

# PENNSYLVANIA BULLETIN

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See Part II page 5117  
for the Environmental Quality Board's  
Proposed Consumer Products Regulations

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Department of Agriculture  
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Department of Community and Economic  
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Department of Conservation and Natural  
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Environmental Quality Board  
Independent Regulatory Review Commission  
Insurance Department  
Legislative Reference Bureau  
Milk Marketing Board  
Pennsylvania Emergency Management Agency  
Pennsylvania Public Utility Commission  
State Employees' Retirement Board

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

**No. 394, September 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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### Printing Format

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

### Fiscal Notes

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

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

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# List of Pa. Code Chapters Affected

The following numerical guide is a list of the chapters of each title of the *Pennsylvania Code* affected by documents published in the *Pennsylvania Bulletin* during 2007.

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# THE COURTS

## Title 255—LOCAL COURT RULES

### MCKEAN COUNTY

Adoption of Civil Procedure; No. 158 December of 1904

#### Order of Court

And Now, this 22nd day of August, 2007, it is ordered and decreed as follows:

1. The McKean County Local Rules of Civil Procedure are hereby adopted, effective 30 days after publication in the *Pennsylvania Bulletin*;

2. The District Court Administrator of the 48th Judicial District of Pennsylvania is hereby Ordered to:

a. File seven certified copies of this Order and the Local Rules of Civil Procedure with the Administrative Office of Pennsylvania Courts;

b. File two certified copies and a computer diskette containing this Order and the Local Rules of Civil Procedure with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. File one certified copy of this Order and the Local Rules of Civil Procedure with the Pennsylvania Civil Procedural Rules Committee;

d. Provide one copy of this Order and the Local Rules of Civil Procedure to each member of the McKean County Bar Association; and

e. Keep continuously available for public inspection copies of this Order and the Local Rules of Civil Procedure.

It is further *Ordered and Decreed* that contemporaneously with the effective date of the within Local Rules of Civil Procedure, any previously adopted local civil rules of court are rescinded and vacated.

JOHN M. CLELAND,  
*President Judge*

### THE BUSINESS OF THE COURTS Pa.R.C.P. 201 to 250

#### RULE L205.2(a) Binding and Attachment

(1) All papers filed with the Prothonotary shall be top bound and prepared for flat filing.

(2) Attachments to any paper filed with the Prothonotary shall be clearly legible. Copies shall faithfully represent the original in every respect.

#### RULE L205.2(b) Cover Sheet

All papers shall have a cover sheet in substantially the following form:

COURT OF COMMON PLEAS OF MCKEAN COUNTY  
PENNSYLVANIA  
CIVIL ACTION-(LAW) (EQUITY)  
No. \_\_\_\_\_  
Type of Case: \_\_\_\_\_

\_\_\_\_\_ Plaintiff  
Type of Pleading: \_\_\_\_\_

VS.  
Filed on Behalf of: \_\_\_\_\_  
(Plaintiff/ Defendant)  
Counsel of Record for this Party: \_\_\_\_\_  
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(Address) \_\_\_\_\_  
(Phone) \_\_\_\_\_

\_\_\_\_\_ Defendant  
Dated: \_\_\_\_\_ Counsel of Record for Adverse Party: \_\_\_\_\_

#### RULE L206.1(a) Petition Practice

(a) As used in these rules, "petition shall mean only an application to open a default judgment or a judgment of non pros."

#### RULE L206.4(c) Procedure for Issuance of A Rule to Show Cause

(a) The issuance of a rule to show cause shall be discretionary with the court and shall be in accordance with Pa.R.C.P. 206.5.

(b) The petition seeking the issuance of a rule shall be supported with an appropriate statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief filed contemporaneously with the petition; or, in a routine petition that does not raise complex legal or factual issues, in the body of the petition itself.

(c) Attached to the petition shall be a proposed order in the form prescribed in Pa.R.C.P. 206.5(d). The court in its discretion may delete paragraphs (4) and (5) of the form order (regarding discovery and argument) and provide instead that the matter will proceed before the court on an evidentiary hearing to resolve disputed issues of fact. The court may also enter an order to require the filing of briefs or to authorize discovery to proceed other than by deposition.

(d) Any request for stay of execution pending disposition of a petition to open judgment shall be filed by separate motion.

(e) The petition and any motion seeking a stay of execution shall be scheduled for argument and/or hearing by the Court Administrator and it is not necessary for the moving party to request hearing and/or argument.

#### RULE L208.2(c) Statement of Authority

All motions shall be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief filed contemporaneously with the

motion; or, in routine motions that do not raise complex legal or factual issues, in the body of the motion itself.

**RULE L208.2(d) Uncontested Motions**

A motion that is represented to be uncontested shall contain a certification by counsel for the moving party that counsel has conferred with all interested parties and that the requested relief is uncontested.

**RULE L208.2(e) Discovery Motions**

A motion relating to discovery shall contain a certification by counsel for the moving party that counsel has conferred, or attempted to confer, with all interested parties in an attempt to resolve the matter without court action and has been unable to reach a satisfactory resolution of the issues presented.

**RULE L208.3(a) Motion Procedure: Scheduling and Argument**

(a)(1) Filing and Scheduling:

(i) All motions shall be filed with the Prothonotary in the form prescribed in Rule L205.2.

(ii) Motions should not be filed with the Court Administrator. Courtesy copies for the court are not required. Motions should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(iii) The court will take no action until a motion has been filed of record, except in unusual circumstances.

(iv) All motions, including emergency motions, shall be scheduled for argument after filing and without the necessity of filing a praecipe for argument or like document. Argument will be scheduled for a time and date certain, and not at a regularly scheduled argument court. The court, in its discretion, may decide the matter at argument or take the matter under advisement.

(a)(2) Telephone or video conferences: The court, in its discretion, may hear any argument by telephone or video conference hookup provided counsel has made a prompt request to participate electronically in writing to the Court Administrator. The party requesting the opportunity to participate electronically shall bear the cost thereof, unless the court provides otherwise.

(a)(3) The Official Court Reporter does not attend arguments unless directed by the court, or unless counsel has made a timely request.

(a)(4) Transcripts: The moving party in all post-trial or post-hearing motions or petitions shall, if the argument relates to the testimony presented, arrange for the transcription of so much of the testimony as may be required to resolve the issues presented.

(b) Reply brief: The opposing party shall file an answer or reply brief to the motion within 20 days after service of the motion unless the time for filing the response is modified by court order.

**RULE L210 Form of Briefs**

Briefs shall be typewritten and double spaced (except for quotation) on paper approximately 8-1/2 inches by 11 inches in size, shall be bound at the top, not at the side, and shall contain:

- (a) A history of the case.
- (b) A statement of the question or questions involved.
- (c) A copy of, or reference to, the pertinent parts of any relevant document, report, recommendation, or order.
- (d) An argument with citation of the authority relied upon.

- (e) A conclusion.

**RULE L212.2 Pre-Trial Statement**

At or before the date set for the pre-trial conference each party shall submit to the court and other counsel a pre-trial statement containing:

(1) A narrative statement of the facts that will be offered by oral or documentary evidence at trial, and a statement of any unusual questions of evidence anticipated with respect to proof of such facts.

(2) A statement of any unusual questions of law anticipated with respect to the issues in the case. All such questions shall be presented with a statement of authority supporting the position taken with respect to such unusual questions of law.

(3) A list of names and addresses of all persons who may be called as witnesses, classifying them as liability and/or damage witnesses. The listing of a witness by a party shall impose no liability on the party to call the witness or to procure his attendance at trial.

(4) Medical reports of any doctor who treated, examined or was consulted in connection with the injuries complained of, and who may be called as a witness.

(5) The reports of any expert whose opinion will be offered in evidence at the time of trial. Such report shall include the findings and conclusions of the expert.

(6) A list of all items of special damages which the party intends to prove, including medical bills, property damage bills (or estimates if there are no bills) and loss of earnings. Claims for loss of earnings shall set forth the names of employers, dates of absences and rates of pay. If the party is self-employed, information which forms the basis for the loss of income attributable to the injuries shall be supplied.

(7) A list of all exhibits which the party may use at trial.

(8) A copy of any hypothetical questions to be used with regard to any subject except the physical or mental condition of the party, or the cause thereof, together with the name and address of the witness to whom it is to be propounded.

(9) A copy of any plan or plot proposes to be introduced into evidence.

(10) An estimate of the length of time which will be required to present the party's case in chief.

**RULE L212.3 Pre-Trial Conference**

(a) For purposes of this rule, "pre-trial" shall mean a type of conference described in Pa.R.C.P. No. 212.3.

(b) Except as otherwise ordered by the court, pre-trial conferences shall be held at times directed by the court. Pre-trial conferences are extended to all actions not subject to arbitration under Rule L1301.

(c) Any application for continuance of the conference shall be by motion addressed to the court.

(d) Counsel attending the pre-trial conference must have complete authority to stipulate on items of evidence and admissions and must have full settlement authority. If counsel does not have such authority then the person or corporation having the actual interest in the case, whether as a party, as an insurance carrier or otherwise, shall be personally present at the pre-trial conference.

(e) If a party, in the exercise of reasonable diligence, first becomes aware after the pre-trial conference of the

necessity or desirability of using a witness, an exhibit, a hypothetical question, plot or plan, he shall forthwith provide the court and other counsel with the same information with respect to such witness, exhibit, hypothetical question, plot or plan as is required on the pre-trial statement set forth in (e) above.

Failure to provide such information shall not be compliance with this subsection, and may, in the discretion of the court, justify refusal by the court to permit the use of such witness, exhibit, hypothetical question, plot or plan at trial.

**RULE L223 Proposed Findings of Fact, Conclusions of Law**

At any bench trial or arbitration hearing, except by leave of Court or of the board of arbitration, no party shall be permitted to present evidence either in support of or in opposition to any claim or cause of action unless the party has first presented proposed findings of fact, conclusions of law and a memorandum in support thereof.

The Court or board of arbitration, in its discretion, may grant a continuance to allow the non-filing party to prepare the required findings, conclusions and memorandum, except that the costs of litigation thereby caused to the other party or parties to the action may be imposed as a sanction of the non-filing party.

**RULE L223.1 Pre-Trial Matters, Points for Charge**

(a) Before the beginning of any non-jury trial or trial before a Board of Arbitrators counsel shall submit a concise memorandum of the applicable law and proposed findings of facts.

(b) Before the beginning of any jury trial counsel shall present to the Court a concise memorandum of the applicable law and requested points for charge. Requested points for charge shall be exchanged by counsel at the close of evidence.

(c) All requested points for charge shall contain a citation of authority.

(d) In so far as possible, all exhibits shall be marked for identification before the beginning of trial.

**RULE L225 Addresses and Summing Up**

(a) Opening addresses may be made by all parties or groups of parties at the commencement of the trial in the order of their appearing in the pleadings. Any party may reserve his opening address until immediately before presenting his evidence.

(b) After the close of the testimony, each party or group of parties shall have the right of final address or argument in inverse order to the order of opening addresses, unless otherwise ordered by the Court.

(c) Counsel shall not consume more than thirty minutes in either the opening address or the summing up address, except by special allowance.

**RULE L227.1 Post-Trial Conferences**

In every case in which a Motion for Post-Trial Relief has been filed, the court may schedule a post-trial conference to be held as soon as the business of the court permits. The purpose of such conference shall be to determine the precise issue or issues that will be before the court on said motion and the extent of the trial record which will need to be transcribed.

**Miscellaneous Court Matters**

The Pennsylvania Rules of Civil Procedure do not specifically deal with the matters covered by Rules L300

through L507 and, therefore, there are no Pennsylvania Rules of Civil Procedure corresponding to Local Rules L300 through L507.

**RULE L300 Service Requirements of All Papers**

Unless otherwise provided by an Act of Assembly or rule of court, a copy of each paper filed in any case, other than the writ, complaint, or other process by which an action is commenced, shall be served by the party filing it promptly upon all other parties to the litigation or their attorneys of record. The manner of service shall be in conformity with Pa.R.C.P. 440. No matter shall be considered by the court unless there has been filed either a proof of service, acceptance of service or certificate of service.

**RULE L301 Copies of Writings**

Whenever a copy of a writing is attached to a pleading, brief or other paper submitted to the court, such copy shall be clearly legible and faithfully represent the original in every respect, and unless the original itself is not legible the court may require a substitute copy to be made and filed before the pleading, brief or other paper will be considered by the court.

**RULE L302 Face Sheet, Flat Filing and Top Binding**

(a) All papers filed with the prothonotary in an action at law or in equity and in other matters designated shall be prepared for flat filing. Every pleading shall have a face sheet in substantially the following form:

COURT OF COMMON PLEAS OF McKEAN COUNTY  
PENNSYLVANIA

CIVIL ACTION-(LAW) (EQUITY)  
No. \_\_\_\_\_

Type of Case: \_\_\_\_\_

Type of Pleading: \_\_\_\_\_

Filed on Behalf of:  
\_\_\_\_\_  
(Plaintiff/ Defendant)

Counsel of Record for this Party:  
\_\_\_\_\_  
(Name of Attorney)  
Supreme Court No.: \_\_\_\_\_  
\_\_\_\_\_  
(Firm name, if any)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone)

Dated: \_\_\_\_\_ Counsel of Record for Adverse Party: \_\_\_\_\_

(b) All papers described in (a) above shall be bound at the top, not the side, so that they may be assembled with other papers in the case in a top bound file cover.

**RULE L303 Matters for Argument**

(1) Upon the filing of any motion, petition, exceptions, or the like, requiring legal argument, the matter will be

scheduled by the court in an order which will also establish the briefing schedule, if any. If the brief is not presented to the Court when ordered, the Court, in its discretion, may refuse to consider a late brief or to hear oral argument.

(2) The court may, in its discretion, hear oral argument on any motion by speaker telephone conference provided that the conversations of all parties are audible to all persons present, or upon stipulation of all parties, by regular telephone conference call. Upon request of any party, such oral argument may be recorded by a court reporter under such conditions as the court shall deem practicable. Counsel shall schedule such telephone calls at a time mutually agreeable to all parties and the court. The expense of the call will be shared equally by the parties, unless the court directs otherwise.

#### **RULE L303(1) Supporting Memorandum of Law**

All motions, exceptions, preliminary objections, and petitions, upon filing, must be supported by a brief or memorandum of law in support thereof. If not so supported, then the motion or exceptions shall be summarily disposed of, unless counsel promptly requests permission for good cause to file the required memorandum or brief at a later date.

The Court will then fix a date for the filing of a reply brief and for oral argument. If no reply brief is filed as ordered, then the non-filing party will not be heard at oral argument except by leave of Court.

This rule shall not apply to exceptions taken to the recommendation of the Family Law Master or Permanent Hearing Officer.

#### **NOTE**

It is not the intention of this rule to require "full blown" briefs on simple or routine issues. The extent of memorandums of law or briefs submitted in support of the motion should be in proportion to the complexity of the issue which the motion raises.

Consequently, a complicated motion, such as a motion for summary judgment, should be supported by a brief or memorandum which fully discusses the facts and the applicable law.

A routine motion or a motion presenting uncomplicated issues may be supported by a recitation of fact or authority in the motion itself or in a cover letter. In those situations, all that is required is a citation to the appropriate rule, statute or case law which establishes that the movant is entitled to the relief requested and that the Court has the power to grant it.

#### **RULE L304 Motions and Petitions**

(a) Motions and petitions shall be filed with the prothonotary or clerk of the Orphans Court for presentation to the court.

(b) Except for emergency matters and routine matters that are not contested, no motion or petition requesting *ex parte* action shall be heard by the court unless prior notice of its presentation has been given to opposing counsel of record.

#### **RULE L305 Motions: Post-Trial and Post-Hearing**

The moving party in all post-trial and post-hearing motions or petitions shall, if argument thereon is to be with reference to the testimony, include a request for a transcript of the testimony, or such part thereof as the moving party desires to have transcribed for the purposes of such motion.

#### **RULE L306 Notice**

(a) All notices shall be in writing.

(b) Except as otherwise provided by Act of Assembly, rule or special order of court, whenever any process, paper or notice is required to be served upon a party, such service shall be made in accordance with the procedure set forth in Pa.R.C.P. 400—441; if service is to be made by publication, then service shall be made as provided by Rule L430.

#### **RULE L307 Prothonotary**

(a) The prothonotary shall immediately endorse all papers filed with the date of such filing, and shall enter into an appropriate docket all pleadings, rules, orders of court and other papers filed in every case.

(b) The prothonotary shall be responsible for the safe keeping of all records and papers belonging in her office. No paper may be taken from the files of the prothonotary without the consent of the prothonotary or one authorized by the prothonotary to give such consent. A record shall be made of any paper removed from the prothonotary's office and the person who receipts for such paper shall be responsible for return of the same and for any financial loss occasioned by failure to return the paper.

(c) Only the prothonotary, his clerks, attorneys registered in McKean County and such other persons as the prothonotary shall specially authorize shall be permitted direct access to the prothonotary's files.

(d) No entries shall be made in any prothonotary's docket except at the direction of the prothonotary or by order of court.

#### **RULE L308 Trial Sessions, Trial Lists and Continuances**

(a) Jury Trial Sessions: Jury trial sessions will be held at such times as shall be established in the annual court calendar.

(b) Praecepte for Trial: To place a case on the trial list, counsel for one or more of the parties in the case shall file a Praecepte to List for Trial. The party placing a case on the trial list shall forthwith serve a copy of the Praecepte upon all other counsel of record, who, if for any reason oppose such certification, shall within ten (10) days thereafter file their reasons opposing listing.

(c) Prothonotary's Active Trial List: Ten days after a Praecepte to List for Trial has been filed, if no objection thereto has been filed, the prothonotary shall place the case upon the Prothonotary's Active Trial List and twenty days before jury selection the prothonotary shall deliver to the court a copy of the current Trial List.

(d) Pre-Trial Conference: Upon receipt of the Trial List the court shall schedule a pre-trial conference to be held on each case on the Trial List. Said conference shall be held in the manner provided by Local Rule L212.3.

(e) Trial Session List: Upon completion of the pre-trial conferences the court administrator shall prepare and deliver to all counsel of record and unrepresented parties a Trial Session List which shall show the cases that will be called for jury selection and the date and time counsel are to be on hand to select juries. Such notice shall also set forth the dates when non-jury cases will be tried.

(f) Continuances: Any case continued from the Active Trial List or Trial Session List will be stricken from the list and must be praeceded onto the Active Trial List in accordance with this rule.

**RULE L308(b) Listing Cases for Trial**

(1) To place a case on the trial list, counsel for one or more of the parties in the case shall proceed as herein provided.

(i) File a Praeceptum to List for Trial and serve the praecipe on all other counsel of record and unrepresented parties. The praecipe shall contain a certification by listing counsel that: the pleadings are closed; there are no outstanding motions; all pretrial discovery is completed; all counsel of record and unrepresented parties agree that the matter is presently ready for trial and that they do not object to its listing.

(ii) By motion reciting that all counsel and unrepresented parties do not agree that the case is presently ready for trial, and requesting that the Court order the case for trial. The Court shall then promptly schedule a hearing to consider the matter.

(2) In no event shall any matter proceed to jury selection or shall trial dates be reserved unless the pleadings are closed, discovery is completed, and there is no other impediment to the immediate trial of the case, unless the Court orders otherwise for good cause.

\_\_\_\_\_  
Plaintiff  
VS  
\_\_\_\_\_  
Defendant  
IN THE COURT OF COMMON PLEAS OF McKEAN COUNTY, PENNSYLVANIA  
CIVIL DIVISION  
NO. \_\_\_\_\_ C.D. 20 \_\_\_\_\_

**MOTION TO PLACE CASE ON TRIAL LIST**

COMES NOW, \_\_\_\_\_ counsel for \_\_\_\_\_, and requests that the Court place the above captioned matter on the \_\_\_\_\_ trial list, pursuant to Local Rule L308(b)(i)(ii).

The undersigned has contacted all counsel of record and unrepresented parties and all parties do not agree that the matter is presently ready for trial.

Proof of Service is attached.

Respectfully Submitted,  
\_\_\_\_\_

Date: \_\_\_\_\_ Counsel for \_\_\_\_\_

\_\_\_\_\_  
Plaintiff  
VS  
\_\_\_\_\_  
Defendant  
IN THE COURT OF COMMON PLEAS OF McKEAN COUNTY, PENNSYLVANIA  
CIVIL DIVISION  
NO. \_\_\_\_\_ C.D. 19 \_\_\_\_\_

**PRAECIPE**

To the Prothonotary:

As listing counsel, pursuant to Local Rule 308, I hereby certify:

- 1. The pleadings are closed.
- 2. There are no outstanding motions.
- 3. All discovery is completed.
- 4. All counsel of record and unrepresented parties have been contacted and agree that this matter is presently ready for trial and that they do not object to its listing.

