allowances and CAIR NO<sub>x</sub> Ozone Season allowances cannot be used for compliance with the annual CAIR NO<sub>x</sub> emission reduction requirement. Pre-2009 NO<sub>x</sub> Budget Trading Program allowances can be banked into the program and used by CAIR sources for compliance with the CAIR NO<sub>x</sub> Ozone Season program. NO<sub>x</sub> Budget Trading Program allowances of vintages (namely, the year for which the allowance is issued) 2009 and later cannot be used for compliance with CAIR or the CAIR FIP and will be superseded.

The CAIR SO<sub>2</sub> cap and trade program will rely upon Title IV SO<sub>2</sub> allowances that have already been issued, although a state may provide CAIR SO<sub>2</sub> allowances to an opt-in source. Pre-2010 Title IV SO<sub>2</sub> allowances can be used for compliance with the CAIR. SO<sub>2</sub> reductions are achieved under the model rules by requiring sources to retire more than one allowance for each ton of SO<sub>2</sub> emissions. The emission value of an SO<sub>2</sub> allowance is independent of the year in which it is used, but is based upon its vintage. SO<sub>2</sub> allowances of vintage 2009 and earlier will offset one ton of SO<sub>2</sub> emissions. Vintages 2010-2014 will offset 0.5 ton of emissions and vintages 2015 and beyond will offset 0.35 ton of emissions.

The CAIR provides each state with a share of the compliance supplement pool, which is comprised of 200,000 CAIR NOx annual allowances of vintage 2009. For the Commonwealth, the compliance supplement pool will be allocated by the EPA under the FIP in 2009.

Sources will monitor and report their emissions using 40 CFR Part 75 (relating to continuous emission monitoring). Compliance for the annual and ozone season NOx cap and trade programs, as well as the SO<sub>2</sub> program, will be determined separately. A source found to have excess emissions must surrender allowances sufficient to offset the excess emissions and surrender allowances from the next control period equal to three times the excess emissions.

If a state chooses to control EGUs in its CAIR program, as the Commonwealth is proposing to do, then the state must establish a budget for EGUs. The EPA established Statewide budgets for the Commonwealth's CAIR trading programs that include only EGUs as follows: (1) an annual EGU NOx budget of 99,049 tons per year for 2009-2014 and 82,541 tons per year for 2015 and thereafter; (2) a compliance supplement pool of 16,009 tons of CAIR NOx annual allowances; (3) an Ozone Season EGU NOx budget of 42,171 tons per year for 2009-2014 and 35,143 tons per year for 2015 and thereafter; and (4) an annual EGU SO<sub>2</sub> budget of 275,990 tons per year for 2010-2014 and 193,193 tons per year for 2015 and thereafter. The EPA calculated the amount of each state's EGU emissions cap, or budget, based on reductions that the EPA determined to be highly cost effective.

SO<sub>2</sub> allowances are allocated to sources by the EPA under the Acid Rain Program. Certain independent power production (IPP) facilities that are subject to the SO<sub>2</sub> emission control requirements of the CAIR, however, were exempted from the Acid Rain Program. Most of these IPP facilities are waste coal-fired facilities in this Commonwealth that combust coal mining refuse. Since states cannot allocate CAIR SO<sub>2</sub> allowances to these facilities, the facilities will have to purchase or otherwise obtain the necessary allowances. To make up for the absence of SO<sub>2</sub> allowances, the Department is proposing to allocate additional CAIR NOx allowances to these facilities, the proceeds from the sale of which the facilities may use to purchase the needed CAIR SO<sub>2</sub> allowances.

The proposed rulemaking establishes general provisions to achieve reductions from EGUs currently covered by the NOx Budget program in Chapter 145, Subchapter A. The proposed NOx reduction requirements are similar to the existing requirements of the NOx Budget Trading Program, and contain provisions regarding designated representatives of covered units, permitting, allowances, monitoring and opting-in. This proposed rulemaking establishes three CAIR trading programs which cover annual NOx emissions, ozone season NOx emissions and

annual SO<sub>2</sub> emissions, respectively. Each of the three proposed CAIR trading programs contains similar provisions.

The proposed rulemaking makes minor changes to the requirements that already apply to small sources of NOx in the five-county Philadelphia area. The proposed rulemaking requires these sources to surrender CAIR NOx Ozone Season allowances rather than NOx Budget program allowances if the sources' NOx emissions exceed its NOx emission limits, beginning in 2009. A similar change is proposed for NOx emissions from large stationary internal combustion engines that are not subject to the NOx Budget Trading Program, and for NOx emissions from Portland cement kilns. The proposed rulemaking also addresses the transitioning of NOx allowance allocations, NOx emission limitations and NOx monitoring requirements from the NOx Budget Program and address certain compliance issues. The proposed rulemaking establishes requirements for non-EGUs that are currently subject to the NOx Budget Trading Program.

EGUs will likely be governed by the NOx allowances already allocated by the Department for 2007 and 2008. As the Department stated in its 2005 allocation of NOx allowances, action at the Federal or State level could affect the Department's allocations, and "... it is possible that NOx allowances allocated for 2008-2012 would be terminated, limited or otherwise affected." 35 Pa.B. 1714 (March 12, 2005).

An NOx allowance allocated by the Department under the NOx Budget Trading Program does not constitute a property right. See § 145.6(b)(7) (relating to standard requirements). A "NOx allowance" is defined in § 145.2 (relating to definitions) as:

An authorization by the Department under the NOx Budget Trading Program to emit up to 1 ton of NOx during the control period of the specified year or of any year thereafter, except as provided under § 145.54(f) (relating to compliance). No provision of the NOx Budget Trading Program, any permit, or an exemption under § 145.4(b) or § 145.5 and no provision of law will be construed to limit the authority of the Department or the Administrator to terminate or limit the authorization, which does not constitute a property right. For purposes of all sections of this subchapter except §§ 145.41-145.43 and 145.88, NOx allowance also includes an authorization to emit up to 1 ton of NOx during the control period of the specified year or of any year thereafter by the Department or the Administrator.

The CAIR NOx allowances expected to be allocated by the EPA under the FIP will replace the NOx allowances already allocated to EGUs by the Department under the NOx Budget Trading Program for 2009 and subsequent years until the FIP is replaced by an approved SIP revision. In administering the FIP, the EPA will record annual and ozone season CAIR NOx allowance allocations for 2009 by September 30, 2007, and for 2010 by September 30, 2008.

Non-EGUs will continue to be covered by the NOx allowances already allocated by the Department until this proposed rulemaking is adopted. Once this proposed rulemaking is adopted, the NOx allowances already allocated by the Department to non-EGUs will be replaced by the NOx permit limits described in the proposed rulemaking, as explained more fully in Section E of this preamble.

Both the EPA's CAIR NOx model rules and CAIR FIP state that CAIR NOx annual allowances and CAIR NOx

Ozone Season allowances do not constitute property rights. 40 CFR 96.106(c)(6), 96.306(c)(6), 97.106(c)(6) and 97.306(c)(6) (relating to standard requirements). The same is true of CAIR SO<sub>2</sub> allowances. 40 CFR 96.206(c)(6) and 97.206(c)(6) (relating to standard requirements). These provisions also provide that no provision of the CAIR programs, a CAIR permit application, a CAIR permit or the retired unit exemption and no provision of law shall be construed to limit the authority of the state or the United States to terminate or limit authorization. The proposed rulemaking incorporates by reference these Federal provisions.

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) on the proposed rulemaking on December 14, 2006, and January 4, 2007. On January 4, 2007, the AQTAC concurred with the Department's recommendation that the Board approve the proposed rulemaking for publication and comment. The Department also consulted with the Citizen Advisory Council on January 17, 2007, and the Small Business Compliance Advisory Committee on January 24, 2007.

The proposed rulemaking is necessary to achieve and maintain the NAAQS and to satisfy related CAA requirements. The proposed rulemaking, when adopted, will be submitted to the EPA as a revision to the Commonwealth's SIP.

#### E. Summary of Regulatory Requirements

The proposed rulemaking amends § 121.1 (relating to definitions) to add a definition of "vintage or vintage year." The term is defined to refer to the calendar year assigned to an allowance by the issuing authority that designates the first year in which the allowance is valid for use in meeting an emission limit.

The proposed rulemaking amends § 129.204 (relating to emission accountability) by changing "NOx allowance" to "CAIR NOx Ozone Season allowance." This amendment will require the small sources of NOx in the five-county Philadelphia area to surrender CAIR NOx Ozone Season allowances rather than NOx Budget Program allowances if the sources' NOx emissions exceed their NOx emission limits, beginning in 2009.

A similar change is proposed for NOx emissions from large stationary internal combustion engines that are not subject to the NOx Budget Program and for NOx emissions from Portland cement kilns in §§ 145.113 and 145.143 (relating to standard requirements), respectively.

The proposed rulemaking also clarifies the existing provisions in § 129.204 regarding alternative calculation and recordkeeping procedures for the calculation of actual emissions from small sources of NOx in the five-county Philadelphia area.

The proposed rulemaking addresses the transition from the NOx Budget Trading Program to the CAIR NOx trading programs. New § 145.8 (relating to transition to CAIR NOx trading programs) provides that the final year for NOx allowance allocations to be made under the NOx Budget Trading Program will be 2008. Allocations in 2009 will be made in accordance with the FIP. CAIR NOx Ozone Season allowance allocations for the control period starting May 1, 2010, and for each control period thereafter, will be distributed in accordance with the CAIR NOx trading programs. New § 145.8 provides that the emission limitations and monitoring requirements established in the NOx Budget Trading Program are replaced by the requirements in Chapter 145, Subchapter D (relating to CAIR NOx and SO<sub>2</sub> trading programs) pertaining to the

CAIR NOx Ozone Season Trading Program beginning with the May 1, 2010, control period. This section also addresses compliance.

Section 145.101 (relating to transition requirements for nonelectric generating units) addresses the transition for non-EGUs from the NOx Budget Trading Program to the CAIR NOx Ozone Season Trading Program. The EPA requires that states continue to meet their NOx SIP Call obligations. The EPA explains that if a state achieves all of its required CAIR emissions reductions by capping EGUs, then the state must modify its existing NOx SIP Call program to require that non-EGUs in the state that are currently participating in the NOx Budget Trading Program conform to the requirements of the CAIR Ozone Season NOx Trading Program with a trading budget that is the same as or more stringent than the budget in the state's currently approved SIP. 70 FR 25256 (May 12, 2005). The Department is proposing to meet this requirement in the following manner in § 145.101: the non-EGUs units will be subject to an ozone season permit limit beginning in 2009 based on their most recent NOx Budget Trading Program allocation unless the Department approves a timely application for the unit to participate in the CAIR NOx Ozone Season Trading Program. Section 145.101 also addresses monitoring, compliance and opting-in for the non-EGUs. The Board is specifically seeking comment on how the proposed rulemaking addresses non-EGUs.

Proposed Chapter 145, Subchapter D incorporates by reference the EPA's CAIR NOx Annual Trading Program, CAIR NOx Ozone Season Trading Program and CAIR SO<sub>2</sub> Trading Program, with modifications.

Section 145.201 (relating to purpose) describes the purpose of Chapter 145, Subchapter D. This section explains that Chapter 145, Subchapter D incorporates by reference the CAIR NOx Annual Trading Program and CAIR NOx Ozone Season Trading Program as a means of mitigating the interstate transport of fine particulates and NOx, and incorporates the CAIR SO<sub>2</sub> Trading Program as a means of mitigating the interstate transport of fine particulates and SO<sub>2</sub>. The section also explains that Chapter 145, Subchapter D establishes general provisions and applicability, allowance and supplemental monitoring, recordkeeping, and reporting provisions.

Section 145.202 (relating to definitions) contains new and amended definitions. The section includes Federal definitions from the EPA's CAIR programs for the following terms, modified to accommodate the Commonwealth's formatting policies. In some instances, definitions for the CAIR NOx Annual Trading Program, CAIR NOx Ozone Season Trading Program and FIP are consolidated. The defined terms are: "Acid Rain Program," "Administrator," "bottoming-cycle cogeneration unit," "CAIR NOx allowance," "CAIR NOx Annual Trading Program," "CAIR NOx Ozone Season allowance," "CAIR NOx Ozone Season Trading Program," "CAIR NOx Ozone Season unit," "CAIR NOx unit," "CAIR SO<sub>2</sub> Trading Program," "CAIR SO<sub>2</sub> unit," "cogeneration unit," "combustion turbine," "commence commercial operation," "control period," "operator," "owner," "ozone season," "topping-cycle cogeneration unit," "unit," "useful power" and "useful thermal energy." The definitions of "CAIR NOx Annual Trading Program" and "CAIR NOx Ozone Season Trading Program" also specify that those terms refer to the respective programs adopted in Chapter 145, Subchapter D.

Several definitions in § 145.202 are derived from or relate to the Alternative Energy Portfolio Standards Act (AEPS Act) (73 P. S. §§ 1648.1—1648.8), including the

term "Pennsylvania Alternative Energy Portfolio Standard." The term "tier I renewable energy qualifying source" is derived from the definition of "Tier I alternative energy source" in the AEPS Act, but includes only those sources included in the definition of "renewable energy" in this proposed rulemaking. The term "tier II demand side management energy efficiency qualifying source" is derived from the definition of "Tier II alternative energy source" in the AEPS Act, but is limited by the definition of "demand side management" in this proposed rulemaking. The term "demand side management," which is also derived from the AEPS Act, does not include industrial by-product technologies, to prevent double allocation of allowances under the CAIR NOx trading programs.

Section 145.202 also includes a definition of "EIA," "gross electrical output," "MWh—Megawatt-hour," "renewable energy" and "renewable energy certificate."

Section 145.203 (relating to applicability) describes the applicability of Chapter 145, Subchapter D. Section 145.203 states that this subchapter will apply to CAIR NOx units, CAIR NOx Ozone Season units and CAIR SO<sub>2</sub> units, as well as tier I renewable energy qualifying sources and tier II demand side management energy efficiency qualifying sources.

Section 145.204 (relating to incorporation of Federal regulations by reference) establishes the incorporation by reference of the Federal CAIR regulations. This section specifies that the incorporation by reference includes appendices, future amendments and supplements to the Federal regulations. This is consistent with the existing Commonwealth law on incorporation by reference set forth in 1 Pa.C.S. § 1937(a) (relating to references to statutes and regulations).

Section 145.205 (relating to emission reduction credit provisions) requires that the Department permanently reduce the Commonwealth's CAIR NOx trading budget and that the owner or operator of a unit subject to Chapter 145, Subchapter D surrender NOx allowances if NOx emission reduction credits or creditable emission reductions are considered in an applicability determination under Chapter 127, Subchapter E (relating to new source review) for a unit not subject to Chapter 145, Subchapter D, or if an emission trade under Chapter 127 (relating to construction, modification, reactivation and operation of sources) is authorized for a unit not subject to Chapter 145, Subchapter D, whenever the emission reduction credits, creditable emission reductions or emission trade are from a unit subject to Chapter 145, Subchapter D. An example of an emission trade under Chapter 127 is a trade at a facility under a plantwide applicability limit from a CAIR NOx unit to a non-CAIR NOx unit at the same facility. Section 145.205 carries over the requirements of §§ 145.40(b) and 145.90 (relating to State Trading Program budget; and emission reduction credit provisions).

Section 145.211 (relating to timing requirements for CAIR NOx allowance allocations) addresses timing requirements for CAIR NOx allowance allocations under the CAIR NOx Annual Trading Program. The timing requirements replace the timing requirements in the EPA's CAIR NOx Annual Trading Program.

Under the EPA's model rule in 40 CFR 96.141(a) and (b) (relating to timing requirements for CAIR NOx allowance allocations), the Department would have been allocating CAIR NOx allowances for the CAIR NOx Annual Trading Program every year for the control period 6 years after the year of the allocation (except that the first

allocation would have been in 2006 and would have covered 6 control periods beginning in 2009). The EPA explains in the CAIR NOx Annual Trading Program SIP submission requirements in 40 CFR 51.123(o)(2)(ii)(B) (relating to findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen pursuant to the Clean Air Interstate Rule), that a state may adopt provisions that differ substantively from the EPA's allowance allocation provisions and still receive SIP approval as long as the state's methodology provides, among other things, that the state will make CAIR NOx allowance allocations each year for the fourth year after the year of the allocation. The Department's approach differs in that it requires the Department to make allocations every 2 years for the third and fourth years after the allocation.

The Department is proposing this process to foster competition and enable new units to transition to existing units sooner. Under the EPA's CAIR model rules, new units do not get regular allocations for 9 years, and the allowances allocated throughout the life of the program are based on baseline heat input data that is older than that used under the proposed rulemaking. The Department's proposed methodology will achieve regular allocations for new units in 5 or 6 years and will use more recent baseline data to make allocations. It also ensures that allocations to new units, which collect NOx allowance allocations based upon emissions, are minimized so as not to build up to significant levels in the program. The Department will consider shortening the time span between issuance of the allocations and the years to which they apply, or, if required by the EPA, lengthening the time span. The Board is specifically seeking comment on its proposed approach to allocating allowances to new units.

Under § 145.211(b), the Department will make CAIR NOx allowance allocations to existing units in 2008 for the control periods in 2010 and 2011. Beginning in 2009, and every 2 years thereafter, the Department will make CAIR NOx allowance allocations to existing units for the two control periods that begin 3 and 4 years after the calendar year of the allocation. These allocations are referred to as "regular allocations." This is illustrated in the example provided with the description of § 145.212(e) (relating to CAIR NOx allowance allocations).

Under § 145.211(c), the Department will submit to the Administrator CAIR NOx allowance allocations to new units by April 30 each year, beginning with 2011. Section 145.211(c) cross-references § 145.212(e), which states that the allocations to new units will be made for the fifth year after the year of the NOx emissions. Section 145.211(c) states that the Department will base the allocations to new units on actual emissions in the calendar year preceding the year of the submission.

Under the EPA's model rule in 40 CFR 96.141(c), the Department would make CAIR NOx allowance allocations for the CAIR NOx Annual Trading Program to new units out of a new unit set-aside every year for the year of the allocation. The EPA explains in the CAIR NOx Annual Trading Program SIP submission requirements in 40 CFR 51.123(o)(2)(ii)(C) that a state may adopt provisions that differ substantively from the EPA's allowance allocation provisions and still receive SIP approval as long as the state's methodology provides, among other things, that the state notifies the EPA regarding the amount of allowances to be allocated to new units by October 31 of the year of the allocation. The proposed rulemaking meets this requirement and provides new units with more

advance notice of their allocations than does the EPA's model rule. Under the proposed rulemaking, new units will receive future year allowances as compensation to cover their compliance obligations. Unit operators will be able to make an inter-company swap, or external trade or sale of the future vintage year allowances for current vintage year allowances that the operators will require for the new unit's compliance obligations. The Board is specifically seeking comment on the proposed approach.

Under § 145.211(d), the Department will publish notice of the proposed CAIR NOx allowance allocations in the *Pennsylvania Bulletin* and will publish the final allocations after a 15-day public comment period.

Section 145.212 addresses allocation procedures for CAIR NOx allowance allocations under the CAIR NOx Annual Trading Program. Subsection (a) explains that the allocation requirements in the proposed rulemaking replace the allocation requirements in the EPA's CAIR NOx Annual Trading Program.

The procedure for issuing CAIR NOx allowances to new and existing units under the proposed rulemaking is based on the "new unit" allocation methodology in the CAIR model rules and FIP. The EPA's model rules and FIP would provide existing units with a permanent allocation based on historical operations. The EPA's method has several negative aspects. It rewards past inefficiency, does nothing to pay back efficiency improvements, and in states like this Commonwealth with deregulated markets gives existing units an unwarranted and counterproductive competitive advantage. It could also fail to provide more productive units with an equitable share of allowances when market forces change the level of output from particular units. Using the EPA's new unit allocation method with an updating component remedies these deficiencies.

This Commonwealth has a deregulated electric market that seeks to achieve the economic and environmental benefits of competition and that is better served by the allocation method in the proposed rulemaking. This approach will allow for the timely integration of new sources into the general allocation pool, and provide allowances for energy efficiency/renewable energy resources on a regular and equitable basis so that these resources will not be placed at a competitive disadvantage. The Board is specifically seeking comment on the modified heat input approach to allocating CAIR NOx allowances proposed in this rulemaking.

Subsection (b) addresses the determination of baseline heat input for existing units in a manner that is consistent with the EPA's model rule approach for new units. The Board is specifically seeking comment on the Department's proposed allocation methodology, including the routine updating of allocations, calculating converted control period heat input for calculating allocations using the EPA's new unit allocation methodology and including the EPA's methodologies for calculating allowance allocations taking into consideration useful thermal energy for cogeneration units.

Subsection (c) explains that allocations will be made to existing units, qualifying resources and new units using baseline heat input data as determined under subsection (b) from a baseline year that is 5 years before the vintage year of the allowances that are allocated. Subsection (c) also explains that the allocations for each control period beginning with 2010 will equal the number of CAIR NOx allowances remaining in the Commonwealth's trading budget under 40 CFR 96.140 (relating to state trading budgets).