A copy of this praecipe has been served on all counsel of record and unrepresented parties in the following manner:

Respectfully Submitted,  
\_\_\_\_\_  
Counsel for \_\_\_\_\_

**RULE L309 Manner of Scheduling Equity Cases**

Any party to an equity proceeding who desires that the case be advanced for early trial listing shall request by motion that the case be given priority trial status. Upon receipt of such request the prothonotary shall forthwith transmit the record papers to the court administrator who shall then schedule the case for pretrial conference and trial as soon as the business of the court permits.

**RULE L310 Court Calendar**

At the beginning of each calendar year, the court shall prepare a court calendar for the current year which shall have the effect of a rule of court establishing the times that the matters set forth in the court calendar shall be heard.

**RULE L311 Security For Costs**

(a) The defendant or any interested party may petition the court to require the plaintiff who resides out of state, or who is in bankruptcy, or has insolvency proceedings pending against him, to file security for costs.

(b) The court, by special order upon cause shown, may require a plaintiff or a defendant who seeks affirmative relief to enter security for costs.

(c) The claimant in a sheriff's interpleader issue shall be construed to be a plaintiff within the meaning of this rule.

(d) In default of security entered at the time fixed by the court, judgment of default or other appropriate court order may be made in favor of the party obtaining the order.

**RULE L312 Bills of Costs**

(a) Bills of costs must contain the names of the witnesses, the dates of their attendance, the number of miles actually traveled by them, and the place from which mileage is claimed. The bill shall be verified by the affidavit of the party filing it or his agent or attorney that the witnesses named were actually present in court, and that, in his opinion, they were material witnesses. A copy of the bill shall be served on opposing counsel.

(b) The party upon whom a bill of costs has been served may, within ten (10) days after such service, file exception thereto, and the issue shall be determined by the court. Failure to file exception within ten (10) days shall be deemed a waiver of all objections.

**RULE L313 Default Judgments**

(a) Whenever a judgment for money is taken by default and the party in whose favor the judgment is entered has filed an instrument or copy thereof, upon which the amount of the judgment is based and a calculation of the judgment is submitted, the prothonotary shall enter the judgment for the amount shown to be due upon the face of the instrument.

(b) If a default judgment cannot be made certain by computation, Pa.R.C.P. 1037 shall apply.

**RULE L314 Judgment on Verdict**

Judgment shall not be entered on a verdict within the time allowed for motions for judgment n.o.v., for new trial, or for arrest of judgment, nor until the party obtaining the verdict shall have paid the prothonotary the required jury fee as provided by law.

**RULE L315 Striking or Opening Judgments Other Than Confessed Judgments Covered by Pa.R.C.P. 2959**

The pleadings and procedure for relief from judgments, other than confessed judgments, shall be the same as the pleadings and procedure for relief set forth in Pa.R.C.P. 2959 and Pa.R.C.P. 2960 for confessed judgments.

**RULE L316 Judgment by Agreement**

Except in actions to which a minor or an incompetent is a party and in actions for wrongful death in which a minor or incompetent has an interest, verdicts and nonsuits, and judgments by agreement may be entered at any time but only upon written stipulation signed by the parties or by their counsel of record and filed in the case.

**RULE L317 Judgments: Re-Indexing**

Judgments entered on confession may be subsequently re-indexed against any defendant under any alias name upon the plaintiff's attorney filing a praecipe therefor supported by an affidavit that such alias defendant is the same person against whom the judgment was originally entered and indexed. The subsequent re-indexing shall be noted on the docket of the original number and term and shall be re-indexed on a separate line in the judgment index, clearly showing the date of such re-indexing.

**RULE L318 General Pleading Form**

Except as otherwise provided by statute, or rule of court, pleadings in all actions shall, as nearly as possible, conform to the rules relating to civil actions law.

**RULE L319 Termination of Inactive Civil Cases**

(a) On or before November 1st of each year the prothonotary shall list for General Call a list of all civil matters in which no steps or proceedings have been taken for two years or more prior thereto.

(b) The prothonotary shall give at least 30 days notice to counsel of record, and to the parties for whom no appearance has been entered, advising them that the time, place and date of the General Call will be the first Monday in November, and that an order will be entered at that time terminating the case on the grounds of unreasonable inactivity unless some action is taken before the General Call, or good cause is shown as to why the case should not be terminated.

(c) The notice herein required shall be in person or by mail to the last address of record of counsel or the parties setting forth a brief identity of the matter to be terminated.

(d) When the prothonotary is unable to give notice in person or by mail, notice or service shall be made in such form and manner in accordance with Pa.R.J.A. 1901(c) as the court, by order, may direct.

(e) The prothonotary shall file an affidavit of service of the herein prescribed notice of intention to terminate inactive cases.

(f) If no good cause for continuing any case is shown at the General Call, an order shall be issued forthwith by the Court for dismissal of said case.

**RULE L400.1 Person to Make Service**

With respect to all actions filed in McKean County, Pennsylvania, original process shall be served within the Commonwealth

(i) by the sheriff or a competent adult in the actions in equity, partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought, and

(ii) by the sheriff in all other actions.

*Note:* This Rule is promulgated pursuant to the provisions of Pa.R.C.P. 400.1, as adopted by Order of the Supreme Court of Pennsylvania of June 14, 1999, at No. 316 Civil Procedural Rule Docket No. 5.

**RULE L430 Service, Petitions, Rules, Orders And Notices—Publications**

Whenever service by publication is authorized by law or rule of court and the manner of publication is not otherwise specified, such service shall be made by publishing the required notice one time in a newspaper of general circulation in McKean County. Affidavits of publication shall be filed in the prothonotary's office.

**RULE L500 Auditors and Auditor's Reports**

(a) Auditors shall be members of the bar.

(b) Auditors' hearings shall be held at the courthouse and testimony taken either by a court stenographer or by a stenographer to be agreed upon by the parties in interest.

(c) Auditors shall give public notice of the time and place of hearings before them, by advertisement once a week for two successive weeks in a newspaper of general circulation of McKean County, stating therein that all persons must prove their claims before them or be debarred from coming upon the fund. In addition thereto, auditors shall obtain from the assignors or debtors, a list of their creditors, and, if the proceeds of the sale of real estate are to be distributed, searches for liens and encumbrances, and award distribution accordingly, unless objections be made, in which event those whose claims are objected to shall be notified to prove their claims or be debarred from coming in upon the fund.

(d) Any person desiring an issue to be granted shall present his petition to the auditor within forty-eight hours after the testimony in relation to the matter in dispute is closed, setting forth under oath or affirmation that material facts are in dispute and the nature and character thereof; and it shall be the duty of the auditor forthwith to make report thereof to the court for its action.

(e) The auditor shall not file his report until ten days after he has notified all the parties who appeared before him that it is subject to their inspection, and that it will be filed on a given date, unless written exceptions are filed with him before that time. If exceptions are filed, he shall re-examine the subject and amend his report, if, in his opinion, the exceptions are in whole or in part, well founded.

(f) The argument before the court shall be confined to the exceptions filed with the auditor; the court will, however, recommit the report if of the opinion that justice requires it.

(g) If no exceptions are filed with the auditor, the report, on motion, will be confirmed by the court.

(h) When facts are controverted before the auditor, he shall report the same as proved, in a concise or digested form and shall also state concisely the questions of law



raised before him and his decisions thereon, with his reasons therefor, and when distribution is made, a distinct account or schedule of the liens on the funds, paid and unpaid, in a form convenient for review shall be made out and presented with the report showing precisely the disposition made of the funds. The testimony, documentary or otherwise shall be returned separately and filed with the report.

(i) The auditor shall file his completed report with the prothonotary, who shall mark in confirmed nisi, which confirmation shall become absolute, without further order, if no objection thereto is made within ten (10) days. If objection to the report is made, it shall be treated as renewal of the exceptions filed by the party with the auditor; and in this case or if exceptions are filed with the prothonotary within this ten day period, the prothonotary shall enter the case on the argument list to be taken up in due course.

(j) Upon motion made by a party interested, of misconduct or unreasonable delay on the part of any auditor, the court may either vacate his appointment or grant a rule on him to show cause why he should not proceed forthwith in the duties of his appointment; and in case of contempt, may punish him by fine or attachment.

#### **RULE L501 Distribution**

(a) Whenever the aid of the court is desired in the distribution of money in court or in the hands of any collecting officer of the court, the party asking its interposition shall present to the court a written statement of the facts, showing its necessity or propriety, and thereupon the court may appoint an auditor to report the facts and make distribution or make such other order as may seem best calculated to bring the matter to a speedy close.

(b) The court may, on motion and upon satisfactory evidence, decree distribution of any portion of the fund in court, not included in any controversy, before or during the pendency of the audit, and order such portions of the fund that is being audited to be deposited or invested during the controversy.

(c) Duplicate receipts shall be given for all moneys paid in pursuance of such distribution, one of which shall be filed in the case and the other upon the original lien docket.

#### **RULE L502 Receivers and Assignees for Creditors**

(a) Assignees for the benefit of creditors and receivers shall, after they have entered security, give notice of their appointment, to every creditor and party in interest of whom they have knowledge, and shall also publish notice thereon once a week for two successive weeks in a newspaper of general circulation published in McKean County.

(b) The assignee shall file with the account a petition for distribution in form similar to that of petitions for distribution required by the Orphans' Court Division of this county and all such accounts and petitions for distribution shall be filed in the office of the Prothonotary.

(c) The assignee shall give written notice of the filing of the account, the petition for distribution and of the call for the audit or confirmation thereof to all parties interested. Such notice shall be given by mailing the same to the last known address of the one entitled to receive the same, at least three weeks before the presentation of the account to the court, and shall also be published by the prothonotary for two successive weeks in one newspaper of general circulation published in McKean County.

(d) Any such account filed for audit and confirmation shall be audited preliminarily by the prothonotary and then presented to the court, together with the proofs of publication and proof of the giving of the required notice to interested parties at the time fixed for the audit or confirmation thereof; and if no exceptions have been filed, the account may be confirmed absolutely.

#### **RULE L503 Sheriff**

It shall be the duty of the sheriff, or his deputy, to always be present in the courthouse when the court is in session and to promptly execute all orders of the court and process issued by it.

#### **RULE L504 Limitations on Bail and Security**

Neither the prothonotary, nor his deputy, nor the sheriff or sheriff's deputy or clerk, shall be admitted as bail or surety in any action, civil or criminal unless by leave of the court for special reasons shown.

#### **RULE L506 Money Paid Into Court**

(a) A party to an action may, upon motion and such notice to the adverse party as the court may direct, pay into court the amount admitted to be due, together with costs, if any. The party entitled to the money may accept the money and settle and discontinue the action or may refuse the money and proceed with the action. If the adverse party shall not recover more than the amount paid into court, all additional costs shall be deducted from the money. This tender into court shall in no way alter the rights of the parties as to legal tender made before suit.

(b) Parties wishing to extinguish liens upon real estate in which they have an interest may, on motion and such notice to the creditor as the court may direct, pay into court the amount due and have satisfaction entered upon the lien.

(c) Upon payment of money into court, to abide its order, the same shall be deposited by the prothonotary in an account in the name of the prothonotary kept for such purposes, and shall be payable only by a check signed by the prothonotary pursuant to order of court.

(d) Under the provisions of the bulk transfers section of the Uniform Commercial Code, 13 Pa.C.S.A. 6101 et seq, the petition of the transferee, in addition to other necessary allegations, shall give the name, address and amount of claims of creditors of the transferor insofar as the same are known to him and may request the appointment of an auditor. If the petition be approved by the court, an auditor may be appointed forthwith to determine what creditors of the transferor are entitled to recommend distribution to the court. The auditor shall give notice of his appointment and perform all his duties in accordance with the provisions of Rule L500. He shall also give notice of the time of filing claims to the transferors and transferees, or their attorneys, by registered or certified mail to each known creditor whose name and address is set forth in the Petition.

#### **RULE L507 Deputy Constables**

Petitions for approval of the appointment or revocation of the appointment of deputy constables shall set forth the following facts:

- (1) The act of assembly authorizing the appointment.
- (2) Name and address of the petitioner.
- (3) The name of the municipality or district in which petitioner was elected.

(4) The date of commencement and expiration of the term of office of the petitioner.

(5) The name and full address of the surety on petitioner's bond and an averment that the surety has had notice of the petition, to be evidenced by the written joinder of the surety in the prayer of the petitioner.

(6) The name and full address of the person to be appointed deputy constable, or whose appointment is to be revoked, and an averment that the person to be appointed is of good repute and has not been convicted of a felony or misdemeanor.

(7) A full statement of the necessity, facts and reasons for making or revoking the appointment.

(8) If any security of any kind is given or to be given by the petitioner or his surety, then the nature, character, and extent shall be fully set forth or, in lieu thereof, an averment that no security is being given.

**CIVIL ACTION—LAW  
R.C.P. 1001 to 1038**

**RULE L1018.1 Notice to Defend**

The person, to be named in the notice to defend, from whom legal help can be obtained is:

Northwestern Legal Services  
100 Main Street  
Bradford, PA 16701  
Telephone: 814-362-6596

**RULE L1028(c) Preliminary Objections**

(a) Filing. All preliminary objections shall be filed with the Prothonotary in the form prescribed in Rule L205.2. Preliminary objections should not be filed with the Court Administrator. Courtesy copies for the court are not required. Preliminary objections should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(b) The court will take no action until the preliminary objections have been filed of record, except in unusual circumstances.

(c) Statement of applicable authority: All preliminary objections shall be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief filed contemporaneously with the motion; or, if the preliminary objections do not raise complex legal or factual issues, in the body of the preliminary objections.

(d) Scheduling: Preliminary objections shall be scheduled for argument after filing and without the necessity of filing a praecipe for argument or like document. Argument will be scheduled for a time and date certain, and not at a regularly scheduled argument court. The court, in its discretion, may decide the matter at argument or take the matter under advisement.

(e) Reply brief: The opposing party shall file an answer or reply brief to the preliminary objections within 20 days after service of the motion unless the time for filing the response is modified by court order.

(f) Telephone or video conferences: The court, in its discretion, may hear any argument by telephone or video conference hookup provided counsel has made a prompt request to participate electronically in writing to the Court Administrator. The party requesting the opportunity to participate electronically shall bear the cost thereof, unless the court provides otherwise.

(g) The Official Court Reporter does not attend arguments unless directed by the court, or upon timely request of counsel.

**RULE L1033 Amended Pleading**

Whenever an amended pleading is filed, such pleading shall be a complete pleading and not merely set forth the amendments to the former pleading. The amended pleading shall clearly indicate that it is an amended pleading, the paragraphs shall be renumbered, and the new portion shall be underlined.

**RULE L1034(a) Motion for Judgment on the Pleadings**

(a) Filing. A motion for judgment on the pleadings shall be filed with the Prothonotary in the form prescribed in Rule L205.2. It should not be filed with the Court Administrator. Courtesy copies for the court are not required. It should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(b) The court will take no action until the motion has been filed of record, except in unusual circumstances.

(c) Statement of applicable authority. It shall be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief filed contemporaneously with the motion; or, in routine motions that do not raise complex legal or factual issues, in the body of the motion itself.

(d) Scheduling: It shall be scheduled for argument after filing and without the necessity of filing a praecipe for argument or like document. Argument will be scheduled for a time and date certain, and not at a regularly scheduled argument court. The court, in its discretion, may decide the matter at argument or take the matter under advisement.

(e) Reply brief: The opposing party shall file an answer or reply brief to the motion within 20 days after service of the motion unless the time for filing the response is modified by court order.

(f) Telephone or video conferences: The court, in its discretion, may hear any argument by telephone or video conference hookup provided counsel has made a prompt request to participate electronically in writing to the Court Administrator. The party requesting the opportunity to participate electronically shall bear the cost thereof, unless the court provides otherwise.

(g) The Official Court Reporter does not attend arguments unless directed by the court, or upon timely request of counsel.

**RULE L1035.2(a) Motion for Summary Judgment**

(a) Filing. A motion for judgment on the pleadings shall be filed with the Prothonotary in the form prescribed in Rule L205.2. It should not be filed with the Court Administrator. Courtesy copies for the court are not required. It should not be filed in duplicate or by facsimile transmission, except in emergency circumstances.

(b) The court will take no action until the motion has been filed of record, except in unusual circumstances.

(c) Statement of applicable authority. It shall be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form or a brief filed contemporaneously with the motion.

neously with the motion; or in routine motions that do not raise complex legal or factual issues, in the body of the motion itself.

(d) Scheduling: It shall be scheduled for argument after filing and without the necessity of filing a praecipe for argument or like document. Argument will be scheduled for a time and date certain, and not at a regularly scheduled argument court. The court, in its discretion, may decide the matter at argument or take the matter under advisement.

(e) Reply brief: The opposing party shall file an answer or reply brief to the motion within 20 days after service of the motion unless the time for filing the response is modified by court order.

(f) Telephone or video conferences: The court, in its discretion, may hear any argument by telephone or video conference hookup provided counsel has made a prompt request to participate electronically in writing to the Court Administrator. The party requesting the opportunity to participate electronically shall bear the cost thereof, unless the court provides otherwise.

(g) The Official Court Reporter does not attend arguments unless directed by the court, or upon timely request of counsel.

(h) Transcripts: If the argument relates to the testimony presented, the moving party shall arrange for the transcription of so much of the testimony as may be required to resolve the issues presented.

#### **RULE L1039 Reserved**

#### **ACTION OF EJECTMENT Pa.R.C.P. 1051 to 1057**

#### **RULE L1053 Service**

Unless otherwise ordered by the court, service by publication shall be made by publication for two consecutive weeks in a newspaper of general circulation within the county. No further action can be taken until twenty (20) days after the last publication. Proof of publication shall be filed in the prothonotary's office.

#### **ACTION TO QUIET TITLE Pa.R.C.P. 1061 to 1066**

#### **RULE L1064 Service**

(a) If a defendant is dead or his identity or whereabouts is unknown and the plaintiff moves the court for an order authorizing service by publication upon such a defendant, the plaintiff shall attach an affidavit to such motion setting forth the following averments:

1. The plaintiff has caused the records in the offices of the Register and Recorder to be examined to ascertain the date of death of the defendant, whether he died testate or intestate, the names and addresses of all the defendant's heirs, legatees or devisees, and whether or not there has been any adverse conveyance of the real estate that is subject of the suit.

2. That he had made a good faith effort to locate the whereabouts of the defendant or defendants.

3. That in the case of a corporation that has been dissolved, he has caused the records in the offices of the Register and Recorder to be examined to ascertain whether or not there has been adverse conveyance or distribution of the real estate that is the subject of the suit.

(b) Unless otherwise directed by the court, service by publication shall be made two consecutive weeks in a newspaper of general circulation in the county.

#### **RULE L1066 Form of Judgments or Order**

Any order entered under subsection (b) (1) of the Pennsylvania Rules of Civil Procedure shall include a description of the property. If notice of the entry of such an order is given by publication, it shall be given as provided by Rule L1064.

#### **RULE L1302 Arbitration**

(a) All cases which are at issue, where the amount in controversy (exclusive of interest and costs) shall be \$25,000 or less, except those involving title to real estate, equity actions, actions upon bail bonds and recognizances, actions upon penal statutes, and other actions which do not involve the recovery of money damages, including divorce, mandamus and quo warranto, shall be submitted to and heard and decided by a Board of Arbitration which shall be composed of three (3) attorneys. The Prothonotary shall maintain a list of available arbitrators who shall all be members of the Bar actively engaged in the practice of law primarily in McKean County.

(b) Cases which are not at issue, and whether or not suit has been filed, may be submitted to a Board of Arbitration by agreement of reference signed by all parties or their counsel. The agreement of reference shall define the issues to be submitted to the Board, and, when agreeable to the parties, shall also contain stipulations with respect to facts agreed or defenses waived. When a case is submitted to the Board by agreement of reference, the agreement shall take the place of pleadings and shall be filed of record in the office of the Prothonotary and shall be assigned a number and term.

(c) Cases shall be placed on the arbitration list by one or more of the parties in the case or their counsel filing a Praecipe for Arbitration, together with a listing fee in the amount of \$100. Ten days after the case has been precaped onto the list, if no objection thereto have been filed, the Prothonotary shall promptly appoint a panel of three (3) arbitrators to hear and decide the case, and shall forward copies of all pleadings and other documents filed in the case to all arbitrators. The chairman so appointed shall forthwith establish the time, date and place of trial and notify all counsel of record, unrepresented parties, and members of the arbitration panel thereof at least 30 days in advance unless a shorter time is stipulated to. All trials shall be held within 60 days of the date the chairman is appointed by the Court. In the event the matter is settled prior to hearing but after the chairman has scheduled a hearing, \$50 of the filing fee shall be paid to the chairman as reimbursement for office expenses. In the event the matter has been settled prior to hearing and before the chairman has scheduled a hearing, \$50 of the filing fee shall be refunded to the party who paid it. In either event the remaining \$50 shall be retained by the Prothonotary to reimburse expenses. The filing fee shall be charged to the party first listing the case for hearing, and only be assessed one time per case.