Under the EPA model rule, a state would maintain a set-aside of 5% of the budget of CAIR NOx allowances for allocation to new units. The Department is not proposing a set-aside for new units; instead, the Department proposes under § 145.212(c) that new unit allowances be allocated from the same pool of allowances as those allocated to other units and qualifying resources to prevent the problem of over-subscription of the new source set-aside experienced under the NOx Budget Trading Program. The Board is specifically seeking comment on the proposed approach of allocating future CAIR NOx allowances to new units rather than allocating CAIR NOx allowances to new units under a new unit set-aside.

Subsection (d) further describes the allocation calculation process for existing units and qualifying resources, and states that the Department will make CAIR NOx allowance allocations under this subsection after the Department makes CAIR NOx allowance allocations to new units under subsection (e).

Subsection (e) explains that the Department will allocate CAIR NOx allowances to new units by March 31, 2011, and March 31 each year thereafter. A unit may receive a "new unit" allocation under subsection (e) in the same year it receives an allocation based on qualifying converted baseline heat input for regular sources. These concurrent allocations will continue until the unit has already received allowances of the same vintage year as the year in which the emissions that support the "new unit" allocation were generated. At that point, the unit will have transitioned into regular source status and will no longer be eligible for new unit allocations. NOx allowance allocations to new units will be made for the fifth year after the year of the emissions. For example:

A unit that begins operations in 2010 will be allocated 2015 CAIR NOx allowances in 2011, based on 2010 emissions. This allocation is made under the procedures for new units because the unit will not have received an allocation of 2010 vintage. Since the unit has a converted heat input baseline in 2010, in 2011 it will also be allocated 2015 allowances because it has a qualifying converted baseline heat input for regular source status in 2015.

In 2012, the unit in the example will be allocated, as a new unit, 2016 CAIR NOx allowances based on 2011 emissions.

In 2013, the unit will be allocated, as a new unit, 2017 CAIR NOx allowances based on 2012 emissions. In 2013, the unit will also be allocated 2016 and 2017 allowances because it has a qualifying converted baseline heat input for regular source status in 2011 and 2012.

In 2014, the unit will be allocated, as a new unit, 2018 CAIR NOx allowances based on 2013 emissions.

In 2015, the unit will be allocated, as a new unit, 2019 CAIR NOx allowances based on 2014 emissions. In 2015, the unit will also be allocated 2018 and 2019 allowances because it has a qualifying converted baseline heat input for regular source status in 2013 and 2014.

In 2016, the unit will no longer be allocated as a new unit, because the unit will have received allowances (in 2011) of the same vintage year (2015) as the year before the allocation based on qualifying converted baseline heat input for regular source status. The unit will now have transitioned into regular source status.

In 2017, the unit will be allocated 2020 and 2021 CAIR NOx allowances because it has a qualifying converted baseline heat input for regular source status in 2015 and 2016. Allocations to the unit will continue in the same manner in which they are allocated in 2017 every 2 years thereafter.

Allocations to new units in 2009 will be made directly by the EPA under the FIP.

Subsection (f) applies to allocations to qualifying resources and units exempted under the EPA's Acid Rain Program. Qualifying resources may be issued allowances under this provision if they submit an application that meets the requirements of subsection (f). The number of allowances allocated to them will be determined by converting the certified quantity of electric energy production, useful thermal energy and energy equivalent value of the measures approved under the Pennsylvania Alternative Energy Portfolio Standard to equivalent thermal energy. The proposed rulemaking does not limit the CAIR NOx allowances that can be allocated to qualifying resources as a whole. The Board is specifically seeking comment on the proposed approach to allocating CAIR NOx allowances on the basis of new renewable energy sources in this Commonwealth and demand-side management under the Pennsylvania Alternative Energy Portfolio Standard, including the appropriateness of including load shifting as a demand side management measure.

Units exempted under the EPA's Acid Rain Program, and which therefore did not receive SO<sub>2</sub> allowances and yet are subject to the CAIR SO<sub>2</sub> Trading Program, may receive a cost equivalent additional amount of CAIR NOx allowances under subsection (f), based on a ratio of 1 CAIR NOx allowance to every 8 tons of SO<sub>2</sub> emitted. This ratio is derived from historical price data showing a 1:8 price ratio for NOx and SO<sub>2</sub> allowances. Up to 1.3% of the Commonwealth's annual NOx budget is available for allocation to these units for each control period from 2010 through 2015, as described in subsection (f)(4). Subsection (f)(5) provides that the Department may extend, terminate or otherwise modify the allocation after providing public notice and a 30-day public comment period. The proposed allocation of NOx allowances to these units is discussed more completely under Section D of this preamble.

Section 145.213 (relating to supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.170–96.175) contains monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units that are subject to the monitoring and reporting requirements of the EPA's CAIR rules. These requirements in the proposed rulemaking are in addition to the requirements in the CAIR rules, and are included to ensure that allocations are made on an equitable basis. This can only be accomplished by requiring all units to collect and report data that meets a standard level of accuracy, consistency and accountability. Most units already have the necessary instrumentation and recordkeeping measures in place.

The provisions in the proposed rulemaking that relate to the CAIR NOx Ozone Season Trading Program are nearly identical to those regarding the CAIR NOx Annual Trading Program. The differences relate to the different control periods (May through September, versus entire year) and different Federal cross-references. Consequently, the discussion of §§ 145.211–145.213 pertain also to §§ 145.221–145.223 (relating to additional requirements for CAIR NOx ozone season trading program),

with the relevant Federal citations being specified in Annex A. No provision is made in § 145.222 (relating to CAIR NOx Ozone Season allowance allocations) as in § 145.212 for units exempted under the EPA's Acid Rain Program.

#### F. *Benefits, Costs and Compliance*

##### *Benefits*

The citizens of this Commonwealth are the major benefactors of this proposed rulemaking. This proposed rulemaking is designed to reduce emissions of PM<sub>2.5</sub>, ozone and their precursors, NOx and SO<sub>2</sub>. The proposed rulemaking is intended to meet the Federal requirements under the CAIR. Implementation of the proposed rulemaking will contribute to the attainment and maintenance of the health-based ozone and fine particle NAAQS. Affected unit owners and operators as well as entities that implement measures within the state to generate credit under the Commonwealth's Advanced Energy Portfolio Standard will receive emission allowances that have a marketable cash value. The budgets for CAIR NOx allowances that will be distributed to these entities contain over 99,000 annual allowances, and 42,000 Ozone Season allowances, which may have a collective market value of approximately \$250 million per year. CAIR NOx allowances would be distributed under the proposed rulemaking based on ongoing production and service activities. Control installation and operation would create jobs and reduce air contaminants that have adverse environmental and health impacts. The EPA claims that the CAIR helps maintain coal as a viable fuel/energy source, keep jobs in this Commonwealth and will not significantly impact regional electricity prices. If the CAIR program ensures that the emission reductions occur in this Commonwealth and elsewhere as projected, the monetized public health benefits are estimated to be almost 20 times greater than the estimated costs of the program.

Twenty-eight other Eastern states must adopt a similar program. Some have regulated electric markets. Although NOx allowances are a small portion of the equation, the allocation method in the proposed rulemaking provides a positive synergistic means of accelerating the desired benefits of market competition. Some of the states have either adopted programs similar to the EPA's CAIR program or the EPA's CAIR FIP in a manner that constrained their allocation methods in ways that do not provide this benefit. Therefore, it is anticipated that this proposed rulemaking will place Pennsylvania units at a competitive advantage.

##### *Compliance Costs*

Since the proposed rulemaking sets forth an economic incentive-based trading program, the costs and savings are largely indeterminable since they will vary over different timeframes and will be determined by plant operator decisions and the allowance market. An existing plant operator, for instance, may choose to upgrade the plant emission controls and sell excess allowances it receives to make a profit over the long-term. Every plant in this Commonwealth may choose this path and every plant may make a profit. On the other hand, the opposite could occur. With multistate corporations operating power plants, and with costs and savings being averaged over several states, it is not possible to predict.

Currently under the Acid Rain Program, facilities in this Commonwealth are issued 540,000 tons worth of SO<sub>2</sub> allowances each year. The market value of those allowances at a current market value of \$500 per ton is \$270

million a year. In addition to the SO<sub>2</sub> allowance allocation, facilities in this Commonwealth purchase approximately 400,000 tons worth of additional allowances each year at about \$200 million a year at the current allowance price of \$500 per allowance. The CAIR SO<sub>2</sub> Trading Program will reduce the effective State budget allocation from 540,000 SO<sub>2</sub> allowances to about 270,000 in 2010 and 193,000 in 2015. If purchasing allowances rather than controlling emissions remains cost effective at facilities in this Commonwealth, the cost of the new CAIR SO<sub>2</sub> Trading Program will be the cost of purchasing 270,000 additional tons worth of SO<sub>2</sub> allowances in 2010 at about \$500 a ton (about \$135 million per year) and 347,000 additional tons worth (about \$174 million dollars per year) in 2015.

There is currently no annual NO<sub>x</sub> trading program in this Commonwealth, but assuming that the predicted price of future CAIR NO<sub>x</sub> annual allowances is about \$1,200 a ton and facilities in this Commonwealth make no NO<sub>x</sub> emission reductions, facilities would need to purchase the difference between current annual NO<sub>x</sub> emissions (about 180,000 tons each year) and the Commonwealth's annual CAIR NO<sub>x</sub> budget (about 99,000 tons in 2009 and 82,500 in 2015). The annual cost in 2009 would be about \$97.2 million and in 2015 would be about \$117 million. It is impossible to predict whether the economics will continue to favor purchasing allowances over installing controls.

There is currently an ozone season NO<sub>x</sub> trading program in this Commonwealth. Assuming that the predicted price of future CAIR NO<sub>x</sub> Ozone Season allowances is about \$1,200 a ton and facilities in this Commonwealth make no ozone season NO<sub>x</sub> emission reductions, facilities would need to purchase the difference between current ozone season NO<sub>x</sub> emissions (about 48,000 tons each ozone season) and the Commonwealth's Ozone Season CAIR NO<sub>x</sub> budget (about 42,000 tons in 2009 and 35,000 in 2015). The annual cost in 2009 would be about \$7.2 million and in 2015 would be about \$15.6 million. It is impossible to predict whether the economics will continue to favor purchasing allowances over installing controls.

In summary, if no emission reductions are made and all allowance are purchased on the market, the costs of the CAIR rule to the regulated community may be about \$239.4 million annually in 2010 and \$306.6 million annually in 2015. Still, the savings associated with the reduction in premature mortality and health care costs yield economic benefits 20 times greater than costs.

#### *Compliance Assistance Plan*

The Department plans to educate and assist the regulated community and the public with understanding these new regulatory requirements through various means, including field inspector contacts, mailings and the Small Business Compliance Assistance Program.

#### *Paperwork Requirements*

This proposed rulemaking utilizes the existing Federal recordkeeping and reporting requirements, as expanded slightly under the CAIR model rules. The EPA will not administer the allowance tracking portion of the program for a state nor allow a state to engage in interstate allowance trading unless the state's CAIR program includes these recordkeeping and reporting requirements. In addition, the proposed rulemaking specifies reporting of electrical and useful thermal output to ensure the producing facilities receive the correct amount of allowances.

#### *G. Pollution Prevention (if applicable)*

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 incorporates the following pollution prevention incentives:

The proposed rulemaking modestly increases the cost of emissions from fossil-fired power generators and thereby encourages fewer polluting power supply options to be adopted. The NO<sub>x</sub> portion of the proposed rulemaking includes provisions for the owners of alternative power generation resources to receive NO<sub>x</sub> allowances in proportion to the pollution prevention benefits the resources provide. These resources include wind, solar and energy efficiency projects. Because the NO<sub>x</sub> allowances for these resources are based on the output, on par with fossil generation, the proposed rulemaking gives no competitive advantage to one form of energy production over the other in the energy market. In this way, the proposed rulemaking increases the potential for the adoption of less polluting resources.

#### *H. Sunset Review*

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

#### *I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 17, 2007, 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 received by the Board by July 2, 2007. 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 received by July 2, 2007. 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 July 2, 2007. 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 rule-making. The hearings will be held as follows:

- May 29, 2007 1 p.m. Department of Environmental Protection  
Southwest Regional Office  
Waterfront A and B Conference Room  
400 Waterfront Drive  
Pittsburgh, PA 15222
- May 30, 2007 1 p.m. Department of Environmental Protection  
Southcentral Regional Office  
Susquehanna A Conference Room  
909 Elmerton Avenue  
Harrisburg, PA 17110
- May 31, 2007 1 p.m. Department of Environmental Protection  
Southeast Regional Office  
Delaware River Conference Room  
2 East Main Street  
Norristown, PA 19401

Persons wishing to present testimony at a hearing are requested to contact the 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 for 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:** 7-411. (1) Clean Air Fund;

	<i>Major Emissions Facilities</i>
(2) Implementing Year 2006-07 is	\$0
(3) 1st Succeeding Year 2007-08 is	\$0
2nd Succeeding Year 2008-09 is	\$0
3rd Succeeding Year 2009-10 is	\$500,000
4th Succeeding Year 2010-11 is	\$500,000
5th Succeeding Year 2011-12 is	\$500,000

*Major Emissions Facilities*

(4) 2005-06 Program—	\$24,290,000
2004-05 Program—	\$24,533,000
2003-04 Program—	\$26,960,000

(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:

\* \* \* \* \*

***Vintage or vintage year***—The calendar year assigned to an allowance by the issuing authority that designates the first year in which it is valid for use in meeting an emission limit.

\* \* \* \* \*

**CHAPTER 129. STANDARDS FOR SOURCES**

**ADDITIONAL NO<sub>x</sub> REQUIREMENTS**

**§ 129.204. Emission accountability.**

\* \* \* \* \*

(b) The owner or operator shall determine actual emissions in accordance with one of the following:

\* \* \* \* \*

(2) If the owner or operator of the unit is not required to monitor NO<sub>x</sub> emissions with a CEMS, one of the following shall be used to determine actual emissions of NO<sub>x</sub>:

\* \* \* \* \*

(iv) An alternate calculation and recordkeeping procedure based upon emissions testing and correlations with operating parameters. The operator of the unit shall demonstrate that the alternate procedure does not underestimate actual emissions throughout the allowable range of operating conditions. **In regard to obtaining the Department's approval for an alternate calculation method and recordkeeping procedure for actual emissions, the owner or operator may request an adjustment to the allowable emissions calculations set forth in §§ 129.201—129.203. An allowable emission adjustment may not overestimate a unit's allowable emissions and must be based upon the parameters and procedures proposed in the alternate calculation method for actual emissions.** The alternate calculation and recordkeeping procedures must be approved by the Department, in writing, prior to implementation.

(c) The owner or operator of a unit subject to this section shall surrender to the Department one **CAIR NO<sub>x</sub> Ozone Season** allowance, as defined in § [ 145.2 ]145.202 (relating to definitions), for each ton of

NOx by which the combined actual emissions exceed the allowable emissions of the units subject to this section at a facility from May 1 through September 30. The surrendered NOx allowances shall be of current year vintage. For the purpose of determining the amount of allowances to surrender, any remaining fraction of a ton equal to or greater than 0.50 ton is deemed to equal 1 ton and any fraction of a ton less than 0.50 ton is deemed to equal zero tons.

\* \* \* \* \*

**CHAPTER 145. INTERSTATE POLLUTION TRANSPORT REDUCTION**

**Subchapter A. NOx BUDGET TRADING PROGRAM GENERAL PROVISIONS**

*(Editor's Note: The following section is new. It has been printed in regular type to enhance readability.)*

**§ 145.8. Transition to CAIR NOx trading programs.**

(a) The final year for NOx allowance allocations to be made by the Department under §§ 145.41 and 145.42 (relating to timing requirements for NOx allowance allocations; and NOx allowance allocations) will be 2008. Allocations in 2009 will be made in accordance with the Federal CAIR Ozone Season Trading Program, 40 CFR Part 97 (relating to Federal NOx Budget Trading Program and CAIR NOx and SO<sub>2</sub> Trading Programs). CAIR NOx Ozone Season allowance allocations for the control period starting May 1, 2010, and for each control period thereafter, will be distributed in accordance with Subchapter D (relating to CAIR NOx and SO<sub>2</sub> trading programs).

(b) The emission limitations and monitoring requirements established in Subchapter A are replaced by the requirements in Subchapter D pertaining to the CAIR NOx Ozone Season Trading Program beginning with the May 1, 2010, control period. If the owner or operator of a NOx budget unit or CAIR NOx Ozone Season unit, as defined in § 145.202 (relating to definitions), has failed to demonstrate compliance with § 145.54 (relating to compliance), the provisions in 40 CFR 96.354 (relating to compliance with CAIR NOx emissions limitation) shall be used to withhold CAIR NOx Ozone Season allowances in calendar year 2010 and beyond. If no CAIR NOx Ozone Season allowances are provided to the unit under § 145.221 (relating to timing requirements for CAIR NOx Ozone Season allowance allocations), the owner or operator of the unit shall acquire and retire a number of CAIR NOx Ozone Season allowances as specified in 40 CFR 96.354.

**INTERSTATE POLLUTION TRANSPORT REDUCTION REQUIREMENTS**

*(Editor's Note: The following section is new. It has been printed in regular type to enhance readability.)*

**§ 145.101. Transition requirements for nonelectric generating units.**

(a) Beginning May 1, 2009, the applicability requirements in § 145.4(a)(2) (relating to applicability) will no longer apply to nonelectric generating units.

(b) Beginning May 1, 2009, nonelectric generating units will be subject to one of the following:

(1) *Ozone Season NOx permit limit.* The Department will establish an Ozone Season NOx permit limit effective May 1, 2009, equal to the most recent Ozone Season NOx allowance allocation for each nonelectric generating unit

that meets the applicability requirements of a NOx budget unit under § 145.4(a)(2) before May 1, 2009.

(2) *NOx allowance allocation.* If the Department approves a plan approval application by May 1, 2008, for a nonelectric generating unit to be subject to CAIR NOx Ozone Season requirements under §§ 145.221—145.223 (relating to timing requirements for CAIR NOx Ozone Season allowance allocations; CAIR NOx Ozone Season allowance allocations; and supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.370—96.375), the Ozone Season NOx permit limit described in paragraph (1) will not apply to the nonelectric generating unit. The unit will receive CAIR NOx Ozone Season allowances for the duration of the CAIR NOx Ozone Season Trading Program or for the life of the unit, whichever is shorter, under the allocation cycle described in § 145.221. The amount of CAIR NOx Ozone Season allowances allocated to a nonelectric generating unit under this paragraph will equal the unit's 2008 NOx allowance allocation under Subchapter A (relating to NOx Budget Trading Program). The Department will amend the unit's permit to subject the unit to §§ 145.221—145.223 for the duration of the CAIR NOx Ozone Season Trading Program.

(c) A nonelectric generating unit may meet the limit in subsection (a) or (b) by retiring CAIR NOx Ozone Season allowances.

(d) A nonelectric generating unit may opt-in to the CAIR NOx Ozone Season program in accordance with 40 CFR Part 96, Subpart IIII (relating to CAIR NOx Ozone Season opt-in units).

(e) A nonelectric generating unit shall comply with the 40 CFR Part 75 (relating to continuous emission monitoring) monitoring requirements specified under 40 CFR Part 96, Subpart HHHH (relating to monitoring and reporting) to demonstrate compliance with this section. Alternatively, if approved by the Department in writing, a nonelectric generating unit may meet the monitoring requirements of this section by complying with the most recent version of the Department's continuous emissions monitoring system program manual.

**Subchapter B. EMISSIONS OF NOx FROM STATIONARY INTERNAL COMBUSTION ENGINES**

**§ 145.113. Standard requirements.**

\* \* \* \* \*

(d) The owner or operator of a unit subject to this section shall surrender to the Department one **CAIR NOx Ozone Season** allowance, as defined in § [ 145.2 ]145.202 (relating to definitions), for each ton of NOx by which the combined actual emissions exceed the allowable emissions of the units subject to this section at a facility from May 1 through September 30. The surrendered **CAIR NOx Ozone Season** allowances shall be of current year vintage. For the purposes of determining the amount of allowances to surrender, any remaining fraction of a ton equal to or greater than 0.50 ton is deemed to equal 1 ton and any fraction of a ton less than 0.50 ton is deemed to equal zero tons.

\* \* \* \* \*

**Subchapter C. EMISSIONS OF NOx FROM CEMENT MANUFACTURING**

**§ 145.143. Standard requirements.**

\* \* \* \* \*

(d) The owner or operator of a Portland cement kiln subject to this section shall surrender to the Department one **CAIR NO<sub>x</sub> Ozone Season** allowance, as defined in § [ 145.2 ]145.202 (relating to definitions), for each ton of NO<sub>x</sub> by which the combined actual emissions exceed the allowable emissions of the Portland cement kilns subject to this section at a facility from May 1 through September 30. The surrendered **CAIR NO<sub>x</sub> Ozone Season** allowances shall be of current year vintage. For the purposes of determining the amount of allowances to surrender, any remaining fraction of a ton equal to or greater than 0.50 ton is deemed to equal 1 ton and any fraction of a ton less than 0.50 ton is deemed to equal zero tons.