(d) Each member of a Board of Arbitrators who has signed the award shall receive as compensation for his services in each case a fee of Two Hundred Fifty (\$250.00) Dollars. In cases requiring hearings of unusual duration or involving questions of unusual complexity, the Court, on petition of the members of the Board and for cause shown, may allow additional compensation. The members of a Board shall not be entitled to receive their fees until after filing an award with the Prothonotary. When the same is filed, the Prothonotary shall issue an order for payment of such fees which shall be immediately paid

from County funds as in the case of all other County debts. Fees paid to Arbitrators shall not be taxed as costs nor follow the award as other costs.

(e) Before entering upon their duties the members of the Board of Arbitrators shall subscribe to an oath to perform their duties and decide the case submitted to them justly and equitably, and with due diligence, which oath shall be filed with their award. In all cases, a decision by majority of the members of the Board of Arbitrators shall be conclusive.

(f) The Board of Arbitrators, or a majority of the members thereof, shall conduct the hearing before them with due regard to the law and according to the established rules of evidence, and shall have the general powers of a court including, but not limited to, the following powers:

(1) To issue subpoenas to witnesses to appear before the Board as in other civil actions, and to issue an attachment upon allowance by the Court for failure to comply therewith.

(2) To compel the production of all books, papers and documents which they shall deem material to the case.

(3) To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by deposition, and to decide the law and facts of the case submitted to them.

(4) To adjourn their meetings from time to time. Requests for continuances shall be made to the Court of Common Pleas.

(a) If, after the appointment of a Board of Arbitrators, but before hearings, one of the members thereof shall die or become incapable of acting, or shall refuse to attend the hearing, or shall remove or depart from the county, the remaining members of the Board shall, upon agreement of the parties, proceed to hear the matter at issue.

(b) If a member of the Board dies or becomes incapable of acting, or shall fail or refuse to perform his duties, after hearing but before an award shall be made, the case shall be decided and the award signed by the remaining members of the Board. If they cannot agree, the matters shall be heard de novo by a new Board, to consist of the remaining members plus a third to be appointed by the Prothonotary.

(c) The Board shall have the right to proceed ex parte in a proper case if, after due notice, one of the parties fails to appear at the hearing and does not request a continuance for good cause.

(d) The Board of Arbitrators shall file an award with the Prothonotary within 20 days after the hearing. The award shall be signed by all or a majority of the members of the Board. The Prothonotary shall file the award and enter the same in the proper dockets and transmit a copy thereof by mail to the parties or their counsel. The Prothonotary shall record any award in the judgment index as verdicts are now recorded.

(e) The award, if any, unless appealed from as herein provided, shall be final and shall have all the attributes and legal effect of a judgment entered by a court of competent jurisdiction. If no appeal is taken within the time allotted therefor, execution process may be issued on the award as in the case of other judgments.

(f) An appeal from an award by the Board of Arbitrators may be taken pursuant to procedure established in the Pennsylvania Rules of Civil Procedure.

(g) All appeals shall be de novo. Despite any costs which a successful appellant may recover from the adverse party, he shall nevertheless not be entitled to recover the arbitrators' fees paid by him as a condition of taking his appeal.

(h) Any party may file exceptions with the Court from the decision of the Board of Arbitration within twenty (20) days from the filing of the award for either or both of the following reasons and for no other:

(1) That the arbitrators misbehaved themselves in the conduct of the case;

(2) That the actions of the Board was procured by corruption or other undue means. If such exceptions shall be sustained, the award of the Board shall be vacated by the Court.

(g) Any case not arbitrable under the foregoing provisions of this Rule may be submitted to arbitration according to the procedure herein provided, by stipulations of all Parties thereto or their counsel.

(h) This Rule shall apply to cases involving more than one claim, including counter claims, if none of such claims exceed \$25,000.

(i) This Rule shall govern cases pending in the Court of Common Pleas of McKean County on the effective date hereof, and all such cases to which the rule shall be applicable which are listed for trial shall be stricken from the trial list and referred to arbitration under the provisions hereof.

(j) The Prothonotary shall provide such printed forms as shall be appropriate to effectuate the provisions of this rule.

(k) All rules of this court or portions thereof which are inconsistent herewith are hereby repealed.

**MINORS AS PARTIES  
Pa.R.C.P. 2026 to 2050**

**RULE L2039 Compromise, Settlement Discontinuance and Distribution**

Except as otherwise authorized by the court, no settlement of an action of a minor for personal injuries will be authorized or approved without the appearance of the minor in court, medical evidence or report as to the extent of the minor's injuries, an itemized statement of all expenses incurred, whether or not they have been paid any by whom, and such further information as the court shall deem necessary.

**INCAPACITATED PERSONS AS PARTIES  
Pa.R.C.P. 2051 to 2075**

**RULE L2064 Compromise, Settlement, Discontinuance and Distribution**

Except as otherwise authorized by the court, no settlement of an action for personal injuries to an incompetent party to the action will be authorized or approved without the appearance of the incompetent party in court where practicable, medical evidence or report as to the extent of the incompetent party's injuries, an itemized statement of all expenses incurred, whether or not they have been paid and by whom, and such further information as the court shall deem necessary.

**UNINCORPORATED ASSOCIATIONS AS PARTIES  
Pa.R.C.P. 2151 to 2175**

**RULE L2152 Actions by Associations**

The Plaintiff's initial pleading in an action prosecuted by an association shall set forth the names and addresses

of the officers thereof or of all persons known to be holding themselves out as such. In case the said officers do not constitute the trustees ad litem, or have not consented to the prosecution of the action by consent in writing attached to the initial pleading, the plaintiffs shall serve notice, in the manner provided in Rule 440 of the Pa.R.C.P. of the bringing of the action upon said officers within ten days thereafter and file proof thereof in the action; otherwise, the action shall be automatically stayed until such proof is filed.

**ACTIONS FOR WRONGFUL DEATH**  
**Pa.R.C.P. 2201 to 2225**

**RULE L2205 Notice to Persons Entitled to Damages**

Notice shall in all cases be given personally or by registered or certified mail to each person entitled by law to recover damages in the action, unless the plaintiff shall file an affidavit that the identity or whereabouts of any such person is unknown to him after diligent search therefore, in which case the plaintiff shall cause the notice to be advertised one time in a newspaper of general circulation published in McKean County. Proof of such publication shall be filed in the prothonotary's office.

**SUBSTITUTION OF PARTIES**  
**Pa.R.C.P. 2351 to 2375**

**RULE L2353 Service of Rule**

When a party seeks to serve a successor by publication, he shall advertise a notice of the rule one time in a newspaper of general circulation published in McKean County. Proof of such publication shall be filed in the prothonotary's office.

**RULE L2952 Confessed Judgments**

When a judgment is entered upon any instrument containing a warrant of attorney, which instrument accompanies a mortgage, a statement shall be placed in the complaint showing the book and the page where said mortgage is recorded. If the instrument is entered without a complaint, a statement shall be placed upon the instrument itself.

**ENFORCEMENT OF JUDGMENTS**  
**Pa.R.C.P. 3103 to 3149**

**RULE L3110 Execution Against Contents of Safe Deposit Box**

When the Plaintiff seeks to serve a party by publication as provided in paragraph (c) of Pa.R.C.P. 3110, it shall be sufficient service to publish said notice one time in a newspaper of general circulation in McKean County. Proof of such publication shall be filed in the prothonotary's office.

**RULE L3112 Service upon Garnishee Real Property of Defendant in Name of Third Party**

Whenever a party seeks to serve a garnishee by publication as provided in paragraph (c) of Pa.R.C.P. 3112, it shall be sufficient service to publish said notice one time in a newspaper of general circulation in McKean County. Proofs of publication shall be filed in the prothonotary's office.

**RULE L3123 Debtor's Exemption**

The sheriff following an appraisal or designation shall immediately thereafter and before sale give notice thereof by first class United States mail to all interested parties of the appraisal or designation, which notice shall set forth the right of appeal to the Court of Common Pleas within forty-eight (48) hours thereof.

**RULE L3128 Notice of Sale of Personal Property**

One copy of the handbill shall be mailed, by certified United States mail, to the defendant by the sheriff.

**DEPOSITIONS AND DISCOVERY**  
**Pa.R.C.P. 4001 to 4020**

**RULE L4010 Exchange of Medical Reports**

When a mental or physical examination has been made pursuant to Pa.R.C.P. 4010, counsel shall be prepared to exchange medical reports, as provided therein, not more than thirty (30) days after the examination has been made.

[Pa.B. Doc. No. 07-1689. Filed for public inspection September 14, 2007, 9:00 a.m.]

**MCKEAN COUNTY**

**Adoption of Criminal Procedure; No. 581 of 1999**

**Order of Court**

*And Now*, this 22nd day of August, 2007, it is ordered and decreed as follows:

1. The Local Rules of Criminal Procedure are hereby adopted, effective 30 days after publication in the *Pennsylvania Bulletin*;

2. The District Court Administrator of the 48th Judicial District is hereby Ordered to:

a. File seven certified copies of this Order and the Local Rules of Criminal Procedure with the Administrative Office of Pennsylvania Courts;

b. File two certified copies and a computer diskette containing this Order and the Local Rules of Criminal Procedure with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. File one certified copy of this Order and the Local Rules of Criminal Procedure with the Pennsylvania Criminal Procedural Rules Committee;

d. Provide one copy of this Order and the Local Rules of Criminal Procedure to each member of the McKean County Bar Association; and

e. Keep continuously available for public inspection copies of this Order and the Local Rules of Criminal Procedure

It is further *Ordered and Decreed* that contemporaneously with the effective date of the within Local Rules of Criminal Procedure, any previously adopted local criminal rules of court are rescinded and vacated.

*By the Court*

JOHN M. CLELAND,  
*President Judge*

**CRIMINAL PROCEDURE**

**L120 Appearances**

(a) An attorney representing a defendant at a preliminary hearing shall sign a praecipe for entrance of appearance and deliver the same to the District Justice before the beginning of the preliminary hearing.

(b) The District Justice shall transmit the praecipe for entrance of appearance with the docket transcript and the same shall be filed of record with the said docket transcript.

(c) This procedure for entry of appearance shall meet the requirements of Pa.R.Crim.P. 120.

(d) If a criminal information is filed by the District Attorney, but is assigned to an Assistant District Attorney for prosecution, the defense counsel having entered an appearance shall be notified promptly of the assignment by the District Attorney.

**L441 Procedure In Certain Court Cases Initiated by Arrest Without Warrant**

(a) When a defendant has been arrested without a warrant and the most serious offense charged is a misdemeanor of the second degree the arresting officer, if he deems it appropriate, may release the defendant from custody rather than taking him before the Issuing Authority if the following conditions are met:

- (1) the defendant is a resident of the Commonwealth;
- (2) the defendant poses no threat of immediate physical harm to any other person or to himself or herself;
- (3) the arresting officer has reasonable grounds to believe that the defendant will appear as required; and
- (4) the defendant does not demand to be taken before an Issuing Authority.

(b) When a defendant is released pursuant to paragraph (a) above, a complaint shall be filed against the defendant within five (5) days of the defendant's release. Thereafter, a summons, not a warrant of arrest, shall be issued and the case shall proceed as provided in Rule 440 of the Pennsylvania Rules of Criminal Procedure.

**L542.1 Scheduling at Preliminary Hearing**

(a) At the preliminary hearing the defendant and his attorney shall be assigned a date at which the defendant and his attorney must appear in Court for arraignment (unless waived), criminal conferences, and jury selection.

(b) If the defendant is not represented by counsel at the preliminary hearing, the District Justice shall assign a date for arraignment at which the defendant must appear in Court. At arraignment the arraigning officer shall set the dates at which the defendant and his counsel must appear for criminal conferences and jury selection.

(c) The dates so established for arraignment and jury selection shall be deemed orders of court and may not be changed except by leave of Court.

**L575 Motions**

All motions or petitions involving disputed legal or factual issues shall contain a citation of appropriate authority in support of the requested relief, or, alternatively, be supported by a concise brief.

**L588 Informations**

Pursuant to Pa.R.Crim.P. 588, in any case in which an information has not been filed within thirty days from when a defendant has been bound over to Court by action of the District Justice, on motion of the defendant the Court will issue a rule directed to the District Attorney to appear and show cause why the case should not be dismissed, without prejudice, for failure to prosecute.

Upon receipt of such a motion or petition a hearing or argument will be scheduled, and a date established for the presentation of a reply brief if required.

[Pa.B. Doc. No. 07-1690. Filed for public inspection September 14, 2007, 9:00 a.m.]

**MCKEAN COUNTY**

**Adoption of Domestic Relations Procedure; No. 158 December Term of 1904**

**Order of Court**

*And Now*, this 22nd day of August, 2007, it is ordered and decreed as follows:

1. The Local Rules of Domestic Relations Procedure are hereby adopted, effective 30 days after publication in the *Pennsylvania Bulletin*;
2. The District Court Administrator of the 48th Judicial District is hereby Ordered to:
  - a. File seven certified copies of this Order and the Local Rules of Domestic Relations Procedure with the Administrative Office of Pennsylvania Courts;
  - b. File two certified copies and a computer diskette containing this Order and the Local Rules of Domestic Relations Procedure with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;
  - c. File one certified copy of this Order and the Local Rules of Domestic Relations Procedure with the Pennsylvania Domestic Relations Procedural Rules Committee;
  - d. Provide one copy of this Order and the Local Rules of Domestic Relations Procedure to each member of the McKean County Bar Association; and
  - e. Keep continuously available for public inspection copies of this Order and the Local Rules of Domestic Relations Procedure.

It is further *Ordered and Decreed* that contemporaneously with the effective date of the within Local Rules of Domestic Relations Procedure, any previously adopted local domestic relations rules of court are rescinded and vacated.

JOHN M. CLELAND,  
*President Judge*

**COMMON PLEAS COURT RULES**

**RULE L1920.51 Family Law Rules and Procedure in Divorce and Support Proceedings**

A. Duties of Master. A Family Law Master shall be appointed by the Court to hear actions in divorce under 23 Pa.C.S.A. Section 3301, subsections (a), (b), and (d) of the Divorce Code, actions of annulment, and other issues permitted by law relating to the termination or validity of marriages. The Master will also conduct hearings on the economic issues raised in divorce complaints and other pleadings, including but not limited to, claims for alimony, alimony pendente lite, spousal support, equitable distribution of marital property, child support, counsel fees, costs and expenses, or any aspects thereof. The Master shall also serve as the Hearing Officer for the purposes of Pa.R.C.P. 1910.12. The Master shall make appropriate reports and recommendations to the Court.

B. An original and one copy of each divorce complaint or other pleading that raises an issue for the Master to

hear shall be filed with the Prothonotary, who shall schedule each such case for a Preliminary Conference. The Prothonotary shall forward a copy of the divorce complaint or pleading to the Master together with a notice of the Conference date.

#### C. Preliminary Conference

1. The Preliminary Conference will be in the nature of a status conference designed to promote settlement of cases, to gather information about the issues in the case, to determine the need for discovery, if any, and to establish a time table for the progress of the case.

2. Counsel and unrepresented parties will prepare and present at the Preliminary Conference the following: income and expense statements, inventory of marital assets, asset values, debts, tax returns for the preceding year, and at least three recent pay stubs for each party.

3. The Master will prepare a Family Law Conference Report and Scheduling Order and serve one copy of each on counsel and unrepresented parties at the end of the Conference. No further hearing notices will be issued unless a continuance is granted resulting in rescheduling.

#### D. Trial Deposit and Pretrial.

1. Seven (7) days before the pretrial conference scheduled by the Master in the Scheduling Order, the Plaintiff will pay to the Family Law Office a trial deposit of \$600.00, and counsel for both parties will file with the Prothonotary and provide the Master with a copy of a Pretrial Statement substantially in the form required by Rule L212 and L222. Upon timely request to the Master, the Master may order that payment be waived, apportioned between the parties, or assessed as part of the final recommendation. Payment may be made in cash or by check made payable to the "Prothonotary" and delivered to the Family Law Office.

2. Upon the request of either party or counsel, the Master may, in proper cases, allocate the responsibility for payment of the trial deposit between the parties or assess it to the Defendant. No divorce decree will be issued by the Prothonotary unless the trial deposit has been paid.

3. In any case settled at the pretrial conference (or otherwise before the final hearing is held), the Master may direct the Prothonotary to return up to \$500.00 of the deposit to the party who paid the deposit.

4. All cases not resolved at the pretrial conference will be scheduled for final hearing within 40 days of the pretrial conference. The Master will prepare and serve upon counsel and unrepresented parties a pretrial order setting the final hearing date and defining the responsibilities of each party, and specifying the issues to be addressed at final hearing.

#### E. Final Hearing.

1. Pursuant to the schedule established at the pretrial conference the Master shall proceed to take testimony and shall report to the Court as required by Pa.R.C.P. 1910.12 and 1920.51, et seq.

2. The Master will tape record the final hearing unless the parties or counsel request at the pretrial conference that a Court reporter take down and transcribe the testimony and agree to be responsible for the cost thereof. The parties will also be responsible for the cost of preparation of transcripts of the tape recorded hearings. The parties and/or counsel may waive the preparation of the transcripts unless exceptions are filed to the Master's Recommendation. Factual issues raised in the exceptions

will be deemed waived unless a transcript is prepared and filed. Deposits will be required to be paid for transcripts in accordance with procedures established from time to time.

#### F. Child Support Hearing Officer.

1. The Alternative Hearing Procedure of Pa.R.C.P. 1910.12 is hereby adopted, except that the Hearing Officer will hold a combined conference/hearing and issue a Recommended Support Order in all disputed cases.

2. The Hearing Officer shall conduct the hearing with due regard to the law and according to the established rules of evidence, which, however, shall be liberally construed to promote justice. The Hearing Officer shall have the general powers of a court including, but not limited to, the following powers:

(1) To issue subpoenas to witnesses to appear before the Hearing Officer as in other civil actions, and to issue an attachment upon allowance by the Court for failure to comply therewith.

(2) To compel the production of all books, papers and documents which shall be deemed material to the case.

(3) To administer oaths or affirmations to witnesses, to determine the admissibility of evidence, to permit testimony to be offered by deposition, and to decide the law and facts of the case submitted to them.

(4) The hearing Officer/Family Law Master will make a recommendation to the Court concerning the amount of child or spousal support or alimony pendente lite and/or payment on arrears, and this amount will become collectible immediately, subject to later modification if exceptions are filed. The Hearing Officer will also issue a temporary wage attachment order that will be adopted as an Order by the Court, together with the Recommendations if no exceptions are filed or, if exceptions are filed, after disposition of the exceptions.

3. The Hearing Officer shall not be required to transcribe the record of the testimony. Transcripts will be made available on the same basis as described in Rule L 1920.51 E(2) hereof.

4. If the Respondent fails to appear as directed by the Court after due notice and does not request a continuance for good cause the hearing may proceed without the Respondent. The Hearing Officer may also recommend that a warrant be issued for the arrest of any Respondent who fails to appear without explanation.

#### G. Continuances.

(1) All requests for continuances in divorce or support hearings shall be by Motion addressed to the Court filed with the Prothonotary and a copy delivered to the Master/Hearing Officer at least seven (7) days before the hearing sought to be continued. No such request will be granted unless good cause for the continuance is shown. Continuances will be granted only in accordance with the Court's continuance policy. (See memorandum of November 16, 1993).

#### H. Penalties.

(1) The Master/Hearing Officer may, in proper cases, recommend to the Court that attorney's fees and fines or other appropriate sanctions be assessed (*See*, for example 42 Pa.C.S. Section 2503) against parties or their counsel for vexations or dilatory conduct, lack of preparation, failure to appear, failure to request timely continuances, or other behavior interfering with the expeditious progress of the case.

**RULE L1940.1 Contested Child Custody Cases—  
Mediation Referral Procedure**

1. All contested child custody cases shall in the first instance be referred to mediation, unless waived by leave of Court. The purpose of the mediation sessions, which shall be conducted by a Court appointed Mediator, is to provide a nonadversarial forum for the parties to attempt to work out their custody problems with the assistance of the Mediator and their attorneys, if any.

2. Custody matters raised in a Divorce Complaint shall be referred to the Court Mediator by the Family Law Master. All other custody complaints or petitions raising issues of custody shall be automatically referred to the Mediator by the Prothonotary, unless counsel has requested and received leave of Court to waive mediation.