\* \* \* \* \*

(Editor's Note: The following subchapter is new. It has been printed in regular type to enhance readability.)

**Subchapter D. CAIR NO<sub>x</sub> AND SO<sub>2</sub> TRADING PROGRAMS**

**GENERAL PROVISIONS**

- 145.201. Purpose.
- 145.202. Definitions.
- 145.203. Applicability.
- 145.204. Incorporation of Federal regulations by reference.

**ADDITIONAL REQUIREMENTS FOR CHAPTER 127 EMISSION REDUCTION CREDIT PROVISIONS**

- 145.205. Emission reduction credit provisions.

**ADDITIONAL REQUIREMENTS FOR CAIR NO<sub>x</sub> ANNUAL TRADING PROGRAM**

- 145.211. Timing requirements for CAIR NO<sub>x</sub> allowance allocations.
- 145.212. CAIR NO<sub>x</sub> allowance allocations.
- 145.213. Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.170—96.175.

**ADDITIONAL REQUIREMENTS FOR CAIR NO<sub>x</sub> OZONE SEASON TRADING PROGRAM**

- 145.221. Timing requirements for CAIR NO<sub>x</sub> Ozone Season allowance allocations.
- 145.222. CAIR NO<sub>x</sub> Ozone Season allowance allocations.
- 145.223. Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.370—96.375.

**GENERAL PROVISIONS**

**§ 145.201. Purpose.**

This subchapter incorporates by reference the CAIR NO<sub>x</sub> Annual Trading Program and CAIR NO<sub>x</sub> Ozone Season Trading Program as a means of mitigating the interstate transport of fine particulates and nitrogen oxides, and the CAIR SO<sub>2</sub> Trading Program as a means of mitigating the interstate transport of fine particulates and sulfur dioxide. This subchapter also establishes general provisions and the applicability, allowance and supplemental monitoring, recordkeeping and reporting provisions.

**§ 145.202. Definitions.**

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

*Acid Rain Program*—A multistate sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under Title IV of the Clean Air Act (42 U.S.C.A. §§ 7651—7651o), regarding acid deposition control, and 40 CFR Parts 72—78.

*Administrator*—The Administrator of the EPA or the Administrator's authorized representative.

*Bottoming-cycle cogeneration unit*—A cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

*CAIR NO<sub>x</sub> allowance*—A limited authorization issued by a permitting authority or the Administrator under provisions of a state implementation plan that are approved under 40 CFR 51.123(o)(1), (2) or (p) (relating to findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen pursuant to the Clean Air Interstate Rule), or under 40 CFR Part 97, Subpart EE (relating to CAIR NO<sub>x</sub> allowance allocations) or 40 CFR 97.188 (relating to CAIR NO<sub>x</sub> allowance allocations to CAIR NO<sub>x</sub> opt-in units), to emit 1 ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO<sub>x</sub> Program. An authorization to emit nitrogen oxides that is not issued under provisions of a state implementation plan that are approved under 40 CFR 51.123(o)(1), (2) or (p) or 40 CFR Part 97, Subpart EE or 40 CFR 97.188 will not be a CAIR NO<sub>x</sub> allowance.

*CAIR NO<sub>x</sub> Annual Trading Program*—A multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with 40 CFR Part 96, Subparts AA—II and 40 CFR 51.123 or established by the Administrator in accordance with 40 CFR Part 97, Subparts AA—II and 40 CFR 51.123(p) and 52.35 (relating to what are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule relating to emissions of nitrogen oxides?), as a means of mitigating interstate transport of fine particulates and nitrogen oxides. The term refers to the program as adopted in §§ 145.201—145.205, 145.211—145.213 and 145.221—145.223.

*CAIR NO<sub>x</sub> Ozone Season allowance*—A limited authorization issued by a permitting authority or the Administrator under provisions of a state implementation plan that are approved under 40 CFR 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd) or (ee), or under 40 CFR Part 97, Subpart EEEE (relating to CAIR NO<sub>x</sub> Ozone Season allowance allocations) or 40 CFR 97.388 (relating to CAIR NO<sub>x</sub> Ozone Season allowance allocations to CAIR NO<sub>x</sub> Ozone Season opt-in units), to emit 1 ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO<sub>x</sub> Ozone Season Trading Program or a limited authorization issued by a permitting authority for a control period during 2003 through 2008 under the NO<sub>x</sub> Budget Trading Program in accordance with 40 CFR 51.121(p) (relating to findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen) to emit 1 ton of nitrogen oxides during a control period, provided that the provision in 40 CFR 51.121(b)(2)(ii)(E) may not be used in applying this definition and the limited authorization may not have been used to meet the allowance-holding requirement under the NO<sub>x</sub> Budget Trading Program. An authorization to emit nitrogen oxides that is not issued under provisions of a state implementation plan approved under 40 CFR 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd) or (ee) or 40 CFR Part 97, Subpart EEEE or 40 CFR 97.388 or under the NO<sub>x</sub> Budget Trading Program as described in the prior sentence will not be a CAIR NO<sub>x</sub> Ozone Season allowance.

*CAIR NO<sub>x</sub> Ozone Season Trading Program*—A multistate nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with 40 CFR Part 96, Subparts AAAA—IIII and 40 CFR 51.123 or established by the Administrator in accordance with 40 CFR Part 97, Subparts AAAA—IIII and 40 CFR 51.123(ee) and 52.35 as a means of mitigating interstate transport of ozone and nitrogen oxides. The term refers to the program as adopted in §§ 145.201—145.204 (relating to general provisions) and §§ 145.221—145.223 (relating to additional requirements for CAIR NO<sub>x</sub> Ozone Season trading program).

*CAIR NO<sub>x</sub> Ozone Season unit*—A unit that is subject to the CAIR NO<sub>x</sub> Ozone Season Trading Program under 40 CFR 96.304 (relating to applicability) and, except for purposes of 40 CFR 96.305 (relating to retired unit exemption) and 40 CFR Part 96, Subpart EEEE, a CAIR NO<sub>x</sub> Ozone Season opt-in unit under 40 CFR Part 96, Subpart IIII.

*CAIR NO<sub>x</sub> unit*—A unit that is subject to the CAIR NO<sub>x</sub> Annual Trading Program under 40 CFR 96.104 (relating to applicability) and, except for purposes of 40 CFR 96.105 (relating to retired unit exemption) and 40 CFR Part 96, Subpart EE (relating to CAIR NO<sub>x</sub> allowance allocations), a CAIR NO<sub>x</sub> opt-in unit under 40 CFR Part 96, Subpart II (relating to CAIR NO<sub>x</sub> opt-in units).

*CAIR SO<sub>2</sub> Trading Program*—A multistate sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with 40 CFR Part 96, Subparts AAA—III and 40 CFR 51.124 (relating to findings and requirements for submission of State implementation plan revisions relating to emissions of sulfur dioxide under the Clean Air Interstate Rule) or established by the Administrator in accordance with 40 CFR Part 97, Subparts AAA—III and 40 CFR 51.124(r) and 52.36 (relating to what are the requirements of the Clean Air Interstate Rule Federal Implementation Plans relating to emissions of sulfur dioxide?), as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

*CAIR SO<sub>2</sub> unit*—A unit that is subject to the CAIR SO<sub>2</sub> Trading Program under 40 CFR 96.204 (relating to applicability) and, except for purposes of 40 CFR 96.205 (relating to retired unit exemption), a CAIR SO<sub>2</sub> opt-in unit under 40 CFR Part 96, Subpart IIII (relating to CAIR SO<sub>2</sub> opt-in units).

*Cogeneration unit*—A stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine meeting both of the following requirements:

(i) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy.

(ii) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity, the following:

(A) For a topping-cycle cogeneration unit, both of the following:

(I) Useful thermal energy not less than 5% of total energy output.

(II) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5% of total energy input, if useful thermal energy produced is 15% or more of total energy output, or not less than 45%

of total energy input, if useful thermal energy produced is less than 15% of total energy output.

(B) For a bottoming-cycle cogeneration unit, useful power not less than 45% of total energy input.

*Combustion turbine*—

(i) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(ii) If the enclosed device is combined cycle, the term includes any associated duct burner, heat recovery steam generator, and steam turbine.

*Commence commercial operation*—

(i) For purposes of the CAIR NO<sub>x</sub> Annual Trading Program, the term “commence commercial operation” means, with regard to a unit, the following:

(A) To have begun to produce steam, gas or other heated medium used to generate electricity for sale or use, including test generation, except as provided in 40 CFR 96.105 and 40 CFR 96.184(h) (relating to opt-in process).

(I) For a unit that is a CAIR NO<sub>x</sub> unit under 40 CFR 96.104 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in this subparagraph and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), the date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(II) For a unit that is a CAIR NO<sub>x</sub> unit under 40 CFR 96.104 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in this subparagraph and that is subsequently replaced by a unit at the same source (in other words, repowered), the date shall remain the replaced unit’s date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in this clause or clause (B), as appropriate.

(B) Notwithstanding clause (i)(A) and except as provided in 40 CFR 96.105, for a unit that is not a CAIR NO<sub>x</sub> unit under 40 CFR 96.104 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in clause (i)(A), the unit’s date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO<sub>x</sub> unit under 40 CFR 96.104.

(I) For a unit with a date for commencement of commercial operation as defined in this subparagraph and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), the date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(II) For a unit with a date for commencement of commercial operation as defined in this subparagraph and that is subsequently replaced by a unit at the same source (in other words, repowered), the date shall remain the replaced unit’s date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in this clause or clause (A), as appropriate.

(ii) For purposes of the CAIR NOx Ozone Season Trading Program, the term “commence commercial operation” means, with regard to a unit, the following:

(A) To have begun to produce steam, gas or other heated medium used to generate electricity for sale or use, including test generation, except as provided in 40 CFR 96.305 and 96.384(h) (relating to opt-in process).

(I) For a unit that is a CAIR NOx Ozone Season unit under 40 CFR 97.304 (relating to applicability) on the later of November 15, 1990, or the date the unit commences commercial operation as defined in this subparagraph and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), the date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(II) For a unit that is a CAIR NOx Ozone Season unit under 40 CFR 96.304 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in this subparagraph and that is subsequently replaced by a unit at the same source (in other words, repowered), the date shall remain the replaced unit’s date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in this clause or clause (B), as appropriate.

(B) Notwithstanding clause (A) and except as provided in 40 CFR 96.305, for a unit that is not a CAIR NOx Ozone Season unit under 40 CFR 96.304 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in clause (A), the unit’s date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NOx Ozone Season unit under 40 CFR 96.304.

(I) For a unit with a date for commencement of commercial operation as defined in this subparagraph and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), the date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(II) For a unit with a date for commencement of commercial operation as defined in this subparagraph and that is subsequently replaced by a unit at the same source (in other words, repowered), the date shall remain the replaced unit’s date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in this clause or clause (A), as appropriate.

*Control period*—For purposes of the:

(i) CAIR NOx Annual Trading Program, the period beginning January 1 of a calendar year, except as provided in 40 CFR 96.106(c)(2) (relating to standard requirements), and ending on December 31 of the same year, inclusive.

(ii) CAIR NOx Ozone Season Trading Program, the period beginning May 1 of a calendar year, except as provided in 40 CFR 96.306(c)(2) (relating to standard requirements), and ending on September 30 of the same year, inclusive.

*Demand side management*—The management of customer consumption of electricity or the demand for electricity through the implementation of any of the following:

(i) Energy efficiency technologies, management practices or other strategies in residential, commercial, institutional or government customers that reduce electricity consumption by those customers.

(ii) Load management or demand response technologies, management practices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand.

(iii) Industrial by-product technologies consisting of the use of a by-product from an industrial process, including the reuse of energy from exhaust gases or other manufacturing by-products that are used in the direct production of electricity at the facility of a customer.

*EIA*—The Energy Information Administration of the United States Department of Energy or its successor.

*Gross electrical output*—The total electrical output from an electric generating unit before making any deductions for energy output used in any way related to the production of energy. For an electric generating unit generating only electricity, the gross electrical output is the output from the turbine/generator set.

*MWh-Megawatt-hour*—One million watt-hours.

*Operator*—

(i) For purposes of the CAIR NOx Annual Trading Program, any person who operates, controls or supervises a CAIR NOx unit, CAIR NOx source, CAIR NOx Ozone Season unit or CAIR NOx Ozone Season source.

(ii) The term includes a holding company, utility system or plant manager of the unit or source.

*Owner*—Any of the following persons:

(i) With regard to a CAIR NOx source, CAIR NOx unit at a source, CAIR NOx Ozone Season source or CAIR NOx Ozone Season unit at a source, respectively, any of the following persons:

(A) A holder of any portion of the legal or equitable title in a CAIR NOx unit at the source, the CAIR NOx unit, the CAIR NOx Ozone Season unit at the source or the CAIR NOx Ozone Season unit.

(B) A holder of a leasehold interest in a CAIR NOx unit at the source, the CAIR NOx unit, a CAIR NOx Ozone Season unit at the source or the CAIR NOx Ozone Season unit.

(C) A purchaser of power from a CAIR NOx unit at the source, the CAIR NOx unit, a CAIR NOx Ozone Season unit at the source or the CAIR NOx Ozone Season source under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, the term “owner” does not include a passive lessor, or a person who has an equitable interest through a passive lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from the CAIR NOx unit or CAIR NOx Ozone Season unit.

(ii) With regard to any general account, a person who has an ownership interest with respect to the CAIR NOx allowances or CAIR NOx Ozone Season allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person’s ownership interest with respect to CAIR NOx allowances or CAIR NOx Ozone Season allowances.

*Ozone Season*—The period beginning May 1 of a calendar year and ending on September 30 of the same year, inclusive.

*Pennsylvania Alternative Energy Portfolio Standard*—An applicable standard promulgated under the Alternative Energy Portfolio Standards Act (73 P.S. §§ 1648.1–1648.8).

*Renewable energy*—Energy generated:

(i) By one or more of the following fuels, energy resources or technologies, and that does not emit NO<sub>x</sub> or SO<sub>2</sub>:

- (A) Solar photovoltaic or solar thermal energy.
- (B) Wind energy.
- (C) Fuel cells that do not employ a fuel processor that emits NO<sub>x</sub>.
- (D) Ocean thermal, wave or tidal energy.
- (E) Low-impact hydro energy.
- (F) Geothermal energy.

(ii) From nuclear fuel, biomass, landfill gas, fuel cells that employ a fuel processor that emits NO<sub>x</sub>, or hydro using pumped storage is not renewable energy.

*Renewable energy certificate*—The tradable alternative energy credit instrument used to establish, verify and monitor compliance with the Pennsylvania Alternative Energy Portfolio Standard. A unit of credit shall equal 1 megawatt-hour of electricity from an alternative energy source.

*Tier I renewable energy qualifying source*—A renewable energy measure that generates renewable energy certificates under the applicable Pennsylvania Alternative Energy Portfolio Standard.

*Tier II demand side management energy efficiency qualifying source*—A demand side management energy efficiency measure that has no associated NO<sub>x</sub> emissions and that generates certified alternative energy credit under the applicable Pennsylvania Alternative Energy Portfolio Standard.

*Topping-cycle cogeneration unit*—A cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

*Unit*—A stationary, fossil-fuel-fired boiler, combustion turbine or other stationary, fossil-fuel-fired combustion device.

*Useful power*—With regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes any onsite processing or treatment of fuel combusted at the unit and any onsite emission controls).

*Useful thermal energy*—With regard to a cogeneration unit, thermal energy that is any of the following:

- (i) Made available to an industrial or commercial process (not a power production process), excluding heat contained in condensate return or makeup water.
- (ii) Used in a heating application (for instance, space heating or domestic hot water heating).
- (iii) Used in a space cooling application (in other words, thermal energy used by an absorption chiller).

### § 145.203. Applicability.

This subchapter applies to CAIR NO<sub>x</sub> units, CAIR NO<sub>x</sub> Ozone Season units and CAIR SO<sub>2</sub> units. This subchapter also applies to tier I renewable energy qualifying sources and tier II demand side management energy efficiency qualifying sources.

### § 145.204. Incorporation of Federal regulations by reference.

(a) Except as otherwise specified in this subchapter, the provisions of the CAIR NO<sub>x</sub> Annual Trading Program, found in 40 CFR Part 96 (relating to NO<sub>x</sub> budget trading program and CAIR NO<sub>x</sub> and SO<sub>2</sub> trading programs for state implementation plans), including all appendices, future amendments and supplements thereto, are incorporated by reference.

(b) Except as otherwise specified in this subchapter, the provisions of the CAIR SO<sub>2</sub> Trading Program, found in 40 CFR Part 96, including all appendices, future amendments and supplements thereto, are incorporated by reference.

(c) Except as otherwise specified in this subchapter, the provisions of the CAIR NO<sub>x</sub> Ozone Season Trading Program, found in 40 CFR Part 96, including all appendices, future amendments and supplements thereto, are incorporated by reference.

(d) In the event of a conflict between Federal regulatory provisions incorporated by reference in this subchapter and Pennsylvania regulatory provisions, the provision expressly set out in this subchapter shall be followed unless the Federal provision is more stringent. Federal regulations that are cited in this subchapter or that are cross-referenced in the Federal regulations incorporated by reference include any Pennsylvania modifications made to those Federal regulations.

## ADDITIONAL REQUIREMENTS FOR CHAPTER 127 EMISSION REDUCTION CREDIT PROVISIONS

### § 145.205. Emission reduction credit provisions.

A permit or plan approval will not be issued to the owner or operator of a unit not subject to this subchapter for which emission reduction credits (ERCs) or creditable emission reductions were considered in an applicability determination under Chapter 127, Subchapter E (relating to new source review) or for which any emission trade under Chapter 127 (relating to construction, modification, reactivation and operation of sources) is authorized, if the ERCs or creditable emission reductions were, or will be, generated by a unit subject to this subchapter, unless the following conditions are satisfied:

(1) Prior to issuing the permit or plan approval, the Department permanently reduces the Commonwealth's applicable CAIR NO<sub>x</sub> trading budget beginning six control periods after the date the unit will be authorized in the permit or plan approval to commence operation or increase emissions. The Department will reduce the trading budget for each control period by an amount of allowances equal to the amount that would be required to be surrendered under this subchapter if the allowable emissions stemming from the ERCs or creditable emission reductions were emitted.

(2) The permit or plan approval contains a condition prohibiting the owner or the operator of the unit from commencing operation or increasing emissions until the owner or the operator of the unit that generated the ERCs or creditable emission reductions surrenders to the Department an amount of allowances equal to the

amount that would be required to be surrendered under this subchapter if the allowable emissions stemming from the ERCs or creditable emission reductions were emitted for five consecutive control periods beginning with that date. The allowances surrendered must be of present or past vintage years.

#### **ADDITIONAL REQUIREMENTS FOR CAIR NO<sub>x</sub> ANNUAL TRADING PROGRAM**

##### **§ 145.211. Timing requirements for CAIR NO<sub>x</sub> allowance allocations.**

(a) *Provisions not incorporated by reference.* The requirements of 40 CFR 96.141 (relating to timing requirements for CAIR NO<sub>x</sub> allowance allocations) are not incorporated by reference. Instead of 40 CFR 96.141, the requirements set forth in this section apply.

(b) *Regular allocations.* The Department will make regular allocations of CAIR NO<sub>x</sub> allowances as follows:

(1) Except for allocations made under subsection (c), by April 30, 2008, the Department will submit to the Administrator the CAIR NO<sub>x</sub> allowance allocations made in accordance with § 145.212 (relating to CAIR NO<sub>x</sub> allowance allocations) for the control periods in 2010 and 2011 in a format prescribed by the Administrator.

(2) Except for allocations made under subsection (c), by April 30, 2009, the Department will submit to the Administrator the CAIR NO<sub>x</sub> allowance allocations made in accordance with § 145.212 for the control periods in 2012 and 2013 in a format prescribed by the Administrator. By April 30 every 2 years after 2009, the Department will submit the allocations for the next two consecutive control periods.

(c) *New CAIR NO<sub>x</sub> unit allowance allocations.* By April 30, 2011, and by April 30 every year thereafter, the Department will submit to the Administrator the CAIR NO<sub>x</sub> allowance allocations made in accordance with § 145.212(e). The Department will base the allocations on actual emissions in the calendar year preceding the year of the submission.

(d) *Publication.* The Department will publish notice of the proposed CAIR NO<sub>x</sub> allowance allocations in the *Pennsylvania Bulletin* as follows, and will publish the final allocations after a 15-day public comment period:

(i) For allocations made under subsection (b)(1), by April 1, 2008.

(ii) For allocations made under subsection (b)(2), by April 1, 2009, and by April 1 every 2 years thereafter.

(iii) For allocations made under subsection (c), by March 1 each year, beginning in 2011.

##### **§ 145.212. CAIR NO<sub>x</sub> allowance allocations.**

(a) *Provisions not incorporated by reference.* The requirements of 40 CFR 96.142 (relating to CAIR NO<sub>x</sub> allowance allocations) are not incorporated by reference. Instead of 40 CFR 96.142, the requirements set forth in this section apply.