3. Custody mediation shall be conducted in accordance with procedures established by the Court from time to time.

4. All parties attending mediation sessions shall be required to sign any Agreement or portion of an Agreement to which they voluntarily consent. If agreement is reached before, during or after mediation, the agreement shall be reduced to a written stipulation and shall thereafter be incorporated into a consent Order of Court.

5. If mediation does not result in agreement between the parties, the Mediator shall refer the parties for evaluations and refer the matter to the Court for hearing and disposition. If the parties do not agree that evaluations should be done or to whom the parties should be referred for evaluation, the case shall be sent to the Judge, who will make a ruling on the disposition of these issues.

[Pa.B. Doc. No. 07-1691. Filed for public inspection September 14, 2007, 9:00 a.m.]

**MCKEAN COUNTY**

**Adoption of Orphans' Court Procedure; No. 42 of  
07-0197**

**Order of Court**

*And Now*, this 22nd day of August, 2007, it is ordered and decreed as follows:

1. The Local Rules of Orphans' Court Procedure are hereby adopted, effective 30 days after publication in the *Pennsylvania Bulletin*;

2. The District Court Administrator of the 48th Judicial District is hereby Ordered to:

a. File seven certified copies of this Order and the Local Rules of Orphans' Court Procedure with the Administrative Office of Pennsylvania Courts;

b. File two certified copies and a computer diskette containing this Order and the Local Rules of Orphans' Court Procedure with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. File one certified copy of this Order and the Local Rules of Orphans' Court Procedure with the Pennsylvania Criminal Procedural Rules Committee;

d. Provide one copy of this Order and the Local Rules of Orphans' Court Procedure to each member of the McKean County Bar Association; and

e. Keep continuously available for public inspection copies of this Order and the Local Rules of Orphans' Court Procedure.

It is further *Ordered and Decreed* that contemporaneously with the effective date of the within Local Rules of Orphans' Court Procedure, any previously adopted local orphans' court rules are rescinded and vacated.

JOHN M. CLELAND,  
*President Judge*

**ORPHANS' COURT DIVISION**

**RULE 1.2:1 Matters for Argument**

(a) Upon the filing of any motion, petition, exceptions, or the like, requiring legal argument, the matter will be scheduled by the Court in an order which will also establish the briefing schedule, if any. If the brief is not presented to the Court when ordered, the Court, in its discretion, may refuse to consider a late brief or to hear oral argument.

(b) The Court may, in its discretion, hear oral argument on any motion by speaker telephone conference provided that the conversations of all parties are audible to all persons present, or upon stipulation of all parties, by regular telephone conference call. Upon request of any party, such oral argument may be recorded by a court reporter under such conditions as the Court shall deem practicable. Counsel shall schedule such telephone calls at a time mutually agreeable to all parties and the Court. The expense of the call will be shared equally by the parties, unless the Court directs otherwise.

**RULE 1.2:3 Costs**

When not otherwise regulated by law, the Court will allocate costs in such manner as it deems equitable.

**RULE 1.2:4 Acknowledgment and Satisfaction**

The receipt of all sums of money or property ordered to be paid or delivered by any award or decree of this Court shall be evidenced by a writing filed with Clerk, or evidenced in such other manner as the Court may order.

**RULE 1.2:5 Petitions to Enforce Compliance**

Any party in interest may petition the Court for an order to enforce compliance with the provisions of a decree or an adjudication.

**RULE 1.2:8 Individual Sureties**

(a) Application for Approval. Justification for Surety—Except as otherwise provided by paragraph (b) of this Rule, an application for the approval of an individual surety shall be accompanied by an affidavit of the proposed surety, setting forth:

(1) his name, residence address;

(2) location of the real property owned by him;

(3) a brief description of the real estate and what it consists of;

(4) how, or from whom, the real estate was obtained and when obtained;

(5) that the surety or sureties do not contemplate selling or encumbering said property;

(6) the encumbrance upon the real property, including lease, agreement of sale, option, and the like;

(7) the assessed value of the property for taxation purposes;

(8) a certification of the value of the said property;



(9) a certification that the surety is not a party in a pending divorce action.

(b) Nothing in this rule shall preclude the Register from approving an individual surety justified by the surety's ownership of personal property.

(c) **Bond Without Surety. Confession of Judgment**—The Court, in its discretion, may permit a party in interest to execute his individual bond, without surety. When a party in interest is authorized to execute his individual bond or individual surety is approved, the Court may direct that the bond to be executed contain a warrant of attorney to confess judgment, with or without default, and that judgment thereon be entered of record in the Office of the Prothonotary.

#### **RULE 1.2:9 Corporate Sureties**

(a) In General—Surety companies duly authorized to do business in this Commonwealth may become surety on any bond or obligation required to be filed in Court.

(b) Exceptions—Except when required by statute or for special cause shown, a bond will not be required of an approved corporate fiduciary.

#### **RULE 1.2:10 Assets and Investments**

(a) Segregation and Designation of Assets—Assets held by individual fiduciaries subject to the jurisdiction of the Court shall be kept separate and apart from their individual assets and, except where authorized by statute or otherwise, shall be held in the name of the fiduciary as such.

#### **RULE 2.3:1 Definitions**

In addition to those words and phrases defined by the Supreme Court Rules, the following words and phrases when used in these Local Rules, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this Local Rule:

“Verify,” “verification,” or “verified statement” means an unsworn written statement made under penalty of perjury.

#### **RULE 3.1:1 Notice to Defend or Plead**

Where a notice to defend or to plead filed in accordance with the Rules of Civil Procedure has been endorsed on a pleading, the pleadings and practice shall conform with the pleading and practice in equity of the local Court of Common Pleas insofar as the requirement of responsive pleadings are concerned.

#### **RULE 3.1:2 Hearings**

Petitions and motions shall have attached thereto a proposed order of court, which shall be prepared by the party presenting the petition or motion, and which shall include a space for the insertion of a date and time for a hearing and for the taking of testimony if necessary.

#### **RULE 6.1(e):1 Form of Accounts. Additional Requirements**

In addition to complying with the Supreme Court Rules, each account shall be accompanied by a certificate of the attorney for the accountant that to the best of his knowledge, information, and belief, the debits and credits and any statement of proposed distribution filed therewith are correct and proper and that any required legal advertisement has been duly published. An attorney also acting as the accountant may sign the certificate in both capacities.

#### **RULE 6.3:1 Contents of Notice. Additional Requirements**

In addition to complying with the Supreme Court Rules, the notice to parties in interest shall set forth:

(1) The date on which the account and any statement of proposed distribution will be presented to the Court for nisi confirmation, and that they will be confirmed absolutely unless objections are filed within twenty (20) days thereafter:

(2) If a copy of the account is not provided with the notice, then the accountant must inform any party in interest that the account will be provided upon request.

#### **RULE 6.3:2 Advertisement of Accounts**

All accounts filed with the Clerk shall be advertised by the Clerk in the manner prescribed by law and shall also state that unless objections are filed within twenty (20) days after nisi confirmation, the account will be confirmed absolutely and that thereafter distribution may be decreed by the Court, without reference to an auditor, in accordance with any statement of proposed distribution filed with the account.

#### **RULE 6.9(a):1 Form of Statement of Proposed Distribution**

The statement of proposed distribution, if any, shall accompany the account and shall specify the names of the person or persons to whom the balance available for distribution is awarded, the amount or share awarded to such person or persons, and whether the proposed distribution is in cash or in kind.

#### **RULE 6.9(b):1 Notice and Advertisement**

Notice and advertisement of the filing of a statement of proposed distribution shall be included in the notice and advertisement as provided in Local Rules 6.3:1 and 6.3:2.

#### **RULE 6.10:1 Objections**

Objections to an account or statement of proposed distribution shall be in writing, shall state such material facts as may entitle the objectant to relief, and shall be filed with the Clerk prior to or within twenty (20) days after nisi confirmation. Any issue not raised by the written objections is waived. The objectant shall serve a copy of the written objection on the accountant promptly upon filing. Upon receipt of the written objection, the accountant shall promptly notify all parties identified in Rule 6.3 of the filing of the objections and their content.

#### **RULE 6.11(a):1 NISI Confirmation**

The accounts of fiduciaries shall be presented to the Court for nisi confirmation at the date and time set for confirmation of accounts by the Court as set forth in the Annual Court Calendar, unless otherwise directed by the Court.

#### **RULE 6.11(a):2 Confirmation Absolute**

(a) Unless objections are filed in accordance with Local Rule 6.10:1, the confirmation of accounts and statements of proposed distribution filed with accounts shall be made absolute by the Clerk, without further order of Court, provided that an affidavit or verification is filed showing that notice has been given in compliance with Local Rule 6.3:1. The confirmation of the account and any statement of proposed distribution filed with the account shall be placed upon the record and the account by the Clerk.

(b) No account, or statement of proposed distribution filed with any account, shall be considered finally confirmed except by written confirmation by the Clerk as

hereinbefore provided or by order of Court; and such final confirmation, if relating to a statement of proposed distribution filed with any account, shall expressly state that it is a final confirmation of the account and the statement of proposed distribution filed therewith.

**RULE 6.11(a):3 Confirmation of Title to Real Property**

(a) Separate Awards—A schedule of distribution shall set forth separate awards of real property in separate paragraphs.

(b) Description—Real property shall be described in the manner appearing in the last deed of record, or in some other proper manner, and in addition should include information pertinent to the derivation of title.

(c) Certification by Clerk—The Clerk may, at the request of any party in interest, certify excerpts from a decree of distribution for recording in any public office for recording deeds.

**RULE 7.1:1 Exceptions, Rules Governing**

(a) Proceedings Commenced Before the Register—Orders and decrees entered upon appeal or upon certifications from the Register shall become absolute as of course, unless written exceptions thereto are filed with the Clerk within ten (10) days from the entry thereof.

(b) Other Exceptions—Other exceptions shall be filed with the Clerk within ten (10) days from entry of the decree or order, unless extended by Order of Court.

(c) Form of Exceptions—Exceptions may be filed by any party to rulings on objections to evidence, to statements or findings of fact, to conclusions of law, or to the decree or adjudication nisi. Each exception shall set forth a separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived, unless, prior to final decree, leave is granted to file exceptions raising these matters.

**RULE 8.1:1 Notice of Hearings**

(a) Original Hearing—Ten (10) days notice of the time and place of the first hearing before the auditor or master shall be served on all parties in interest or their attorneys as provided in Rule 5.1.

(b) Subsequent Hearings—Notice of succeeding hearings given by the auditor or master at a hearing of which proper notice has been given shall constitute sufficient notice of such succeeding hearings. Otherwise, notice of subsequent hearings shall be given as set forth in (a) above.

**RULE 8.6:1 Notice of Filing Report, Preliminary Exceptions**

After the report is prepared, the auditor or master shall serve on the parties who have appeared before him, or their attorneys, ten (10) days written notice of the day fixed for filing the same and in the meantime, such parties shall be allowed access thereto. Any party interested may file preliminary exceptions to the report, before the day fixed for the filing thereof. If preliminary exceptions are filed, the auditor or master shall reexamine the report and amend the report if, in his opinion, the preliminary exceptions are, in whole or in part, well founded. If the report is not filed at the time fixed therefor in the said notice, said report shall only be filed after five (5) days written notice is given to the parties, or their attorneys. The auditor or master shall certify in his report the manner and time of serving the notice herein required.

**RULE 8.7:1 Approval of Expenses and Fees Prior to Confirmation**

No auditor's or master's report shall be confirmed nisi or otherwise approved until such time as the Court shall have entered an order approving the amount of expenses to be reimbursed unto and the amount of fees to be awarded unto the auditor or master. The auditor or master shall make a recommendation on the allocation of expenses and fees among the parties. The Court may assess said expenses and fees upon any party in interest, as it deems fit.

**RULE 8.7(a):1 Confirmation of Auditor's Reports, Exceptions**

All reports of auditors shall be filed on the date set by the auditor, pursuant to these Rules. Upon the filing of the report, it shall be confirmed nisi, which confirmation shall be made absolute by the Clerk without further order of Court, unless exceptions thereto are filed.

**RULE 8.7(b):1 Confirmation of Master's Reports, Exceptions**

All reports of master shall be filed on the date set by the master pursuant to these Rules. Upon the filing of the report, the Court shall enter a decree nisi either adopting the master's recommendations or rejecting the same. A decree nisi shall be made final by the Clerk without further order of Court, unless exceptions thereto are filed.

**RULE 8.8:1 Absolute Confirmation. Auditor's and Master's Expenses and Fees**

Unless authorized by order of Court, no nisi confirmation or decree nisi shall be confirmed absolutely by the Clerk until all expenses and auditor's or master's fees have been paid to the Clerk. Upon absolute confirmation, the Clerk shall pay all expenses and the balance of the auditor's or master's fee to the auditor or master.

**RULE 10.2:1 Appeal by Petition**

All appeals under Rule 10.2 shall be by petition to the Court which shall set forth:

- (1) the nature of the proceedings before the Register;
- (2) a copy of any Will in controversy;
- (3) a statement of the facts and circumstances upon which he relies;
- (4) a precise statement of the questions of law or of fact involved;
- (5) the names and addresses of all parties in interest

**RULE 10.2:2 Certification and Citation; Bond**

(a) If the averments of the petition for appeal appear to be prima facie sufficient, and, if any bond or security required by law has been filed and approved by the Register, the Court shall award a citation and, if it has not been done by the Register on his own motion, order certification of the entire record of the Register to the Court. The citation shall be directed to all parties in interest and shall require them to file a complete answer under oath or verification to the averments of the petition, on or before a day certain which shall not be less than ten (10) days after the service thereof, and to show cause as the decree of the Court shall Provide.

(b) Proof of service of the citation shall be filed with Register on or before the return date of the citation.

(c) The Court may issue a citation and direct that the Register certify to the Court the record, without regard to whether or not testimony has been taken before the Register.

**RULE 10.2:3 Grant of Jury Trial**

(a) Determination by Court—The Court will determine preliminarily whether a jury trial shall be granted upon any issue of fact arising upon the certification or appeal. The Court may grant a jury trial based on the testimony taken before the Register; or, if the parties agree that the case be heard on the testimony taken before the Register, the Court may grant or refuse to grant a jury trial, depending, in each instance, on whether or not he finds that a substantial issue of fact exists.

(b) Decree—If a jury trial is granted, the decree shall specify the issues to be tried, which may be in form agreed upon by the parties, or as the Court shall determine.

**RULE 12.1(a):1 Family Exemption. Additional Requirements**

(a) Contents of Petition—In addition to complying with the Supreme Court Rules, a petition for a family exemption shall also set forth in separate paragraphs:

- (1) the name, residence and date of death of decedent;
- (2) the name, address and relationship of the petitioner to the decedent, and whether the petitioner formed a part of decedent's household at the date of his death;
- (3) if petitioner be the surviving spouse, the date and place of the ceremonial marriage; or, in case of a common-law marriage, all averments necessary to establish the validity of such a marriage;
- (4) whether the decedent died testate or intestate; where, when, and to whom letters were granted; and if decedent died intestate, the names, relationship and addresses of those interested as next of kin;
- (5) the location and valuation of the property claimed;
- (6) that ten (10) days prior notice of the filing of the petition has been given to the personal representative, or, when no letters have been granted, to the parties adversely affected; and
- (7) a request for appraisers when an appraisal is required.

(b) Exhibits—The following exhibits shall be attached to the petition:

- (1) a copy of the will;
- (2) a copy of the inventory and appraisement showing the valuation of the property claimed, when the exemption is claimed from personal property, and the gross estate exceeds the statutory amount of the family exemption; and
- (3) an affidavit or verification of return of notice.

**RULE 12.1(b):1 Appraisal**

(a) Procedure when Appraisal Required—Unless otherwise directed by the Court, upon petition the Court may appoint such appraisers as required by law who shall, within thirty (30) days after appointment, file with the Clerk an appraisal of the property claimed.

(b) Upon the filing of the appraisal with the Clerk the appraiser shall also give notice thereof to the personal representative and to the next of kin; and, if there be neither personal representative nor next of kin, to the Attorney General.

(c) The notice shall contain a copy of the petition and the appraisal, and a statement that nisi confirmation of the appraisal will be requested and may be allowed by the Court at a stated date and unless exceptions are filed thereto, the appraisal shall be confirmed absolutely ten (10) days thereafter by the Clerk without further order of Court. Said notice shall be given by the appraiser not less than ten (10) days prior to the date set for nisi confirmation.

**RULE 12.2(a):1 Allowance to Surviving Spouse of Intestate. Additional Requirements.**

(a) Contents of Petition—In addition to complying with the Supreme Court Rules, a petition for the allowance to the surviving spouse of an intestate shall also set forth in separate paragraphs:

- (1) the information required in a petition for family exemption under Local Rule 12.1(a):1, as far as appropriate; and
- (2) that ten (10) days prior notice of the intended presentation of the petition has been given to the personal representative; or, if no personal representative has been appointed, to those interested as next of kin; and, if there be no next of kin, to the Attorney General.

(b) Exhibits—The following exhibits shall be attached to the petition:

- (1) a copy of the inventory and appraisement; and
- (2) an affidavit or verification of return of notice.

**RULE 12.2(a):2 Conclusiveness of Averments**

If the averments of the petition are not conclusive as to the right of the spouse to the allowance being claimed, the matter may be referred by the Court to a master or auditor.

**RULE 12.2(b):1 Appraisal. Notice. Practice and Procedure.**

(a) Filing of Appraisal—The appraiser shall, within thirty (30) days after their appointment, file with the Clerk an appraisal of the property claimed.

(b) Notice of Appraisal—Upon the filing of the appraisal notice thereof shall be given to the personal representative, and to the next of kin, and if there be neither personal representative nor next of kin, to the Attorney General. The notice shall contain a copy of the petition and the appraisal, and a statement that nisi confirmation of the appraisal and the setting apart of the real estate to the surviving spouse will be requested and may be allowed by the Court at a stated time, and unless exceptions are filed thereto, confirmed absolutely ten (10) days thereafter. Said notice shall be given not less than ten (10) days prior to the date set for nisi confirmation. If the address or whereabouts of any of the next of kin is unknown, notice shall be given in such manner as the Court shall direct.

(c) Confirmation and Setting Apart of Allowance—Unless exceptions are filed to the nisi confirmation, the appraisal and award of real estate shall be confirmed absolutely by the Clerk without further order of court.

(d) Exceptions—Exceptions to an appraisal shall be filed with the Clerk within ten (10) days after nisi confirmation. Copies of the exceptions shall be served on the fiduciary, if any, and on the spouse or their attorney, within five (5) days after filing. If exceptions are filed, the matter may be placed on the Argument List by praecipe for disposition.

**RULE 12.3(b):1 Extension of Time. Contents of Petition.**

A petition for the extension of time in which the surviving spouse may file an election take against the Will shall set forth:

(1) the information required to be set forth in a petition under Supreme Court Rule 12.3(a), paragraphs (1) through (7), inclusive, as far as appropriate; and

(2) the facts relied upon to justify an extension of time in which to file the election.

**RULE 12.3(b):2 Extension Time. Practice and Procedure.**

The petitioner shall file the petition with the Clerk and serve copies thereof on all persons adversely affected thereby who do not join in the prayer of the petition. The Court shall issue a rule to show cause why the prayer of the petition should not be granted, and service thereof shall be made by the Petitioner on all parties served with the original petition. In the absence of objection, upon the presentation of an affidavit or verification of return of notice on or after said day, an appropriate decree may be entered by the Court.

**RULE 12.5(c):1 Exhibits To Petition**

The following exhibits shall be attached to the petition:

(1) Consent of Parents or Person in Loco Parentis—Written consent of the parents or the surviving parent of the minor to the appointment of a guardian for his estate or person is required. If both parents are deceased, such consent is required of the adult person with whom the minor resides or of the superintendent or other official in charge of the institution having custody of the minor and, the spouse of the minor if the minor is married. If such consent is not obtained, the petitioner shall set forth the reason and give such notice of the Petition as the Court may direct.

(2) Consent of Guardian. Individual—When the proposed guardian is an individual, his written consent to act as such shall contain, in addition, the following statements:

(A) his business and domicile;

(B) that he is not the fiduciary or an officer or employee of the corporate fiduciary of an estate in which the minor has an interest nor the surety or an officer or an employee of the corporate surety of such a fiduciary; and that he has no interest adverse to the minor.

(3) Consent of Guardian. Corporate—When the proposed guardian is a corporate fiduciary, its written consent to act as such shall contain, in addition, a statement

that it is not the fiduciary of an estate in which the minor has an interest nor the surety of such a fiduciary; and that it has no interest adverse to the minor.