(b) *Baseline heat input.* Except for new unit allocations made under subsection (e) based on a previous year's emissions, and except for allocations made to subsection (f)(1) qualifying resources, the control period baseline heat input (in mmBtu) used with respect to CAIR NO<sub>x</sub> allowance allocations under subsection (c) for each CAIR NO<sub>x</sub> unit will be converted as follows:

(1) A unit's control period heat input and a unit's status as coal-fired or oil-fired for a calendar year under this paragraph will be determined in one of the following two ways:

(i) In accordance with 40 CFR Part 75 (relating to continuous emission monitoring), to the extent that the unit was otherwise subject to 40 CFR Part 75 for the year.

(ii) Based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

(2) Except as provided in subparagraphs (iv) and (v), a unit's converted control period heat input for a calendar year shall be determined as follows:

(i) The control period gross electrical output of the generators served by the unit multiplied by 7,900 Btu/kWh if the unit is coal-fired for the year, and divided by 1,000,000 Btu/mmBtu.

(ii) The control period gross electrical output of the generators served by the unit multiplied by 6,675 Btu/kWh if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu.

(iii) If a generator is served by two or more units, the gross electrical output of the generator will be attributed to each unit in proportion to the share of the total control period heat input from each of the units for the year.

(iv) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy, the total heat energy (in Btus) of the steam produced by the boiler during the annual control period, divided by 0.8 and by 1,000,000 Btu/mmBtu.

(v) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy, the annual control period gross electrical output of the enclosed device comprising the compressor, combustor and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the annual control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(vi) Calculations will be based on the best output data available on or before January 31 of the year the allocations are published. If unit level electrical or steam output data are not available from EIA, or submitted by this date by the owner or operator of the CAIR NO<sub>x</sub> unit, then heat input data for the period multiplied by 0.25 and converted to MWh will be used to determine total output.

(vii) If the total allowances calculated for all eligible recipients exceeds the CAIR NO<sub>x</sub> annual budget, the Department will adjust allocations on a prorata basis to meet the budget.

(c) *Existing unit, new unit and subsection (f)(1) qualifying resource allocation baseline.* For each control period beginning with January 1, 2010, and each year thereafter, the Department will allocate to qualifying resources and CAIR NO<sub>x</sub> units, including CAIR NO<sub>x</sub> units issued allowances under subsection (e), a total amount of CAIR NO<sub>x</sub> allowances equal to the number of CAIR NO<sub>x</sub> allowances remaining in the Commonwealth's trading budget under 40 CFR 96.140 (relating to state trading budgets) for those control periods using baseline heat input data as determined under subsection (b) from a baseline year that is 5 years before the control period.

(d) *Proration of allowance allocations.* Except for allocations made under subsections (e) and (f)(2), the Depart-

ment will allocate CAIR NOx allowances to each existing CAIR NOx unit and qualifying resource in an amount determined by multiplying the amount of CAIR NOx allowances allocated under subsection (c) or (f), as applicable, by the ratio of the baseline heat input of the existing CAIR NOx unit or qualifying resource to the amount of baseline heat input of existing CAIR NOx units and qualifying resources and rounding to the nearest whole allowance as appropriate. The Department will make CAIR NOx allowance allocations under this subsection after the Department makes CAIR NOx allowance allocations to units under subsection (e).

(e) *Allocations to new CAIR NOx units.* By March 31, 2011, and March 31 each year thereafter, the Department will allocate CAIR NOx allowances under § 145.211(c) (relating to timing requirements for CAIR NOx allowance allocations) to CAIR NOx units equal to the previous year's emissions at each unit, unless the unit has been issued allowances of the previous year's vintage in a regular allocation under § 145.211(b). The Department will allocate CAIR NOx allowances under this subsection of a vintage year that is 5 years later than the year in which the emissions were generated. The number of CAIR NOx allowances allocated may not exceed the actual emission of the year preceding the year in which the Department makes the allocation. The allocation of these allowances to the new unit will not reduce the number of allowances the unit is entitled to receive under § 145.211(b).

(f) *Allocations to qualifying resources and units exempted by section 405(g)(6)(A) of the Clean Air Act.* For each two control periods beginning with 2010 and thereafter, the Department will allocate CAIR NOx allowances to qualifying resources under paragraph (1) in this Commonwealth that are not also allocated CAIR NOx allowances under subsection (c) and to existing units under paragraph (2) that were exempted at any time under section 405(g)(6)(A) of the Clean Air Act (42 U.S.C.A. § 7651d(g)(6)(A)), regarding phase II sulfur dioxide requirements, and that commenced operation prior to January 1, 2000, but did not receive an allocation of SO<sub>2</sub> allowances under the EPA's Acid Rain program, as follows:

(1) The Department will allocate CAIR NOx allowances to a tier I renewable energy qualifying resource or tier II demand side management energy efficiency qualifying resource in accordance with subsections (c) and (d) upon receipt by the Department of an application, in writing, meeting the requirements of this paragraph. The number of allowances allocated to the qualifying resource will be determined by converting the certified quantity of electric energy production, useful thermal energy, and energy equivalent value of the measures approved under the Pennsylvania Alternative Energy Portfolio Standard to equivalent thermal energy. To receive allowances under this subsection, the qualifying resource must have commenced operation after January 1, 2005, must be located in this Commonwealth and may not be a CAIR NOx unit. The following procedures apply:

(i) The Department will transfer the allowances into an account designated by the owner or operator of the qualifying resource, or into an account designated by an aggregator approved by the Public Utility Commission or its designee.

(ii) The applicant shall provide the Department with the corresponding renewable energy certificate serial numbers.

(iii) At least one whole allowance must be generated per owner, operator or aggregator for an allowance to be issued.

(2) The Department will allocate CAIR NOx allowances to the owner or operator of a CAIR SO<sub>2</sub> unit that commenced operation prior to January 1, 2000, that has not received an SO<sub>2</sub> allocation for that compliance period, as follows:

(i) The owner or operator of a unit may apply, in writing, to the Department under this subsection to receive a cost-equivalent additional amount of CAIR NOx allowances that were needed during each CAIR NOx allowance allocation cycle to be allocated in the following allocation cycle.

(ii) The cost-equivalent additional amount of CAIR NOx allowances an owner or operator may request under this paragraph is 1 CAIR NOx allowance for every 8 tons of SO<sub>2</sub> emitted from a qualifying unit during the control period.

(iii) If the original CAIR NOx allowance allocation for the unit for the cycle exceeded its actual emissions of NOx for the cycle, the value of the excess CAIR NOx allowances will not be included in the amount of CAIR NOx allowances allocated.

(iv) If the total number of NOx allowances requested by all qualified units under this paragraph exceeds 1.3% of the Pennsylvania annual CAIR NOx budget, units will receive a prorated allocation based upon the following equation:

$$\frac{(\text{A unit's requested cost-equivalent CAIR NOx allowance allocation} - \text{facility excess allowances for the control period}) \times (0.013 \times \text{number of CAIR NOx allowances in Pennsylvania CAIR NOx budget for the control period})}{\text{Total number of CAIR NOx allowances requested from all units requesting allowances under this paragraph}}$$

Total number of CAIR NOx allowances requested from all units requesting allowances under this paragraph

(v) Owners and operators of previously exempted units that opt in to or are opted in to the Acid Rain Program will also reduce the number of NOx allowances requested each year under this section by 1 NOx allowance for every 8 SO<sub>2</sub> allowances they are issued under the opt-in provisions of the Acid Rain Program.

(3) The Department will review each CAIR NOx allowance allocation request under this subsection and will allocate CAIR NOx allowances for each control period under a request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of this section.

(ii) On or after January 1 of the year of allocation, the Department will determine the sum of the CAIR NOx allowances requested.

(4) Up to 1.3% of the Commonwealth's annual NOx budget is available for allocation in each control period from 2010—2015 for the purpose of offsetting SO<sub>2</sub> emissions under paragraph (2). Beginning January 1, 2016, the units will no longer be allocated CAIR NOx allowances under paragraph (2).

(5) Notwithstanding the provisions of paragraphs (2)—(4), the Department may extend, terminate or otherwise modify the allocation of NOx allowances made available under this subsection for units exempted under section 405(g)(6)(A) of the Clean Air Act after providing notice in the *Pennsylvania Bulletin* and at least a 30-day public comment period.



(g) Errors in allocations discovered after allocations are made shall be corrected in a subsequent allocation cycle.

**§ 145.213. Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.170—96.175.**

(a) By January 1, 2008, or by the date of commencing commercial operation, whichever is later, the owner or operator of the CAIR NOx unit shall install, calibrate, maintain and operate a wattmeter, measure gross electrical output in megawatt-hours on a continuous basis and record the output of the wattmeter. If a generator is served by two or more units, the information to determine the heat input of each unit for that control period shall also be recorded, so as to allow each unit's share of the gross electrical output to be determined. If heat input data are used, the owner or operator shall comply with the applicable provisions of 40 CFR Part 75 (relating to continuous emission monitoring).

(b) By September 1, 2008, for a CAIR NOx unit that is a cogeneration unit, and for a CAIR NOx unit with cogeneration capabilities, the owner or operator shall install, calibrate, maintain and operate meters for steam flow in lbs/hr, temperature in degrees Fahrenheit, and pressure in PSI, to measure and record the useful thermal energy that is produced, in mmBtu/hr, on a continuous basis. The owner or operator of a CAIR NOx unit that produces useful thermal energy but uses an energy transfer medium other than steam, such as hot water or glycol, shall install, calibrate, maintain and operate the necessary meters to measure and record the data necessary to express the useful thermal energy produced, in mmBtu/hr, on a continuous basis. If the unit ceases to produce useful thermal energy, the owner or operator may cease operation of the meters, but operation of the meters shall be resumed if the unit resumes production of useful thermal energy.

(c) Beginning with 2008, the designated representative of the unit shall submit to the Department an annual report showing monthly gross electrical output and monthly useful thermal energy from the unit. The report is due by January 31 for the preceding calendar year.

(d) The owner or operator of a CAIR NOx unit shall maintain onsite the monitoring plan detailing the monitoring system and maintenance of the monitoring system, including quality assurance activities. The owner or operator of a CAIR NOx unit shall retain the monitoring plan for at least 5 years from the date that it is replaced by a new or revised monitoring plan. The owner or operator of a CAIR NOx unit shall provide the Department with a written copy of the monitoring plan by January 1, 2008, and thereafter within 3 calendar months of making updates to the plan.

(e) The owner or operator of a CAIR NOx unit shall retain records for at least 5 years from the date the record is created or the data collected as required by subsections (a) and (b), and the reports submitted to the Department and the EPA in accordance with subsections (c) and (d).