(4) Funds Arising From Litigation—If any part of the minor's estate was obtained as a result of litigation or compromise of litigation in a Court of record, a copy of the decree approving the compromise and distribution of the proceeds of the suit shall be attached to the petition.

**RULE 12.5(e):1 Guardians of Minors. Appearance Before the Court.**

(a) Appearance. Minor over Fourteen—If the minor is over fourteen (14) years of age the Court shall hold a hearing at which he shall appear in person and state his preference of guardian. If the minor is unable to appear in person, the reason for his absence shall be set forth in the petition.

(b) Appearance. Other Persons—The Court may excuse the appearance of a minor fourteen (14) years of age or under, or the parents or proposed guardian of the minor at any hearing scheduled by the Court.

**RULE 12.5:1 Minor's Estate. Restricted Account.**

(a) Waiver of Security—In lieu of the entry of security, the Court, in the decree appointing the guardian, may authorize the guardian to deposit the funds of the minor in an interest-bearing deposit insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation subject to the express restriction, to be noted on the records of the institution, that no withdrawals shall be made therefrom without order of court, with a further requirement that the evidence of the deposit or investment, marked to indicate the restriction, shall be promptly exhibited to the Court.

(b) Payment at Majority of Minor.

(1) The decree of the Court may contain a further provision that if no withdrawals are made from the account during minority, the institution may pay over the funds when the minor attains his majority, upon the joint order of the guardian and the former minor without further order of court.

(2) If, upon subsequent order of this Court, withdrawals have been made from the account during minority, the guardian shall file a petition for his discharge upon the minor's attaining his majority. There shall be attached to the petition:

(A) an affidavit or verified statement in the nature of an account, containing items of administration, distribution, principal, and income, which shall be separately stated;

(B) an affidavit or verified statement by the guardian setting forth the date he attained his majority; that he has examined the account; that he has received the money, or benefit of the money, for which credit is taken in the account; that he approves account and requests that it be confirmed; and that, upon distribution to him of the balance shown thereon, subject to such additional credits as may be authorized by law and set forth in the petition and order, he agrees that the guardian shall be discharged.

**RULE 12.5:2 Minor's Estate Not Exceeding Statutory Limitation.**

(a) Disposition. In General—If the value of the real and personal estate of a minor does not exceed the statutory limitation as provided in Section 5101 of the Probate, Estates, and Fiduciaries Code (20 Pa.C.S.A. § 5101), the Court may:

(1) authorize payment or delivery thereof to the minor or the parent or other person maintaining the minor;

(2) direct the deposit of the minor in a restricted account in the name of a natural guardian of the minor or of the minor himself; or

(3) make such provision for the retention or deposit of securities or other assets as the Court shall deem for the best interests of the minor.

(b) **Mortgage or Sale of Real Property.**—If the value of the entire estate of a minor does not exceed the statutory limitation as provided in Section 5101 of the Probate, Estates, and Fiduciaries Code (20 Pa.C.S.A. § 5101), the Court, upon petition, may authorize the parent or other person maintaining the minor to convey or mortgage any real property forming a part or all of such estate, without the appointment of a guardian or the entry of security. The petition shall conform to the requirements of the provisions governing the same or mortgage of real property by a guardian. The order of the Court may be conditioned upon the deposit of the proceeds of the sale or mortgage in a restricted account.

**RULE 12.5:3 Minor's Estate. Allowances.**

(a) **In General. Responsibility of Guardian.**—Except in the case of funds deposited in a restricted account under Local Rule 12.5:1, expenditures from income for the benefit of the minor, and counsel fees in a nominal amount for routine services, whether payable from principal or income, should ordinarily be made by the guardian upon his own responsibility without application to the Court for approval.

(b) **Permissive Petition.**—The guardian may petition the Court for approval of periodical payments from income needed for the maintenance, support, or education of the minor, his spouse or children.

(c) **Mandatory Petition.**—Except as provided in paragraph (a) of this Local Rule, unless approval by the Court is first obtained, no payments shall be made by the guardian when payment is to be made from principal or when special services have been performed by counsel and the guardian is in doubt as to the reasonableness of the fee.

(d) **Contents of Petition. Allowance for Maintenance, Support, or Education.**—A petition for an allowance from a minor's estate, for the maintenance, support or education of the minor, his spouse or children, shall set forth:

(1) the manner of the guardian's appointment and qualification, and the dates thereof; and the terms of the instrument creating the estate;

(2) the age and residence of the minor; whether his parents are living; the name of the person with whom he resides, and, if married, the name and age of his spouse and children;

(3) the value of the minor's estate, real and personal, and the net annual income;

(4) the circumstances of the minor, whether employed or attending school; if the minor's parents, or the persons charged with the duty of supporting him, are living, the financial condition and income of such persons and why they are not discharging their duty to support the minor; and whether there is adequate provision for the support and education of the minor, or his spouse and children;

(5) the date and amount of any provision allowance by the Court, and the name of the Judge who granted it;

(6) the financial requirements of the minor and his family unit, and the circumstances making such allowance necessary; and

(7) if the petition is presented by someone other than the guardian, that demand was made upon the guardian to act, and the reason, if any, given by him for his failure to do so.

(e) **Contents of Petition. Allowance of Counsel Fees.**—A petition for the allowance of counsel fees shall set forth the views of the guardian with respect to the reasonableness of the fees and contain sufficient facts to enable the Court to pass judgment on the matter. The following exhibits shall be attached to the petition:

(1) a statement of counsel setting forth in detail the nature and extent of the services performed by him; and

(2) the joinder of the minor's parents or surviving parent; or, if both parents are deceased, the joinder of the adult person with whom the minor resides, or the superintendent or other official in charge of the institution having custody of the minor, and the spouse of a married minor.

**RULE 12.6(b):1 Appointment of A Trustee. Exhibits.**

The following exhibits shall be attached to the petition:

(1) a copy of the trust instrument; and

(2) the written consent of any co-trustee.

**RULE 12.7:1 Discharge of A Fiduciary. Additional Provisions.**

(a) **Affidavit or Verification.**—The Court may discharge without hearing any fiduciary who files a Petition for Discharge which shall have attached consents and contain an averment that the parties who have signed the consents to discharge are all the parties interested in the estate, or the reason for the failure of any party to consent. If any party shall fail to consent, the Court may, if the circumstances require, direct the issuance of notices by citation or otherwise.

(b) **Exhibits. Consents.** Written consent of all parties in interest, and of the surviving or successor fiduciary shall be attached to the petition. Such consent may be included in a receipt and release attached to the petition.

**RULE 13.3:1 Report by Fiduciary.**

The report required by the Supreme Court Rules shall be submitted to the Court or to an auditor appointed by the Court, and shall include substantially the following:

(1) **Unknown Distributee.**—If it appears that the identity or whereabouts of a distributee is unknown, or there are no known heirs, the fiduciary shall submit a written report, sworn to or verified by the fiduciary or his counsel, setting forth:

(A) The nature of the investigation made to locate the heirs of the decedent, in complete detail; and

(B) in cases of intestacy, or where there are no heirs, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain.

(2) Investigation Defined—The term “investigation” as used in this Local Rule, shall include inquiry of or as to as many of the following as may be pertinent and feasible: residents of the household in which the decedent resided; friends and neighbors; labor union membership; places of employment; social, fraternal, or beneficial organizations; insurance records; church membership; school records; social security, Veterans’ Administration, or military service records; naturalization records, if not native born; and such other sources of information as the circumstances may suggest.

(3) Other Distributee—If the fiduciary requests the Court to withhold distribution to a distributee, he shall submit a written report, sworn to or verified by the fiduciary or his counsel, which shall set forth:

(A) the relationship of the distributee to the decedent, and any available information concerning his present whereabouts;

(B) in cases of intestacy, a family tree, as complete as possible under the circumstances, supported by such documentary evidence as the fiduciary has been able to obtain; and

(C) the reason for the request that distribution be withheld, and the suggested manner of withholding.

**RULE 14.1:1 Practice and Procedure. In General**

(a) Evidence. Depositions—Except for special reason appearing, the deposition of, or sworn or verified statement by, a superintendent, manager, physician or psychiatrist of any state-owned mental hospital or Veterans’ Administration hospital, or a physician in attendance to the alleged incompetent will be accepted in evidence as to the mental or physical condition of a patient of said hospital or physician.

(b) Guardians

(1) Relatives and Household Residents—The Court, except for cause shown, shall not appoint as guardian, of the estate a relative of the incompetent or a person residing in the same household with him.

(2) Nonresidents—The Court, except for cause shown, shall not appoint nonresidents as guardians of incompetents residing within this county.

(c) Security. Individual Guardian—In lieu of the entry of security, an individual guardian may be authorized to deposit the funds comprising the incompetent’s estate in accounts insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, the account to be marked “Not to be withdrawn except on further Order of the Court.” Upon cause shown, the Court may dispense with the requirement of a bond when it finds that no bond is necessary.

(d) Additional Assets—If, upon the filing of an inventory, it appears that the value of the personal estate which has, or is about to, come into the possession of the guardian exceeds the amount set forth in the original petition, the Clerk shall direct the Court’s attention to this fact in order that adequate security may be ordered and entered.

(e) Certificates of Appointment—The Clerk, in addition to issuing certified copies of the decree of appointment of

a guardian, will issue a “Guardian’s Certificate” when the security, if any, ordered by the Court has been entered.

**RULE 14.1:2 Incapacitated Person’s Estate. Decrees.**

(a) In General—A petition to adjudicate a person incapacitated shall have attached thereto:

(1) a proposed preliminary order in accordance with Local Rule 3.1:2; and

(2) a proposed decree.

(b) Small Estates—If at a hearing the incapacity is established, and it appears that the gross estate does not exceed the statutory limitation for a small estate, the Court may award the entire estate to the person or institution maintaining the incapacitated person, or make such order as may be appropriate under the circumstances. In such case, a proposed final decree awarding said estate shall be attached to the face of the petition, in lieu of the final decree appointing a guardian. (See: 20 P. S. § 5505)

**RULE 14.1:3 Incapacitated Person’s Estate. Proof of Service.**

Proof of service of notice shall be presented at the hearing. The affidavit or verification of service shall, in all cases, recite that the contents of the petition and citation were made known to the alleged incapacitated person.

**RULE 15.4(d):1 Decree of Involuntary Termination**

In all cases involving an involuntary termination of parental rights, the Court shall enter a decree nisi. Unless exceptions are filed thereto within ten (10) days of notice of filing the adjudication by any party in interest, the Clerk shall confirm the decree absolutely without further order of Court.

No petition for adoption shall be filed until a final decree has been entered.

**RULE 15.5(a):1 Information for Certification of Adoption.**

Contemporaneous with the filing of a Petition for Adoption, the information required for a Certificate of Adoption shall be submitted to the Clerk upon a form approved by the Clerk or upon a form approved by the Vital Statistics Division of the Pennsylvania Department of Health.

**RULE 15.5(a):2 Preliminary Order and Decree of Adoption.**

A petition for adoption shall have attached thereto:

(1) a proposed preliminary order in accordance with Local Rule 3.1:2; and

(2) a proposed decree of adoption.

**RULE 16.1 McKean County Orphans’ Court Rules.**

The Local Rules of the Orphans’ Court Division of the Court of Common Pleas of McKean County shall be known as the McKean County Rules of Court—Orphans’ Court Division; and shall be cited as Local Orphans’ Court Rules or Local O. C. Rules.

[Pa.B. Doc. No. 07-1692. Filed for public inspection September 14, 2007, 9:00 a.m.]

**WESTMORELAND COUNTY**  
**Rescinding Rule WJUV 1330; Misc. 7 of 2007**

**Order**

*And Now, this 29th day of August, 2007, it is hereby ordered that Westmoreland County Rule of Juvenile Procedure WJUV 1330 is rescinded effective immediately.*

*By the Court*

JOHN E. BLAHOVEC,  
*Acting President Judge*

[Pa.B. Doc. No. 07-1693. Filed for public inspection September 14, 2007, 9:00 a.m.]

**DISCIPLINARY BOARD OF  
 THE SUPREME COURT**

**Notice of Disbarment**

Notice is hereby given that Philip G. Gentile, having been disbarred from the practice of law in the State of New Jersey by Order of the Supreme Court of New Jersey dated February 26, 2007, the Supreme Court of Pennsylvania issued an Order on August 30, 2007, disbarring Philip G. Gentile, from the Bar of this Commonwealth, effective September 29, 2007. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 07-1694. Filed for public inspection September 14, 2007, 9:00 a.m.]

**Notice of Suspension**

Notice is hereby given that Michael L. Block having been suspended from the practice of law in the State of New Jersey by Order of the Supreme Court of New Jersey dated February 20, 2007, the Supreme Court of Pennsylvania issued an Order dated August 30, 2007, suspending Michael L. Block from the practice of law in this Commonwealth consistent with the Order of the Supreme Court of New Jersey. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 07-1695. Filed for public inspection September 14, 2007, 9:00 a.m.]

**Notice of Suspension**

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated August 30, 2007, Rubina Arora Wadhwa is suspended from the Bar of this Commonwealth for a period of 9 months effective September 29, 2007. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 07-1696. Filed for public inspection September 14, 2007, 9:00 a.m.]

# RULES AND REGULATIONS

## Title 52—PUBLIC UTILITIES

### PENNSYLVANIA PUBLIC UTILITY COMMISSION

#### [52 PA. CODE CHS. 54 AND 57]

[L-00040169]

#### Provision of Default Service

The Pennsylvania Public Utility Commission, on May 10, 2007, adopted at final rulemaking order defining the obligation of electric distribution companies to serve retail customers at the conclusion of their respective transition periods.

#### *Executive Summary*

Section 2807(e)(2) of the Public Utility Code, 66 Pa.C.S. § 2807(e)(2) (relating to duties of electric distribution companies), requires the Commission to promulgate regulations that define the obligation of electric distribution companies to serve retail customers at the end of the restructuring transition period. Section 2807(e) mandates that all customers who do not receive generation service through the competitive retail market must be provided generation service by either their incumbent electric distribution company or a Commission approved alternative provider. Generation supply provided to these customers must be acquired at prevailing market prices, and the provider may fully recover all reasonable costs associated with this service. On December 16, 2004, the Commission issued a Notice of Proposed Rulemaking that formally commenced this rulemaking process, which included additions to and revisions of Chapters 54 and 57 (relating to electricity generation customer choice and electric service) of the Commission's regulations. The Commission sought comments from all interested parties on the issues addressed in the proposed regulations.

The Commission identifies the generation service provided to customers under Section 2807 as "default service." The regulations require electric distribution companies to act as the default service provider to all retail customers, unless an alternative provider is approved by the Commission. Default service providers must continue to comply with all existing regulations, statutes and orders pertaining to public utility service to the extent they are not modified by this subchapter.

To meet the "prevailing market price" legal standard, the default service provider must procure all generation supply through a Commission approved competitive bidding process. The regulations provide for a two phase procedure for complying with the obligation. Providers must first submit default service implementation plans for the Commission to review, which would include a proposed competitive procurement process. Upon approval of the implementation plan by the Commission, the default service provider will execute its procurement process. The prices that result from compliance with the procurement process will be deemed the "prevailing market price" for default service.

The regulations also identify the mechanisms by which the default service provider will recover its costs, the rules governing customer migration to and from default service, and provide new competitive safeguards to ensure the reliable provision of default service.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 14, 2005, the Commission

submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 1421 (February 26, 2005), to Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Consumer Affairs and the Senate Committee on Consumer Protection and Professional Licensure for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on July 18, 2007, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 19, 2007, and approved the final-form rulemaking.

Public Meeting held  
May 10, 2007

*Commissioners Present:* Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Kim Pizzingrilli; Terrance J. Fitzpatrick

*Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa.C.S. § 2807(e)(2); Doc. No. L-00040169*

#### Final Rulemaking Order

#### *By the Commission:*

The Electricity Generation Customer Choice and Competition Act (Competition Act), 66 Pa.C.S. §§ 2801—2812, requires the Commission to promulgate regulations defining the obligation of electric distribution companies (EDCs) to serve retail electric customers at the conclusion of the restructuring transition periods. On December 16, 2004, the Commission issued proposed regulations for public comment on this subject. On February 8, 2007, the Commission issued an advance notice of final rulemaking (ANOFR) for public comment. The Commission has completed its review of the comments to the ANOFR, and today issues a final form default service regulation. At separate dockets, we are issuing a final policy statement on default service and retail electric markets, and identifying other policies for addressing potential electric price increases.<sup>1</sup>

#### BACKGROUND

Section 2807(e)(2) of the Competition Act requires the Commission to promulgate regulations governing an EDC's obligation to serve retail customers after the conclusion of its transition period. 66 Pa.C.S. § 2807(e)(2). This duty is often referred to as the "provider of last resort" (POLR) obligation. As the Competition Act makes clear, the purpose of this obligation is to address the scope of retail electric service that must be provided to customers who either have not chosen an alternative electric generation supplier or who contracted for electric energy that was not delivered. Section 2807(e) of the Competition Act provides several directives that the Commission must follow in its promulgation of regulations on this subject:

<sup>1</sup> *Default Service and Retail Electric Markets*, Docket M-00072009; *Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957.



(2) At the end of the transition period, the commission shall promulgate regulations to define the electric distribution company's obligation to connect and deliver and acquire electricity under paragraph (3) that will exist at the end of the phase-in period.

(3) If a customer contracts for electric energy and it is not delivered or if a customer does not choose an alternative electric generation supplier, the electric distribution company or commission-approved alternative supplier shall acquire electric energy at prevailing market prices to serve that customer and shall recover fully all reasonable costs.

(4) If a customer that chooses an alternative supplier and subsequently desires to return to the local distribution company for generation service, the local distribution company shall treat that customer exactly as it would any new applicant for energy service.

66 Pa.C.S. § 2807(e)

The proposed regulations were published at 35 Pa.B. 1421 (February 26, 2005). A 60 day comment period and 60 day reply comment period followed, the latter of which concluded on June 27, 2005. The Independent Regulatory Review Commission (IRRC) filed comments to this proposed rulemaking order on July 27, 2005.

The Commission reopened the public comment period in late 2005 to address the relationship between the default service rulemaking and the Alternative Energy Portfolio Standards Act of 2004 (73 P.S. §§ 1648.1—1648.8) (AEPS Act).<sup>2</sup> This second public comment period concluded on April 7, 2006. IRRC stated in a letter dated May 8, 2006, that it had no additional comments, and that the due date for a final default service rulemaking had been extended to April 7, 2008.

On February 8, 2007, the Commission issued an ANOFR at this docket. The ANOFR included numerous changes to the proposed rule intended to address concerns raised by IRRC and other parties, and to reflect changes in Commission policy on a number of issues. Comments and reply comments were requested. Separately, the Commission issued a proposed policy statement on certain issues relating to default service and retail choice. *Default Service and Retail Electric Markets*, Docket No. M-00072009 (Proposed Policy Statement Order entered February 9, 2007).

Comments to the proposed rulemaking order and/or ANOFR were filed at this docket by many parties, including the Allegheny Conference on Community Development, Allegheny Power (Allegheny), BP Solar, Citizens for Pennsylvania's Future (PennFuture), Citizens Electric Company (Citizens), Clean Power Markets, Inc., Conservation Services Group, Inc. (CSG), Constellation Energy (Constellation), Consolidated Edison Solutions, David Boonin, the Pennsylvania Department of Environmental Protection (DEP), Direct Energy, LLC (Direct), Dominion Retail, Inc. (Dominion), DTE Energy Company (DTE), Duquesne Light Company (Duquesne), the Economic Growth through Competitive Energy Markets Coalition, the Energy Association of Pennsylvania (Energy Association), FirstEnergy Solutions Corporation (FirstEnergy Corporation), the FirstEnergy Operating Companies<sup>3</sup> (FirstEnergy Companies), the Hess Corporation (Hess),

the Industrial Energy Consumers of Pennsylvania, et al.<sup>4</sup> (IECPA), Mesa Environmental Sciences, Inc. (Mesa), the Mid-Atlantic Power Supply Association (MAPSA), Morgan Stanley Capital Group, Inc., the National Energy Marketers Association (NEM), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the PA Utility Law Project, PECO Energy Company (PECO), Pike County Light & Power Company (PCLP), PPL Electric Utilities Corporation and PPL EnergyPlus, LLC (PPL), PJM Interconnection, LLC (PJM), PPM Energy (PPM), PV Now, Reliant Energy, Inc. (Reliant), Richards Energy Group, Inc., the Retail Energy Supply Association (RESA), Strategic Energy, LLC (Strategic), UGI Utilities, Inc.—Electric Division (UGI), U.S. Steel Corporation, (US Steel), US Wind Force, LLC, and the Wellsboro Electric Company (Wellsboro). All comments are available on the Commission's public internet domain.

## SUMMARY OF CHANGES

The Commission has made significant changes to the proposed regulations issued on December 16, 2004. We have determined that the public interest can best be served by modeling certain portions of the default service rules on our form of regulation of natural gas supply costs. That is, there should be regular adjustments to default service rates to reflect changes in the actual, incurred costs of the default service provider (DSP). This practice of regular adjustment with the use of spot market energy supply products will ensure that rates more closely track prevailing wholesale energy prices, and that customers do not experience large changes in rates as program terms expire. When wholesale energy prices rise over a period of several years, we find that a series of small rate increases is to be preferred to one large increase at the end of a plan's term of service. Reconciliation is strongly encouraged, though not mandated, to ensure the full recovery of the DSP's reasonable costs.

DSPs should consider a portfolio of energy supply products when developing their procurement plans. A reasonable procurement strategy may include a mix of fixed-term and spot market energy purchases, the use of laddered contracts, etc. The Commission discourages the practice of procuring all needed supply for a period of service at a single point in time. Instead, we recommend that the DSP use multiple competitive procurements and spot market purchases to meet its obligations and to reduce the risk of acquiring all supply at a time of unusual price volatility. We expect that DSPs will gradually increase their reliance on shorter term contracts and spot market energy products over time.

Rate design should be simplified to provide normal incentives for energy conservation and to facilitate customer choice. This will be done through the elimination of declining blocks rates and some demand charges. These designs may be gradually phased out to mitigate the bill impact for customers. Each default service customer will be offered a single rate option, which will be displayed on a customer's monthly bill as the Price-to-Compare (PTC). The PTC is an informational tool designed to facilitate customer choice, and represents the sum of all unbundled generation and transmission charges associated with default service. Additionally, customers may have the option of selecting an alternative time based rate if the Commission separately determines that the public interest requires DSPs to offer such rates to customers.

<sup>2</sup> Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa.C.S. § 2807(e)(2), Docket No. L-00040169 (Order entered November 18, 2005).

<sup>3</sup> The Pennsylvania Power Company, the Pennsylvania Electric Company, and the Metropolitan Edison Company.

<sup>4</sup> The Industrial Energy Consumers of Pennsylvania, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, and the PP&L Industrial Customer Alliance.

The Commission is mindful of the risks of being too prescriptive in its approach to this rulemaking. Changes in markets, technology and applicable law may result in an approach that is too narrowly tailored to serve Pennsylvania's interests. Accordingly, we do not attempt to dictate the exact manner by which every DSP will acquire electricity, adjust rates, and recover their costs. The Commission is issuing a separate statement of policy that contains guidelines for DSPs in the areas of procurement, rate design, and cost-recovery. Reserving some aspects of our regulation of default service to a statement of policy will allow the Commission, DSPs, retail customers, and other market participants to consider these policies in the context of individual default service plans, and to more effectively respond to changes in retail and wholesale markets.

## DISCUSSION

The Commission has reviewed the comments filed at each stage of this proceeding. For purposes of this Final Rulemaking Order, we will focus on revisions to the proposed regulations and ANOFR, and the issues raised by IRRRC in their comments of June 27, 2005.

In developing this final form rule, the Commission has attempted to craft rules that reflect stakeholder consensus to the extent that any agreement is aligned with the requirements of the Competition Act and the interest of ratepayers. We have found, as evidenced by the comments, that there is relatively little consensus on most of the key issues addressed by this rulemaking proceeding, including energy procurement, rate design and cost-recovery. This is not surprising, given the divergence in interests among those participating in this rulemaking process.

We make this observation cognizant of the fact that this rule is subject to the review of the Pennsylvania General Assembly (General Assembly) and IRRRC, and that interested parties are free to support or oppose this regulation in those forums. We find that this rule achieves the objectives of the Competition Act on issues relating to default service, including the acquisition of electricity at prevailing market prices, customer choice of generation suppliers through direct access, and the full recovery of reasonable costs for EDCs. There is sometimes a tension between these and the other objectives of the Competition Act that, if not balanced appropriately, can frustrate the intent of the General Assembly. The Commission has therefore crafted a regulatory framework that does not unreasonably advance one objective to the extent that it obstructs others. Consequently, to the extent that changes to this final form rule are required as part of the regulatory review process, such revisions may not occur in isolation.

### A. *Need for Regulations, Currently Effective Default Service Plans, and Pending Default Service Proceedings.*

In its first comment, IRRRC questioned whether the Commission was promulgating regulations too far in advance of the expiration of rate caps. Several parties who participated in the POLR Roundtable proceeding in 2004 recommended that the Commission wait at least several more years before promulgating regulations. These parties cautioned that changes in retail and wholesale markets might render ineffective any regulations adopted too far in advance of the end of the transition period. IRRRC noted that additional experience, including more study of default service models in other states, and further consideration of the requirements of the AEPS Act, might benefit the Commission in preparing regulations.

We believe this issue has been resolved given the passage of time since we proposed this rule. Six EDC generation rate caps have expired, and the remaining ones will end by December 31, 2010. The Commission has also had the benefit of several more years to study how neighboring jurisdictions are managing POLR service and the expiration of rate caps. The Commission now has a significantly better understanding of the impact of the AEPS Act on default service than it did in 2004. We have also learned from the experience of several Pennsylvania EDCs who have concluded their transition periods and implemented default service plans since 2004. Finally, the overwhelming majority of stakeholders would prefer to have regulations finalized as soon as possible. Accordingly, the Commission finds that it would be appropriate to conclude the default service rulemaking by mid-2007. This will provide needed regulatory certainty to those EDCs preparing their first default service programs, who collectively serve the large majority of Pennsylvania ratepayers.

The Commission has already approved interim default service plans for six EDCs that have completed their transition periods.<sup>5</sup> A number of parties, such as Duquesne, UGI, the Energy Association, and the OSBA, have asked that the Commission clarify the impact of final regulations on plans that are effective or now under Commission consideration.<sup>6</sup> It has been suggested that this issue be addressed by delaying the effective date of these regulations until January 1, 2011, when the last EDC generation rate cap has expired.

The Commission will not apply these regulations to already effective default service plans. In Pennsylvania, the retroactive application of laws is disfavored when it affects the substantive rights of parties. *Giant Eagle, Inc. v. Worker's Compensation Appeal Board*, 764 A.2d 663 (Pa. Cmwlth. 2000). Most of these interim default service plans will expire within the next 12 months, and we can find no public interest in disturbing their terms and conditions of service for so short a period of time.

Nor will the Commission require EDCs with pending default service proceedings to withdraw their filings and submit new plans. The Commission will not know if these final form regulations have obtained all necessary regulatory approvals for several months. Even assuming these regulations are approved by the end of July 2007, we question whether there would be sufficient time for EDCs to seek Commission approval of new, amended default service plans and obtain supply at reasonable prices prior to the expiration of their currently effective rates on December 31, 2007.<sup>7</sup>

However, the Commission will not grant a blanket waiver of these regulations at this time for plans now, or soon to be under, consideration by the Commission. Instead, the Commission recommends that EDCs with pending plans evaluate whether they wish to amend their filings. EDCs should take into consideration whether the delay of these proceedings resulting from an amendment would materially prejudice their ability to procure energy prior to the expiration of currently effective rates. If EDCs do not wish to amend their pending plans, they should request a waiver, in the pending proceeding, from any provision of the approved regulations that conflicts with their proposal. In reviewing any waiver requests, the

<sup>5</sup> Citizens, Duquesne, Pennsylvania Power Company, PCLP, UGI and Wellsboro.

<sup>6</sup> Default service proceedings are currently pending before the Commission for Duquesne, PCLP and the Pennsylvania Power Company. Citizens and Wellsboro are also expected to file plans for our consideration during 2007.

<sup>7</sup> Currently effective rates for Duquesne, PCLP, Citizens and Wellsboro will expire on December 31, 2007.

Commission will be guided by its stated policy objectives of mitigating the impact of potential electric price increases for retail customers.

*B. § 54.123. Competitive safeguards*

IRRC commented that certain proposed safeguards may improperly restrain customer choice, which is protected by section 2807(e)(4) of the Competition Act. We have deleted the language IRRC identified as problematic. The Commission will instead rely on its powers to prosecute and assess civil penalties on electric generation suppliers for violations of the Code of Conduct at 52 Pa. Code § 54.122 and other relevant regulations and statutory provisions. Given our finding that rates be regularly adjusted to reflect changes in the composition of the DSP's portfolio, we find that the risk of an EGS exploiting seasonal price variation, to the detriment of the DSP, is greatly reduced.

*C. § 54.181. Purpose*

IRRC commented that this section should be revised to reflect that parties other than EDCs may be approved to serve as a DSP. Any DSP, whether they are an EDC or not, is entitled to full recovery of reasonable costs. Accordingly, the phrase "other approved entity" has been added to the last sentence of § 54.181. The purpose of our default service regulatory framework is expanded upon in the final statement of policy on "Default Service and Retail Electric Markets."

*D. § 54.182. Definitions*

The Commission received many comments on the proposed definitions and this section reflects some revisions. Certain terms have been deleted given changes in other parts of the regulation, and new terms have been added. IRRC provided comments on four different definitions. "Default service provider" has been modified consistent with IRRC's suggestion to comply with the *Pennsylvania Code & Bulletin Style Manual*. "Fixed rate option" and "hourly priced service" have been deleted from this section given our changes to the section on rate design and cost recovery. The definition for "competitive procurement process" has been revised, and we will respond to IRRC's comment on this issue in subsequent sections of this final order.

New definitions have been added, including PTC, maximum registered peak load, and spot market energy purchase. These definitions are required due to other changes to the regulations that will be discussed in subsequent sections of this final order.

Definitions have been further revised based on comments to the ANOFR by PPL and the Energy Association. For example, the word "lowest" has been added to the definition for "competitive bid solicitation process" to be consistent with the version that appears in the default service statement of policy. The definition for "default service" has also been clarified. Additionally, the definition for PTC has been revised to reflect that it is intended to serve as a new line item to facilitate customer choice.

*E. § 54.183. Default service provider*

IRRC asked the Commission to explain its decision in § 54.183(a) to require the EDC to serve as the DSP unless the Commission approves an alternative. IRRC observes that section 2807(e)(1) of the Competition Act requires an EDC to assume this role while it is recovering stranded costs, but that it does not mandate that this role continue indefinitely. This description of the statutory language is correct.

However, the Commission cannot assume that there will be other parties qualified to or even interested in taking on the DSP role. There must be a DSP already in place in each territory to serve retail customers the day generation rate caps expire. Accordingly, the Commission must pick some party to be the initial DSP. The EDCs are the only parties that currently have certificates of public convenience to provide electric utility service in all of their particular territory. As the holder of a certificate, the EDC cannot refuse to serve retail electric customers within its designated service territory. The Commission cannot force another party, such as an EGS, to assume the DSP role. Therefore, the Commission has no choice but to initially designate the EDC to assume the DSP role. Section 2802(16) of the Competition Act clearly gives the Commission this authority:

Electric distribution companies should continue to be the provider of last resort in order to ensure the availability of universal electric service in this Commonwealth unless another provider of last resort is approved by the Commission.

66 Pa.C.S. § 2802(16). This section does not include language supporting a limitation of the DSP role to the transition period. Additionally, the Commission does not interpret section 2807(e)(2) as in any way requiring the Commission to allow an EDC to exit this function. The Commission has been granted broad authority by the General Assembly to define the obligations of EDCs after the transition has expired, including whether they are to continue in the role of the DSP. Designating the EDC as the initial DSP in each service territory is a reasonable approach to take to ensure the availability of electric service to all customers. Section 54.183 of these regulations identifies a process by which the DSP can be changed from an EDC to another party, as allowed by section 2807(e)(2), when the Commission finds it to be in the public interest. The Commission's interpretation of the Competition Act is reasonable and consistent with the intent of the General Assembly.

In regards to § 54.183(b), IRRC has requested that the Commission provide more specific criteria for changing the DSP. The Commission agrees that more specific criteria are appropriate. This version includes proposed changes to address this issue. The Commission draws on sections 1103, 1301, and 1501 and 2807(e)(3) of the Public Utility Code, 66 Pa.C.S. §§ 1103, 1501, 2807(e)(3), in developing these criteria. Section 1103(a) requires that the Commission only award a certificate of public convenience when finding that utility service is necessary for the "... accommodation, convenience, or safety of the public." Section 1301 requires that all rates charged by a utility be "just and reasonable." Section 1501 requires that the conditions of public utility service "... be adequate, efficient, safe, and reasonable." Section 2807(e) finds that a DSP can only recover "reasonable" costs. Thus, if an EDC can no longer provide default service in a safe and efficient manner, and/or in a way that reflects the incurrence of reasonable costs, the Commission may make a finding that other parties should be considered for the role.

IRRC identified several concerns regarding § 54.183(c). It asked whether it would be appropriate to require an EGS or EDC to obtain a certificate of public convenience if it wished to assume the DSP role. We now conclude that a certificate is not necessary, and have eliminated that requirement. We have also identified criteria, similar to those in § 54.183(c), for selecting from among more than one qualified parties who wish to serve as the

alternative DSP. Finally, we observe that to the extent that an alternative DSP is approved, this entity will be subject to assessments for the Commission's regulatory expenses. Specifically, we would require a party to agree to subject themselves to regulatory assessments as a condition of becoming an alternative DSP.

If a party does not wish to be responsible for these costs, then they should not seek to become a DSP. The Competition Act does not give any party a statutory right to become an alternative DSP. The Commission, at its discretion, may impose terms and conditions it believes to be appropriate for the reassignment.

In response to comments by Strategic to the ANOFR, we have made other revisions to § 54.183(c) to be able to fully utilize the potential of alternative DSPs. For example, it may be in the public interest to reassign some, but not all, customer classes to an alternative DSP. It may also be appropriate to utilize more than one alternative DSP if the obligation is assigned. One alternative DSP could be approved for residential and small business customers and a separate DSP for large customers.

*F. § 54.184. Default service provider obligations*

IRRC asked that the Commission more specifically identify what regulations and statutory provisions a DSP must adhere to. We have added these references for purposes of clarity in § 54.184(b).

IRRC properly raised the issue of whether an alternative DSP would have a universal service obligation. In the event that a reassignment occurs, the incumbent EDC's universal service obligation must be addressed. The Commission finds that the Competition Act requires that consumer protections be maintained at the level they existed at the time of the Competition Act's passage. 66 Pa.C.S. § 2802(10). In § 54.184(c), the Commission now acknowledges that if an EDC is relieved of the default service obligation, consideration will need to be given to the proper allocation of universal service responsibilities between that EDC and the replacement DSP. Universal service programs must be maintained at the same level in the event of the reassignment of the DSP role.

In a recent order the Commission provided guidance on the recovery of universal service program costs. *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923 (Final Investigatory Order entered December 18, 2006). The order provides that utilities may propose a surcharge to recover the costs of these programs from residential customers.

Even if the DSP role is reassigned, the incumbent EDC will still be providing transmission and distribution service to retail customers. Universal service programs cover the costs of transmission, distribution and generation service. The proper solution may be for the EDC to continue to administer and recover all costs for universal service programs. The EDC could then reimburse the alternative DSP for whatever services are provided by the DSP.

Some parties commented on this issue in their response to the ANOFR. For example, PPL recommended that the universal service obligation be largely shifted to the alternative DSP. However, the OCA and FirstEnergy believes that this function should remain with the incumbent EDC. In the absence of any actual experience with reassigning the full default service role, we are reluctant to issue a blanket rule at this time. A uniform standard may be developed after the Commission has adjudicated a petition to reassign the DSP role.

At the suggestion of the OCA, we have also made express the DSP's obligation to serve retail customers whose EGS has defaulted on their obligation to provide generation service. This revision is made in § 54.184(a).

*G. § 54.185. Default service programs and terms of service*

This section has been significantly revised. Pursuant to § 54.185(a), DSPs will be filing "default service programs" instead of implementation plans, and this definition has been added to § 54.182. Responding to IRRC's question on alternative DSP filings, the Commission notes that no alternative DSPs have been approved, and no requests are pending. In the event that an alternative DSP was approved after this regulation became effective, we would expect that the alternative DSP file its program at least twelve months prior to the expiration of the generation rate cap or approved default service program in that service territory. If this is not possible due to the timing of the reassignment, a waiver of this provision could be sought, consistent with 52 Pa. Code § 5.43.

Section 54.185(b) has been amended consistent with IRRC's recommendation to identify the documentary filing regulations that must be adhered to. Therefore we are including a reference to 52 Pa. Code § 1.1, et seq. We are also directing the DSP to serve a copy of its default service program on any EGSs registered in the DSP's service territory, and to make it available on their public internet domain.

After reflecting on IRRC's and other parties comments on this issue, the Commission has revised the language of § 54.185(c) on program duration by selecting a 2 to 3 year term for the first default service program filed after the effective date of these regulations. The Commission has not been able to identify an optimal program duration based on its current knowledge of energy markets. This issue has therefore been reserved to the default service statement of policy, which recommends a standard duration of 2 years for subsequent programs. As wholesale and retail markets change over time, the Commission will provide guidance on appropriate program durations. If markets mature to the point where the Commission can identify the ideal program duration, this regulation will then be revised accordingly.

We also agree with IRRC's comment to this section about excessive reliance on energy contracts of greater than one year. We are encouraging DSPs to gradually increase their utilization of spot market purchases and short fixed term contracts, a subject which is discussed at length in this order. The final statement of policy we are issuing contains guidelines on this topic.

Section 54.185(d) of the proposed rules has been eliminated, as procurement specific requirements have been moved to the new § 54.186. The revised § 54.185(d) identifies the required elements of the default service program. The default service program will consist of three main elements: a procurement plan for acquiring electric generation supply, an implementation plan that identifies the schedules and technical requirements of these procurements, and a rate design plan. The program will also include documentation of compliance with the RTO requirements, a contingency plan in the event of supplier default, copies of all agreements and forms to be used in competitive solicitations, and schedules identifying generation contracts with existing customers.

Section 54.185(e) remains largely the same in the final form version. The Commission recognizes that retail customers may benefit from the economies of scale real-

ized by combining the procurements of more than one service territory into a single auction process. DSPs may submit such proposals for our consideration.

The Commission is also concerned about the possibility of DSPs scheduling multiple, large procurements at the same point in time. This might negatively impact the price of bids. Guidelines on this issue are included in the default service statement of policy. We will work with relevant parties to balance the potential benefits associated with building economies of scale, with the associated increase in interest by suppliers, versus potential complications related to suppliers having to commit a large amount of their generation portfolio at a single point in time.

Section 54.185(f) has been moved to § 54.185(d)(4) and is largely unchanged. The term ISO, which stands for Independent System Operator, has been dropped from this section as no Pennsylvania EDC is under the operational control of an ISO. While PCLP is owned by a member of the New York Independent System Operator (NYISO), its transmission system is not under the NYISO's operational control.

Section 54.185(g) has been moved to § 54.185(d)(3). Sections 54.185(h) and (i) have been deleted. Section 54.185(j), now § 54.185(d)(7) has been revised from "long term generation contracts" to "generation contracts greater than 2 years" to respond to a comment from IRR. Section 54.185(k), has been moved to § 54.185(d)(6) and expanded to include all forms and agreements used as part of the default service implementation plan. The inclusion of these documents has been made mandatory, consistent with the recommendation from IRR.<sup>8</sup> Section 54.185(l) has been moved to § 54.185(d)(5), and left largely unchanged. Section 54.184(m), which IRR identified some concerns with, has been deleted.

In response to comments to the ANOFR by FirstEnergy and others, the time for the filing of a default service program has been reduced from fifteen to a minimum of twelve months in advance of the expiration of the current program in § 54.185(a). However, DSPs should give consideration to filing more than twelve months ahead of time, particularly for complex or initial post-rate cap default service programs.

We also received responses to our request for comments in the ANOFR on the coordination of procurements. PPL, PECO, FirstEnergy, Allegheny and Constellation have all expressed an interest in some form of coordinated, state-wide or multi-territory procurement process with uniform rules. We agree that such an approach may reduce administrative costs and facilitate wholesale supplier participation. Additionally, as recommended by Constellation, the Commission has no objection to the use of a single independent consultant to manage a multi-territory, coordinated, procurement process. However, a multi-service territory default service program must comply with the other aspects of this rule, including procurements by customer class, regular adjustments of rates, etc.

Both Citizens and Wellsboro filed comments to the ANOFR and default service statement of policy highlighting the challenges faced by smaller EDCs in managing the default service obligation. For example, these EDCs comment that they may have difficulty managing a portfolio of resources, multiple procurements, etc., even if

they were to aggregate their load. They suggest that the Commission make more express its willingness to grant small DSPs waivers from appropriate provisions.