**ADDITIONAL REQUIREMENTS FOR CAIR NOx OZONE SEASON TRADING PROGRAM**

**§ 145.221. Timing requirements for CAIR NOx Ozone Season allowance allocations.**

(a) *Provisions not incorporated by reference.* The requirements of 40 CFR 96.341 (relating to timing requirements for CAIR NOx Ozone Season allowance allocations)

are not incorporated by reference. Instead of 40 CFR 96.341, the requirements in this section apply.

(b) *Regular allocations.* The Department will make regular allocations of CAIR NOx Ozone Season allowances as follows:

(1) Except for allocations made under subsection (c), by April 30, 2008, the Department will submit to the Administrator the CAIR NOx Ozone Season allowance allocations made in accordance with § 145.222 (relating to CAIR NOx Ozone Season allowance allocations) for the control periods in 2010 and 2011 in a format prescribed by the Administrator.

(2) Except for allocations made under subsection (c), by April 30, 2009, the Department will submit to the Administrator the CAIR NOx Ozone Season allowance allocations made in accordance with § 145.222 for the control periods in 2012 and 2013 in a format prescribed by the Administrator. By April 30 every 2 years after 2009, the Department will submit the allocations for the next two consecutive control periods.

(c) *New CAIR NOx unit allowance allocations.* By April 30, 2011, and by April 30 every year thereafter, the Department will submit to the Administrator the CAIR NOx Ozone Season allowance allocations made in accordance with § 145.222(e). The Department will base the allocations on actual emissions in the Ozone Season in the calendar year preceding the year of the submission.

(d) *Publication.* The Department will publish notice of the proposed CAIR NOx Ozone Season allowance allocations in the *Pennsylvania Bulletin* as follows and will publish the final allocations after a 15-day public comment period:

(1) For allocations made under subsection (b)(1), by April 1, 2008.

(2) For allocations made under subsection (b)(2), by April 1, 2009, and by April 1 every 2 years thereafter.

(3) For allocations made under subsection (c), by March 1 each year, beginning in 2011.

**§ 145.222. CAIR NOx Ozone Season allowance allocations.**

(a) *Provisions not incorporated by reference.* The requirements of 40 CFR 96.342 (relating to CAIR NOx Ozone Season allowance allocations) are not incorporated by reference. Instead of 40 CFR 96.342, the requirements in this section apply.

(b) *Baseline heat input.* Except for new unit allocations made under subsection (e) based on a previous year's emissions, and except for allocations made to subsection (f) qualifying resources, the control period baseline heat input (in mmBtu) used with respect to CAIR NOx Ozone Season allowance allocations under subsection (c) for each CAIR NOx Ozone Season unit will be converted as follows:

(1) A unit's control period heat input and a unit's status as coal-fired or oil-fired for the Ozone Season portion of a calendar year under this paragraph will be determined in one of the following two ways:

(i) In accordance with 40 CFR Part 75 (relating to continuous emission monitoring), to the extent that the unit was otherwise subject to the requirements of 40 CFR Part 75 for the control period.

(ii) Based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

(2) Except as provided in subparagraphs (iv) and (v), a unit's converted control period heat input for the ozone season portion of a calendar year shall be determined as follows:

(i) The control period gross electrical output of the generators served by the unit multiplied by 7,900 Btu/kWh if the unit is coal-fired for the ozone season control period, and divided by 1,000,000 Btu/mmBtu.

(ii) The control period gross electrical output of the generators served by the unit multiplied by 6,675 Btu/kWh if the unit is not coal-fired for the ozone season control period, and divided by 1,000,000 Btu/mmBtu.

(iii) If a generator is served by 2 or more units, the gross electrical output of the generator will be attributed to each unit in proportion to the share of the total control period heat input from each of the units for the ozone season control period.

(iv) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy, the total heat energy (in Btus) of the steam produced by the boiler during the ozone season control period, divided by 0.8 and by 1,000,000 Btu/mmBtu.

(v) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the ozone season control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(vi) Calculations will be based on the best output data available on or before January 31 of the year the allocations are published. If unit level electrical or steam output data are not available from EIA, or submitted by this date by the owner or operator of the CAIR NOx Ozone Season unit, then heat input data for the period multiplied by 0.25 and converted to MWh will be used to determine total output.

(vii) If the total allowances calculated for all eligible recipients exceeds the CAIR NOx Ozone Season budget, the Department will adjust allocations on a prorata basis to meet the budget.

(c) *Existing unit, new unit and subsection (f)(1) qualifying resource allocation baseline.* For each control period beginning with the 2010 control period and thereafter, the Department will allocate to qualifying resources and CAIR NOx Ozone Season units, including CAIR NOx Ozone Season units issued allowances under subsection (e), a total amount of CAIR NOx Ozone Season allowances equal to the number of CAIR NOx Ozone Season allowances remaining in the Commonwealth's trading budget under 40 CFR 96.140 (relating to state trading budgets) for those control periods using baseline heat input data as determined under subsection (b) from an ozone season control period in a baseline year that is 5 years before the control period.

(d) *Proration of allowance allocations.* Except for allocations made under subsection (e), the Department will allocate CAIR NOx Ozone Season allowances to each existing CAIR NOx Ozone Season unit and qualifying resource in an amount determined by multiplying the

amount of CAIR NOx Ozone Season allowances allocated under subsection (c) or (f), as applicable, by the ratio of the baseline heat input of the existing CAIR NOx Ozone Season unit or qualifying resource to the amount of baseline heat input of existing CAIR NOx Ozone Season units and qualifying resources and rounding to the nearest whole allowance as appropriate. The Department will make CAIR NOx Ozone Season allowance allocations under this subsection after the Department makes CAIR NOx Ozone Season allowance allocations to units under subsection (e).

(e) *Allocations to new CAIR NOx Ozone Season units.* By March 31, 2011, and March 31 each year thereafter, the Department will allocate CAIR NOx Ozone Season allowances under § 145.221(c) (relating to timing requirements for CAIR NOx Ozone Season allowance allocations) to CAIR NOx Ozone Season units equal to the previous year's emissions at each unit, unless the unit has been issued allowances of the previous year's vintage in a regular allocation under § 145.221(b). The Department will allocate CAIR NOx allowances under this subsection of a vintage year that is 5 years later than the year in which the emissions were generated. The number of CAIR NOx Ozone Season allowances allocated shall not exceed the actual emission of the year preceding the year in which the Department makes the allocation. The allocation of these allowances to the new unit will not reduce the number of allowances the unit is entitled to receive under § 145.221(b).

(f) *Allocations to qualifying resources.* For each two control periods beginning with the 2010 control period, and thereafter, the Department will allocate CAIR NOx Ozone Season allowances to qualifying resources in this Commonwealth that are not also allocated CAIR NOx Ozone Season allowances under subsection (c), as follows:

(1) The Department will allocate CAIR NOx Ozone Season allowances to a tier I renewable energy qualifying resource or tier II demand side management energy efficiency qualifying resource in accordance with subsections (c) and (d) upon receipt by the Department of an application, in writing, meeting the requirements of this paragraph. The number of allowances allocated to the qualifying resource will be determined by converting the certified quantity of electric energy production, useful thermal energy, and energy equivalent value of the measures approved under the Pennsylvania Alternative Energy Portfolio Standard to equivalent thermal energy. To receive allowances under this subsection, the qualifying resource must have commenced operation after January 1, 2005, must be located in this Commonwealth and may not be a CAIR NOx Ozone Season unit. The following procedures apply:

(i) The Department will transfer the allowances into an account designated by the owner or operator of the qualifying resource, or into an account designated by an aggregator approved by the Public Utility Commission or its designee.

(ii) The applicant shall provide the Department with the corresponding renewable energy certificate serial numbers.

(iii) At least one whole allowance must be generated per owner, operator or aggregator for an allowance to be issued.

(2) The Department will review each CAIR NOx Ozone Season allowance allocation request under this subsection and will allocate CAIR NOx Ozone Season allowances for each control period under a request as follows:

(i) The Department will accept an allowance allocation request only if the request meets, or is adjusted by the Department as necessary to meet, the requirements of this section.

(ii) On or after January 1 of the year of allocation, the Department will determine the sum of the CAIR NOx Ozone Season allowances requested.

(g) Errors in allocations discovered after allocations are made shall be corrected in a subsequent allocation cycle.

**§ 145.223. Supplemental monitoring, recordkeeping and reporting requirements for gross electrical output and useful thermal energy for units subject to 40 CFR 96.370—96.375.**

(a) By January 1, 2008, or by the date of commencing commercial operation, whichever is later, the owner or operator of the CAIR NOx Ozone Season unit shall install, calibrate, maintain and operate a wattmeter, measure gross electrical output in megawatt-hours on a continuous basis and record the output of the wattmeter. If a generator is served by two or more units, the information to determine the heat input of each unit for that control period shall also be recorded, so as to allow each unit's share of the gross electrical output to be determined. If heat input data are used, the owner or operator shall comply with the applicable provisions of 40 CFR Part 75 (relating to continuous emission monitoring).

(b) By September 1, 2008, for a CAIR NOx Ozone Season unit that is a cogeneration unit, and for a CAIR NOx Ozone Season unit with cogeneration capabilities, the owner or operator shall install, calibrate, maintain and operate meters for steam flow in lbs/hr, temperature in degrees Fahrenheit and pressure in PSI, to measure and record the useful thermal energy that is produced, in mmBtu/hr, on a continuous basis. The owner or operator of a CAIR NOx Ozone Season unit that produces useful thermal energy but uses an energy transfer medium

other than steam, such as hot water or glycol, shall install, calibrate, maintain and operate the necessary meters to measure and record the data necessary to express the useful thermal energy produced, in mmBtu/hr, on a continuous basis. If the unit ceases to produce useful thermal energy, the owner or operator may cease operation of the meters, but operation of the meters shall be resumed if the unit resumes production of useful thermal energy.

(c) Beginning with 2008, the designated representative of the unit shall submit to the Department an annual report showing monthly gross electrical output and monthly useful thermal energy from the unit. The report is due by January 31 for the preceding calendar year.

(d) The owner or operator of a CAIR NOx Ozone Season unit shall maintain onsite the monitoring plan detailing the monitoring system and maintenance of the monitoring system, including quality assurance activities. The owner or operator of a CAIR NOx Ozone Season unit shall retain the monitoring plan for at least 5 years from the date that it is replaced by a new or revised monitoring plan. The owner or operator of a CAIR NOx Ozone Season unit shall provide the Department with a written copy of the monitoring plan by January 1, 2008, and thereafter within 3 calendar months of making updates to the plan.

(e) The owner or operator of a CAIR NOx Ozone Season unit shall retain records for at least 5 years from the date the record is created or the data collected as required by subsections (a) and (b), and the reports submitted to the Department and the EPA in accordance with subsections (c) and (d).

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