We agree that smaller DSPs such as Citizens, Wellsboro, PCLP and, to a lesser extent UGI, face different challenges than larger EDCs, and have fewer resources to manage their obligation. Accordingly, we are adding § 54.185(f) to the final form rule. This has two purposes. First, it puts all DSPs on notice that they should include all requests for waivers to this subchapter in their default service program filings. Second, it affirms that special consideration will be given to the waiver requests of DSPs that serve smaller numbers of customers.

Section 54.185(d)(7) has been revised in response to a comment to the ANOFR by IECPA. Schedules identifying each generation contract between the incumbent EDC and customers shall only be provided to the Commission. Individual customer information will be given confidential status.

#### H. § 54.186. *Default service procurement and implementation plans*

This section has been substantially revised. We will first address IRR's comments to both this section and § 54.185(d) regarding the requirement for competitive procurement processes. IRR and some other commentators question the need to prescribe the manner in which electricity can be procured. IRR observes that section 2807(e) does not expressly mandate that competitive bidding be used to procure electric generation supply for default service customers. IRR recommends that this be modified, and that the Commission should be disinterested as to the method for procurement, so long as supply as acquired at prevailing market prices.

Initially, we must observe that we are expressly charged by the General Assembly with defining the obligation to "acquire" electricity:

At the end of a transition period, the commission shall promulgate regulations to define the electric distribution company's obligation to connect and deliver and acquire electricity under paragraph (3) that will exist at the end of the phase-in period.

66 Pa.C.S. § 2807(e)(2). The scope of this rulemaking properly includes the acquisition of electricity. This obligation cannot be defined without addressing the method of the acquisition.

It is true that electric utilities do routinely acquire electricity through bilateral contracts that are not a result of competitive procurement processes. These bilateral contracts may very well reflect "prevailing market prices." However, the Commission concludes that the optimal method of acquiring electricity includes a direct exposure to market forces. This exposure can best occur either through a competitive procurement process or a purchase in a spot energy market managed by an RTO such as the PJM Interconnection, LLC.<sup>9</sup> We note it is the standard practice of the Commonwealth of Pennsylvania to use competitive bidding when procuring goods or services of significant value. 62 Pa.C.S. § 101, et seq.

<sup>9</sup> We remind the IRR that most Pennsylvania EDCs have wholesale energy supplier affiliates with substantial generation assets. Permitting the routine use of bilateral contracts would allow an EDC to negotiate a contract with its affiliate, with all the potential risks and conflicts of interest this would entail. Requiring competitive procurements largely eliminates the risk that an EDC's wholesale energy affiliate would be given some preference in the procurement of default service supply. Some parties who commented to the ANOFR suggested that the Commission allow bilateral contracts with non-affiliates. As discussed in this section, the Commission is very skeptical of a DSP's ability to obtain the best price for customers with bilateral, long-term contracts.

<sup>8</sup> The Commission has initiated a separate proceeding to develop standardized request for proposal forms and supplier master agreements at Docket M-00061960.

In considering this rulemaking, IRRC should be cognizant of one of the key findings of the General Assembly included in the "Declaration of policy" section of the Competition Act:

Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.

66 Pa.C.S. § 2802(5). In interpreting a statute, legislative intent controls. 1 Pa.C.S. § 1921. We find that the plain language of the Competition Act demonstrates a preference for the use of "competitive market forces" in controlling the cost of electricity. The regular use and Commission approval of no-bid, bilateral energy contracts would be an exercise in "economic regulation" of the sort that the Competition Act discourages. We conclude that section 2807(e) must be read together with the General Assembly's declarations of policy in section 2802. The optimal forms of default service procurement are therefore competitive bid solicitations and spot market energy purchases. The recognition that spot market purchases are appropriate is a change from the proposed version of the rules, and consistent with IRRC's request that DSPs be given more procurement options and that the Commission allow procurements that reflect "prevailing market prices." The Commission's interpretation of the Competition Act is reasonable and reflects the intent of the General Assembly.

However, the Commission recognizes that there may be some circumstances where a short-term, bilateral contract is necessary and appropriate. For example, in the event that a wholesale energy supplier would default on a contract, the DSP would need to acquire replacement supply. We would not want to limit the DSP to acquiring electricity in only the spot market. In that situation, one or more bilateral contracts of 1-3 months may be appropriate until a permanent solution could be achieved, and may be incorporated in a DSP's contingency plan. To the extent a DSP believes an exception to the procurement standard is required regarding bilateral contracts, a petition for waiver may be filed pursuant to 52 Pa. Code § 5.43.

Section 54.186 has been significantly revised as to form and content. Section 54.186(a) provides that supply will be acquired consistent with Commission approved default service procurement and implementation plans. Section 54.186(b) identifies procurement plan standards, some of which are new to this version. This includes the requirement to use competitive procurement processes or spot market energy purchases only. This change is at least partly in response to IRRC's comment to the proposed § 54.187(b), that rates includes seasonal or monthly variation to reflect the prevailing market prices. Incorporating spot market products in a DSP's portfolio, when coupled with the regular adjustment of rates, will ensure that retail rates are responsive to changes in wholesale market prices.

Procurement plans should have the objective of obtaining the lowest, reasonable price. Given our recent experience with PCLP, we recognize that small DSPs have a greater challenge in attracting the interest of wholesale energy suppliers. Accordingly, they are directed to consider the benefits of coordinating their procurements with other DSPs. Section 54.156(b)(1), relating to affiliate participation, has been moved to § 54.156(b)(5).

Section 54.156(b)(2) has been moved to § 54.156(c)(1) in this version with few changes. In responding to IRRC's questions regarding bid evaluation criteria, we are revis-

ing this to "price-determinative bid evaluation criteria." It is our expectation that the energy suppliers who submit the lowest priced bids, providing they have met all bidder qualification criteria, will be awarded generation contracts by the DSP. Issues regarding the reliability and creditworthiness of a supplier should be addressed in bidder qualification criteria.

The original § 54.156(c) has been deleted and § 54.186(d) has been moved to new § 54.186(c)(3). Consistent with IRRC's and other parties' recommendations, third party oversight is now a mandatory part of this process. Guidelines for selecting a third party evaluator are addressed in more detail in the default service statement of policy.

The original § 54.186(f) has been deleted and its substance is addressed in the revised § 54.188. In the revised § 54.188, we address IRRC's comment on the old § 54.186(f)(2) that we reduce the time to review competitive procurement results.

We have also responded to IRRC's comment on contingency plans in § 54.186(g) (and §§ 54.187(i) and 54.188(e)). The prior versions of these sections have been deleted as duplicative or otherwise revised or moved to new sections. Contingency plans must be still included in the default service program, at the new § 54.185(d)(5). The terms and conditions of a contingency plan will be subject to Commission review as part of the examination of the default service program under the procedures at the revised § 54.188. Responding to IRRC's comment on "acquisition strategies," we find that acceptable contingency plans may incorporate spot market purchases, a competitive bid solicitation process (if time permits), or a short-term bilateral contract, as acknowledged previously in this section. Individual spot market purchases do not require prior Commission approval, consistent with the revised § 54.188. When issuing an order on a particular default service program, the Commission would clearly address the level of Commission oversight in the execution of a contingency plan.

Section 54.186(h) has been moved to § 54.186(c)(5). Additional guidelines regarding confidentiality of information are addressed in the default service statement of policy.

In response to a comment by UGI to the ANOFR, the words "to the extent applicable" have been added to § 54.186(c)(1) to acknowledge the fact that a DSP may not solely procure load following service. For example, a DSP has the discretion to use other types of contracts including on-peak, off-peak, or structured block products (e.g., 7 days a week, 24 hours a day), etc., as part of its procurement plan. In response to a comment by PPL, § 54.186(c)(1)(vii) has been revised to state that data may need to be provided according to the divisions in maximum registered peak load, as opposed to customer class. We have also adjusted the wording of this subsection, in response to a comment by FirstEnergy to the ANOFR, to ensure that "current" load information be made available to suppliers at an "appropriate time," which will likely be a time closer to the actual competitive bid process. The reference to § 54.186(b)(2)(vi) in § 54.186(c)(4) of the ANOFR, which was intended to refer to price determinative bid criteria, has been corrected to § 54.186(c)(1)(vi).

In response to comments by Strategic and other parties, we wish to clarify that § 54.186(b)(3), which allows for supply contracts that extend beyond the duration of the program term, is primarily intended to address the subject of contract laddering. The Commission recognizes

that the laddering of supply products may be a valid element of a portfolio strategy, particularly in the initial period following the expiration of rate caps. For laddering to occur, it may be necessary for some portion of the supply acquisition to overlap the end of one program term, and the beginning of another.

This section should not be interpreted to mean that the Commission has no policy preference on contract lengths. We stand by § 69.1805 of the default service statement of policy, which provides that long-term contracts should primarily be used to meet the requirements of the AEPS Act, and the supply needs of residential and small business customers in the early years of the post-transition period. We do suggest in the statement of policy that full requirements or block purchase contracts of 1 to 3 years in length, which may be laddered, be part of the portfolio for residential and small business customers for the DSP's first default service program. We also suggest that the portion of the portfolio that relies on shorter term contracts (e.g., 1 year or less) and the spot market be gradually increased with time. This procurement approach is consistent with Competition Act standard that energy be acquired at prevailing market prices.

In conclusion, we are generally skeptical of the DSP's ability to beat the market over periods of time greater than one year. Incumbent EDCs have simply not provided any real record in this or other default service proceedings to show that they can anticipate changes in market prices, and take advantage of this information to obtain consistently lower prices through long-term contracts compared to short-term and spot market purchases. Wholesale market prices are very sensitive to factors completely beyond the control of DSPs, suppliers and regulators, including weather, global energy demand, and war. This is one of the key reasons we are discouraging the use of bilateral contracts in the acquisition of default service supply. We believe customers will save more money as DSPs gradually increase their utilization of short-term fixed price contracts and spot market products, and what data we do have supports this premise. For example, Direct Energy cited to a report in its reply comments that Duquesne's residential customers would have saved \$75 million during the first two years of its "POLR III" plan if they had been on monthly priced service.<sup>10</sup> Small commercial customers would have realized savings of \$28 million over the first 23 months of the POLR III plan. *Id.*

We are sensitive to the concerns of parties regarding price volatility, and the need for customers to become accustomed to market pricing and the regular adjustment of rates. Therefore we do support reliance on longer-term, fixed price products in the years immediately following the expiration of rate caps.

*I. § 54.187. Default service rate design and the recovery of reasonable costs*

This section has been significantly revised. After reviewing the many comments on this issue from IRRC and other parties, the Commission concluded that its approach to rate design and cost recovery was too prescriptive. Therefore, this section has been revised to provide

<sup>10</sup> Intelometry Inc., *Power Price Report, Pittsburgh Market (Duquesne Light) 1/1/05 through 11/30/06*, December 2006. Direct Energy also provided evidence in a separate proceeding, which they refer to in their reply comments, that the PJM monthly clearing price in the PJM zone was less than the PPL tariff price for residential customers in at least 32 out of 49 months between 2002 and 2005. Direct Energy Reply Comments, pg. 3. Direct Energy asserts that PECO's small commercial customers would have saved approximately \$1.1 billion off their tariff rate between January 1, 2002, and November 30, 2005, through the use of a monthly pricing mechanism. Intelometry Inc., *Power Price Report, Philadelphia Market (PECO) 1/1/02—11/30/06*, December 2006.

more flexibility to DSPs and the Commission to manage the default service obligation. Additional guidelines on rate design and cost-recovery are included in the default service statement of policy.

Many commentators believed that the proposed version of § 54.187(a) was overly complex, or simply incorrect in its design. IRRC also had many questions about this section. We agree that this is one of the more technically complex issues of this rulemaking. In the revised § 54.187(a), the Commission limits its finding to the requirement that the default service rate should represent the sum of all generation and transmission related costs.

In response to IRRC's comments on the proposed § 54.187(a)(1) and (a)(2), the Commission maintains its position that distribution rates should be examined to ensure that no generation costs remain embedded. The PTC, which is derived from default service rates at a particular point in time, shall be designed to recover all default service costs for an average member of a customer class. The revised § 54.187(d) provides that the default service rate may not include any distribution costs, and that EDC distribution rates be reduced to reflect embedded costs reallocated to the generation component of the PTC. However, we believe that this issue will require considerable study and additional policy development. Therefore we have moved much of the detail on this issue to the final statement of policy on default service, where we identify what we believe to be the appropriate cost elements for default service. We expect that each EDC will have its distribution rates addressed in a separate proceeding to finally resolve this issue. This may involve the performance of new cost of service studies for each EDC, as suggested by IRRC. The Commission may also make use of a collaborative process to develop uniform standards on embedded costs to be applied to each EDC.

In response to IRRC and other parties' comments to § 54.187(b), (c) and (d), we have removed the language mandating fixed rate options and hourly rates for certain customer classes. The associated definitions have been deleted from § 54.182. The new § 54.187(b) now provides that each customer will have a single rate option, which will be described as the PTC. The PTC will be a new, separate line item on a monthly bill that represents the sum of all transmission and generation related charges. The PTC will not replace the unbundled generation, distribution, and transmission charges that currently appear on a monthly bill. The use of a PTC will enable customers to make more informed choices regarding whether or not to seek service with an EGS. We intend that customers be educated about the use of the PTC as part of the consumer education initiatives that will be implemented pursuant to the Final Order in the price mitigation proceeding.

To provide normal incentives for conservation, and to reflect the actual cost of energy, we have revised § 54.187(c). The revised language will have the effect of eliminating "declining blocks" from rate schedules. Some EDC rate schedules currently provide that the rate charged per kWh declines once the customer uses a certain amount of electricity in a given month, such as 1000 kW. This provision would require those rate designs for default service to be eliminated.<sup>11</sup>

Sections 54.187(e) and (f) address the issue of cost reconciliation. Consistent with the comments of IRRC,

<sup>11</sup> In its most recent POLR filing, at Docket P-00072247, Duquesne proposed to eliminate declining blocks and demand charges for all customers by 2010.



§ 54.187(e) has been revised to include a reference to the Commission's alternative energy regulations in Chapter 75. In responding to IRRC's concern about reconciliation, we note that the AEPS Act expressly provides that alternative energy costs be recovered through a Section 1307 automatic adjustment clause. See 73 P. S. § 1648.3(a)(3). Cost-recovery mechanisms for alternative energy are also being specifically addressed in a pending rulemaking at Docket L-00060180.<sup>12</sup> As the alternative energy portfolio standard is effectively a component of the default service obligation, these rules necessarily contain cross-references.

In response to IRRC's comment to the proposed § 54.187(a)(3) and § 54.187(d), we do not believe that these rules will hinder the ability of DSP's to meet their AEPS requirements. The AEPS Act expressly provides that:

(4) (i) An electric distribution company or electric generation supplier shall comply with the applicable requirements of this section by purchasing sufficient alternative energy credits and submitting documentation of compliance to the program administrator.

(ii) For purposes of this subsection, one alternative energy credit shall represent one megawatt hour of qualified alternative electric generation, whether self-generated, purchased along with the electric commodity or separately through a tradable instrument and otherwise meeting the requirements of commission regulations and the program administrator.

73 P. S. § 1648.3(e)(4). Accordingly, a DSP may meet its portfolio requirements solely with alternative energy credits that have been separated from the energy commodity. Therefore, the use of competitive procurements in combination with automatic adjustment clauses, or hourly priced options, poses no problems for alternative energy compliance.<sup>13</sup> Energy prices or rate options are irrelevant, because the DSP does not have to buy energy to satisfy the requirements of the AEPS Act.<sup>14</sup>

In § 54.187(f) the Commission provides that a DSP may propose cost-reconciliation of non-alternative energy costs as part of its default service program. The Commission now concludes that reconciliation of default service costs may be necessary, and in fact is more desirable, to enable the DSP to "... recover fully all reasonable costs" so that the PTC reflects market prices. 66 Pa.C.S. § 2807(e)(3). If the DSP wishes to utilize a cost reconciliation mechanism, the default service statement of policy provides guidelines on this subject. The original § 54.187(h), which was commented on by IRRC, and included a prohibition on reconciliation, has therefore been removed.

To respond to the concern of IRRC regarding reconciliation, we find that parity between EDCs and EGSs can be maintained through the regular adjustment of rates, the

<sup>12</sup> *Implementation of the Alternative Energy Portfolio Standards Act of 2004*, Docket L-00060180 (Proposed Rulemaking Order entered July 25, 2006).

<sup>13</sup> PECO filed a petition with the Commission on March 19, 2007, regarding its AEPS obligations. It proposes to hold several competitive auctions for alternative energy credits only in late 2007 and early 2008. The costs of these credits would be recovered through a Section 1307 automatic adjustment clause after PECO's generation rate cap expired. *Petition of PECO Energy Company for Approval of (1) A Process to Procure Alternative Energy Credits During the AEPS Banking Period and (2) A Section 1307 Surcharge And Tariff To Recover AEPS Costs*, Docket P-00072260. PECO would bank these credits during its rate cap period and use them satisfy its non-solar photovoltaic Tier I obligations for several reporting periods.

<sup>14</sup> This statutory interpretation is codified in the pending rulemaking at Docket L-00060180. The legal challenge to this interpretation filed in the context of the appeal of the Commission's ruling on Pennsylvania Power Company's POLR filing at Docket P-00052188 has been withdrawn. See Commonwealth Court Docket 1085 C.D. 2006. We note that in that case, Pennsylvania Power Company made its wholesale suppliers contractually responsible for providing it with sufficient alternative energy credits to meet its portfolio obligation under the AEPS Act for the term of that plan.

gradual increase in spot market products, and the limitation on the use of long-term contracts, and several other measures. With these elements, the default service rate will more closely track the market prices offered by EGSs. The elimination of declining blocks and the use of the PTC will also facilitate competitive choice. We are also exploring a variety of other initiatives through the default service statement of policy to facilitate retail choice. Finally, this regulation does not *mandate* the use of reconciliation. We will be monitoring DSP's use of reconciliation mechanisms going forward, and to the extent that they are abused, we will decline to approve, or otherwise modify, their use.

Section 54.187(g) requires the DSP to include demand side response and management rates in their default service program *if* the Commission has mandated that such rates be available. The Commission is studying this topic as part of a pending investigation into conservation, energy efficiency, and demand side response.<sup>15</sup> Consistent with IRRC's suggestion, we have included a definition of demand side response and demand side management by reference to an existing definition found in section 1648.2 of the AEPS Act, 73 P. S. § 1648.2. In response to IRRC's question regarding potential hardship for smaller DSPs in offering these programs, this is an area where a waiver may be requested.

The revised § 54.187(g) allows for the option of an hourly priced rate for residential customers, as recommended by IRRC in their comment to proposed § 54.187(b). We are aware that real time pricing pilots have recently been implemented in Illinois for residential customers in response to the expiration of rate caps, and believe that such pilots may also be appropriate in Pennsylvania. A DSP may therefore propose to include an optional, hourly priced rate for residential customers in its default service program. However, we are reluctant to mandate that hourly priced service be offered at this time to all customers. For hourly priced service to be offered, EDCs may need to make significant new investments in metering, billing and communication systems. These investments may cost a significant amount of money, and these costs would ultimately be recovered from ratepayers. The Commission needs to carefully consider the costs associated with hourly pricing before mandating that all customers have this option. This is one of a number of issues being studied in our pending investigation on DSR, energy efficiency and conservation.

Section 54.187(h), (i) and (j) represents major revisions to the rulemaking. Specifically, the Commission finds that the PTC should be adjusted on a regular basis as opposed to remaining fixed for the entire duration of a program. This is consistent with a recommendation made by IRRC, in its comment to the proposed § 54.187(b), that rates have some variability to reflect market prices. This also addresses IRRC's comment to the proposed § 54.187(g), that adjustment mechanisms be clearly set forth. The frequency of this PTC adjustment would be dependent on the customer class.<sup>16</sup> For residential and small business customers, rates will be adjusted at least every quarter. For large business customers, the PTC will be adjusted at least every month. DSPs have the discretion to propose more frequent adjustments in their program filings, consistent with IRRC suggestion that flexibility be allowed

<sup>15</sup> *Investigation of Conservation, Energy Efficiency Activities, and Demand Side Response by Energy Utilities and Rate-making Mechanisms to Promote Such Efforts*, Docket No. M-00061984 (Order entered October 11, 2006).

<sup>16</sup> Consistent with suggestions made by the IRRC and other commentators, we are giving the DSP some flexibility in determining the divisions of customers to preserve existing rate schedules.



for in this area. Accordingly, DSPs may elect to offer hourly rates to large commercial and industrial customers.

As stated earlier, this approach is similar to our regulation of natural gas supply costs. The purchased gas cost rate for most natural gas distribution companies is adjusted quarterly to reflect changes in their incurred costs of supplying customers. 52 Pa. Code § 53.64(i)(5). When wholesale market prices move higher, rates increase. When prices decline, rates are reduced. Having regular adjustments allows the utility to collect its costs immediately, avoid and manage cost under recoveries, and not incur additional costs associated with trying to recover the difference between costs and revenues all at one time. If gas customer rates were not adjusted quarterly, the annual reconciliation process could demonstrate larger divergences between costs incurred and revenues received. Overall costs would be higher, as more interest would need to be paid either by the utility or customers in reconciling costs and revenues. Pennsylvania's residential gas customers, most of whom are also customers of EDCs, are well accustomed to having their gas rate adjusted quarterly. We expect that retail electric customers can manage quarterly adjustments as well.

In both this rulemaking and the accompanying statement of policy, the Commission is encouraging DSPs to acquire a portfolio of generation supply products. Rather than simply procuring all generation at one time for the entire duration of the program, DSPs should consider a mix of fixed-term and spot market energy purchases, laddered contracts, and the use of both supply and demand resources. The Commission recognizes the risks posed by the practice of procuring all generation supply for the entire duration of a program at a single point in time.

PCLP's last default service filing is a case in point. PCLP procured all of its default service supply for 2006-2007 through an auction held in October of 2005, approximately two months after Hurricane Katrina severely disrupted wholesale energy markets and the nation's energy infrastructure. As a result of very high prices in wholesale markets, PCLP's average customer experienced a total bill increase of about 75% on January 1, 2006, which included a generation rate increase of about 129%. Because all energy was acquired at one point in time, PCLP's default service rate for the entire two year program was locked in and reflected the market price of the day of the auction. Even though wholesale energy prices retreated substantially from their late 2005 and early 2006 peaks, PCLP's high default service rate was not reduced.

This is in marked contrast to the experience of retail customers of PCLP's parent company, Orange & Rockland Utilities, Inc. (O & R), whose territory lies just across the state line in New York. For the same time period covered by PCLP's plan, Orange & Rockland was utilizing a portfolio approach, whereby it was acquiring supply through a mix of fixed-term contracts and spot market energy purchases. The costs O & R incurred to serve its default customers therefore changed over time in response to changes in wholesale market prices. O & R's retail customers are charged a "market supply charge" which changes every month. While O & R's market supply charge increased in October of 2005, it declined in subsequent months as wholesale energy prices retreated.<sup>17</sup> PCLP's customers did not benefit from the

<sup>17</sup> O & R's price to compare for the last few years can be viewed at <http://www.oru.com/energyandsafety/energychoice/newyork/orupricetocompare.html>

decline in wholesale energy prices as their rate was set in advance for a two year period.

In this rulemaking and the default service statement of policy, the Commission is encouraging DSPs to take an approach similar to O & R's. This would include the use of multiple fixed-term contracts and spot market energy purchases. Laddering of contracts should also be considered. This is a departure from some of the recent POLR filings where the entire supply was provided pursuant to one or more fixed-term contracts. A small step was taken in this direction in the recent Pennsylvania Power Company default service plan, where energy was procured for a 17 month period in two separate auctions.

In arriving at this decision, we find that there is simply too much risk associated with procuring all supply at a fixed rate for the entire duration of the program. When a price is locked in and wholesale rates move lower, customers will experience what PCLP customers have dealt with over the past few years. When wholesale energy prices increase above a fixed rate, customers may experience sharp, unplanned increases when the program expires (e.g., the experience of many customers in this region, including Maryland, when generation rate caps set during a time of lower wholesale energy prices expired).

Fixed default service rates for prolonged periods are also detrimental to the development of retail markets in Pennsylvania. For example, EGSs have simply not been able to compete with the below market rates offered by EDCs during the generation rate cap period. Customer choice is largely nonexistent outside the territory of Duquesne, the only large EDC whose generation rate cap has expired.<sup>18</sup> A PTC that is fixed for long periods of time, and that does not adjust to changes in wholesale energy prices, will stifle competition. We believe customers will receive the lowest rates when multiple EGSs are competing for their business, as is the case for any good or service that consumers need.

If DSP rates are fixed at below market prices for prolonged periods, EGSs will not be able to make price attractive offerings to customers. Instead, customers will be left with no readily available alternative to the DSP's rate when it eventually is adjusted to reflect the market price. The PCLP experience will be repeated again and again. If EGSs know that the PTC will be adjusted consistent with the DSP's incurred costs as wholesale markets change, they will invest more time and money in establishing a presence in Pennsylvania, and marketing their service to customers. Customers will then have greater opportunity to choose among suppliers and realize savings.

This is not to say that customers should be deprived of the opportunity to obtain a fixed price for generation service. We have concluded that the public interest will be served, in the form of lower rates over the long term, if the default service rate is regularly adjusted to reflect changes in default service costs as they occur. In this regulatory environment, EGSs will respond by entering the market in greater numbers, and if there is a significant demand for these types of rates, offer them.<sup>19</sup> We caution, however, that such price certainty does not come

<sup>18</sup> The experience of Duquesne shows that retail markets can work. Duquesne's territory has the highest rate of customer choice in Pennsylvania. See <http://www.oqa.state.pa.us/Industry/Electric/electstats/instat.htm>. Its overall retail electric rates remain 15% below what they were when the Competition Act was passed in 1996. [http://www.puc.state.pa.us/general/pdf/Thomas\\_Stmt\\_OSA0203\\_081904.pdf](http://www.puc.state.pa.us/general/pdf/Thomas_Stmt_OSA0203_081904.pdf).

<sup>19</sup> In support of this assertion we refer to the OCA's residential gas customer shopping guide, dated January 5, 2007. One year, fixed price contracts for residential customers are currently available in the service territories of Columbia Gas, Dominion Peoples, and UGI Utilities, Inc.—Gas Division.

without increased costs for the customer. A retail rate that cannot be adjusted over a significant period of time in response to changes in wholesale energy markets will reflect a risk premium, whether offered by a DSP or an EGS.

Many comments were filed in response to this section of the ANOFR on the subject of declining blocks, cost-reconciliation, customer groupings and rate design. The Commission has made a number of changes to the ANOFR in response to these comments.

#### *The Price-to-Compare*

In response to comments to the ANOFR, we are clarifying the use of the PTC. This is a new line item that represents the sum of generation and transmission related charges. However, transmission and generation related charges should still be included on the monthly utility bill as separate line items. In response to a comment from Constellation regarding taxes, we wish to confirm that sales tax should not be included in the PTC.

#### *Declining Blocks and Demand Charges*

The Commission received comments both for and against the elimination of declining blocks in response to the ANOFR. Some parties, such as the OCA, warned that their abrupt elimination may lead to rate shock for certain customer classes. Others, like IECPA, Allegheny, US Steel, and PECO, believe that demand charges and/or declining blocks are an appropriate element of rate design.

In addressing these comments, we will review UGI's most recent default service plan. On April 17, 2006, UGI filed a petition with the Commission to establish default service rates for the 2007–2009 period. After the proceeding was initiated, UGI and several other interested parties initiated settlement discussions. A Joint Petition for Settlement was filed with the Commission on June 1, 2006. The signatories included UGI, the OCA, the OSBA and Constellation.

Under the terms of the settlement, UGI agreed to phase out some declining block rates and generation demand charges over a 3 year period. UGI attached the testimony of David C. Beasten, Director of Electric Power Supply and Rates, in support of the settlement. On the topic of declining blocks, Mr. Beasten testified:

When one purchases energy in the market, one generally pays the same price for all the energy purchased. Having declining block rates for generation service thus gives a false price signal to customers.

Mr. Beasten explained that immediate elimination of these rates could result in rate shock for some customers. Accordingly, UGI proposed to phase out these rates over three years. The Commission accepted this proposal, and approved the Joint Settlement. *Petition of UGI Utilities, Inc.—Electric Division for Approval to Implement 2007-2009 Default Service Tariff Provisions on One Day's Advance Notice*, Docket No. P-00062212 (Order entered June 22, 2006).

We still agree with Mr. Beasten's testimony that declining block rates for default service gives false price signals to customers. This false price signal discourages energy conservation and complicates retail choice. Therefore, the requirement to eliminate all declining block rates will remain in the final version of this rule.

However, we do accept the argument of IECPA, Allegheny, US Steel and PECO that generation and transmis-

sion demand charges may be appropriate in some circumstances for large commercial and industrial customers. Accordingly, this rule does not include a blanket prohibition on generation and transmission demand charges. DSPs may propose demand charges that are rationally related to the costs of providing service to large commercial and industrial customers. Incumbent EDCs should not assume that the Commission will approve the demand charges currently appearing in their tariffs. We agree with the reply comments of the OSBA that the current demand charges are a legacy from the pre-restructuring era, and do not reflect the actual costs of serving these customers in today's markets. DSPs should be prepared to include strong evidence in their default service program filings that supports the design and cost basis of any proposed demand charges.

The UGI Joint Settlement is also appropriate for consideration in the context of price increase mitigation. The Commission agrees with the OCA that the immediate termination of declining block rates and generation demand charges could lead to rate shock for certain customers. Therefore, we will apply the rate change mitigation provision of the default service statement of policy to this issue. If a DSP finds that the elimination of declining blocks or demand charges would lead to an increase of 25% or more for any customer class, it should propose to gradually phase out these design elements through a series of annual adjustments. The length of this adjustment process may vary, depending on the size of the increase to be mitigated. Generally, we believe this can be done within 2–3 years.

#### *Cost Reconciliation*

We recognize that the use of a reconciliation mechanism was strongly opposed by some who responded to the ANOFR, who assert that the use of a reconciliation mechanism may harm the development of retail competition. Some, like Dominion, believe that DSPs may use reconciliation to give a false price signal to keep retail customers from shopping. The DSP could attempt this by charging a below market PTC and then recovering any under collections, with interest, during an end of the year reconciliation process.

We have given serious consideration to these comments and the potential problems identified. Consistent with the gas cost recovery model, we will provide for asymmetrical interest calculations for under and over collections.<sup>20</sup> Interest paid to the DSP will be at the legal rate of interest, which is 6%.<sup>21</sup> The interest rate paid to customers for refunds of over collections shall be 8%. This will serve as a disincentive to price manipulation behavior, and an incentive to acquire energy at prevailing market prices. The Commission will also closely monitor the use of reconciliation mechanisms by DSPs.

We remind DSPs that the discretion afforded them by this regulation is not an invitation to acquire all energy through a handful of multiyear full requirements contracts and then passively observe costs and revenues significantly diverge in response to wholesale market events, customer migration, etc. Such conduct would not be consistent with the acquisition of energy at "prevailing market prices" or the incurrence of "reasonable costs." 66 Pa.C.S. § 2807(e)(3).

Rather, we are giving DSPs the tools to proactively manage their default service obligation. A DSP may minimize the risk of under collection through the regular

<sup>20</sup> 66 Pa.C.S. § 1307(f)(5).

<sup>21</sup> 41 P.S. § 202.

adjustment of rates. Additionally, we believe the risk of seasonal gaming will be greatly reduced when the PTC is adjusted on a regular basis in response to the change in composition of the portfolio. This is why we have directed that the PTC be adjusted at least every quarter or month, depending on customer size. This approach ensures full customer choice but protects DSPs from seasonal gaming and under recovery of costs.

To the extent that a DSP is concerned that it lacks the expertise or resources to proactively manage short-term purchases, they are free to retain the services of other parties and include these costs in their rates. For example, a DSP could outsource the management of its spot and short-term energy portfolio. As stated earlier in this order, this regulation also allows DSPs to coordinate their procurements of default service supply. Smaller DSPs are strongly encouraged to consider pooling their resources in the management of the default service obligation, and may request waivers from provisions that are too burdensome.

Additionally, at the suggestion of IECPA and others, we have revised this section to clearly state that the use of a reconciliation mechanism will be subject to annual review and audit, consistent with section 1307(d) and (e) of the Public Utility Code. The review of alternative energy and non-alternative energy costs recovered through an automatic adjustment clause should be addressed in the same proceeding to reduce administrative costs to the parties. The public notice and hearing provisions of section 1307(e) will apply to these filings.

#### *Customer Groupings and Frequency of Rate Changes*

Some parties have objected to the frequency of rate changes for customers, asserting that this will produce harmful volatility in rates. We simply disagree with this analysis. We cite to the experience of the State of Maryland, which has already transitioned to market based rates, as referenced by Strategic and NEM in their comments to the ANOFR:

The Commission concurs with the parties that rate stability is an important public policy goal generally, and particularly with respect to SOS. Recent experience suggests that longer term fixed prices do not contribute to that goal; indeed they create a false sense of complacency that costs are in fact stable, followed by the painful transition when rates are finally adjusted to reflect current costs . . . The upshot is that frequent, albeit small rate changes, are a better vehicle for insuring relative rate stability (and a more gradual reflecting of changes in current market prices) rather than longer periods of frozen rates, followed by rate shock.

Maryland Public Service Commission, Case No. 9056, *Investigation into Default Service For Type II Standard Offer Service Customers*, Order 81019, Issued August 19, 2006.

In response to those suppliers who feel that quarterly and monthly changes in rates are too infrequent, we remind them that the regulation sets the minimum frequency of change. For example, DSPs may propose more frequent changes in rates, such as hourly priced service, for their larger commercial and industrial customers.

In response to the comments of IRRC on this issue to the proposed § 54.187(c), the Commission wishes to emphasize that the regulations allow DSPs the discretion to propose alternative groupings of retail customers for good cause. For example, Duquesne may propose to continue to

offer hourly priced service to all customers at or above 300 kw. DSPs may also separate residential and small business customers for procurement purposes, as recommended by the OCA.

We recognize that the number and distribution of customers across classes varies significantly from territory to territory. For example, it may be necessary to combine the customer classes of smaller DSPs to develop tranches of sufficient size for competitive auctions. Alternatively, individual tranches may be stratified into residential and business customer segments when there are insufficient customers to create separate tranches for the different customer classes. Reasonable, alternative groupings of customers may be proposed for our consideration, consistent with the suggestion of IRRC.

#### *Single Rate Option*

Some parties believe that the Commission is unduly restricting the rate options available to customers in this rulemaking. It has been suggested that section 2806(h) of the Public Utility Code, 66 Pa.C.S. § 2806(h), be used in the context of default service to provide flexible pricing options to individual customers. DSPs may include proposals for flexible rates in their default service programs. However, these programs may increase the complexity and costs of providing basic default service. Additionally, these proposals must comply with the Public Utility Code and recent precedent regarding reasonable differences in rates between customer classes. 66 Pa.C.S. § 1304; *Lloyd v. Pa. Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth 2006).

The Commission will keep an open mind on the appropriateness of renewable energy default service products, such as PECO's "Wind Tariff."<sup>22</sup> However, we observe that two EGSs are currently offering "green" energy products to residential customers in PECO's service territory. Additionally, default service supply will begin to incorporate a gradually increasing renewable energy component with the expiration of the rate cap, consistent with the requirements of the AEPS Act. PECO may propose the continuation of this rate in its first default service program and submit evidence of how this service is consistent with a "provider of last resort" role in the post-transition period.

Finally, we are revising § 54.187(k) in response to a comment made by the OCA to the ANOFR. The OCA recommends that a DSP be required to first use any collateral owed by a wholesale supplier pursuant to an energy contract in the event of a default. Only after this collateral was fully exhausted could the DSP seek to recover the incremental costs of a default from customers. We agree with this recommendation and have revised § 54.187(k) to require DSPs to first seek recovery under their "contract terms with the default supplier."

#### *J. § 54.188. Commission review of default programs and rates*

Section 54.188 has been revised to reflect the introduction of new terms such as default service program, etc. The review period standard has been moved from § 54.186(f)(2) to § 54.188(d) in this version. Some parties commented that the proposed review period was too long and open-ended, and may detrimentally affect the prices

<sup>22</sup> The Commission held that offering and marketing this tariff was permissible under the terms of the settlement agreement relating to the establishment of the Exelon Corporation and its merger with the Unicom Corporation. However, the Commission did not make a final decision on the availability or marketing of this tariff in the context of post-transition period default service. *Green Mountain Energy Company v. PECO Energy Company*, Docket R-00016938C0001 (Order entered July 18, 2003).

bid by suppliers. IRRC, in comments to the prior version of § 54.186(f)(2) recommended reducing the review period from "no less than" to "no more than" 3 business days. The Commission agrees with these comments, and believes the period can be reduced. Accordingly, the Commission is reducing its review period from "no less than 3 business days" to no more than "1 business day." The Commission provides additional guidelines on this issue in the default service statement of policy.

We have clarified § 54.188(d) to state that while the result of a solicitation may be deemed approved if not formally rejected within 1 business day, this does not represent the end of the Commission's oversight. Should information subsequently come to the attention of the Commission that the DSP failed to adhere to the approved plan, that the DSP disclosed confidential information to an affiliate, or that one or more bidders engaged in fraud, collusion, bid rigging, price fixing or other unlawful acts the Commission would investigate and seek appropriate remedies.

We agree with IRRC that procurement plans should be reviewed to ensure that their design will result in reliable supply of electric at market prices with the incurrence of reasonable costs. The default service statement of policy includes guidelines for DSPs intended to help achieve this goal.

We are declining to adopt IRRC and some other commentators' suggestion that we lengthen the default service case timeline from 6 to 9 months. The Commission has adjudicated several default service cases, including the Pennsylvania Power Company's most recent filing, within a 6 month period. We believe that with the issuance of final regulations, greater consistency among filings, and the experience that will come with each case, the Commission, DSPs, and other parties will become more efficient in the filing and review of default service programs. However, we will adjust the standard to 7 months, and these final-form regulations reflect this change. This is the same time period for which the Commission may suspend a tariff in the context of requests for general rate increase. 66 Pa.C.S. § 1308(d). Where more time is truly necessary, particularly with initial filings, the DSP can petition for a waiver or modification of the seven month standard pursuant to 52 Pa. Code § 5.43.

Section 54.188(e) provides more structure for the review and approval of the initial rates that will take effect at the beginning of a default service program. The revised regulations establish a standard that should result in customers receiving notice of new rates within a reasonable period of time, and more opportunity to consider other options, including service with an EGS.

Section 54.188(f) now addresses standards for tariff filings required by our decision to require regular adjustment of the PTC. Section 54.188(g) has been eliminated as unnecessary and duplicative. A provision for the waiver of Commission regulations is already in place in 52 Pa. Code § 5.43.

In response to comments by UGI and others to the ANOFR, we are revising § 54.188(d) to state that we will not conduct an after the fact prudence review of purchases made consistent with a Commission approved default service plan. We are also revising this section, based on a comment from FirstEnergy, to observe that the Commission approval is not required for individual spot market purchases made pursuant to a Commission approved procurement plan. The Commission will study the

DSPs overall spot market acquisition strategy in its review of the default service program. However, as noted above, a DSP's disclosure of confidential information to an affiliate or fraud, collusion, bid rigging or price manipulation by suppliers would be subject to Commission investigation and appropriate remedial action.

Section 54.188(e) has been clarified at the suggestion of the OCA to require that customers be given initial notice of the filing of the default service program. This notice is modeled on the provision that applies to natural gas distribution companies utilizing section 1307(f) of the Public Utility Code.

In response to IRRC's comment on this section, we note that the proposed § 54.188(g) has been deleted. Requests for waivers must now be included in the default service program, consistent with the new § 54.185(f). The phrase "and other applicable laws" no longer appears in this context.

#### *K. § 54.189. Default Service Customers and the Standards for Transferring Customer Accounts to Default Service Providers*

We agree with IRRC that limitations on choice are inappropriate and contrary to the provisions of the Competition Act. We find that by providing for regular rate adjustments that track changes in market prices, any incentives to game the system through frequent changes in suppliers is greatly reduced. References to regulatory provisions have been added for clarity.

In response to comments by the OCA and IECPA, the Commission is making several edits to this section. Customers who are taking service with an EGS do not need to "apply" for default service. These customers should have already gone through an application process with an EDC when they first signed up for electric utility service. Since the incumbent EDC is currently the DSP in all service territories, customers who are shopping are still EDC customers for purposes of distribution and transmission service. Accordingly, they do not need to apply again, and potentially be required to pay onerous security deposits, to return to the DSP from an EGS.<sup>23</sup>

#### **CONCLUSION**

The Commission thanks the parties for their comments and participation in this proceeding. Given the high level of public interest in this matter, we offer the following information on the next steps in this rulemaking procedure. Upon the entry of this Final Order, the Commission will prepare this rule for delivery to the General Assembly and IRRC. If the rule is approved by IRRC, it will be forwarded to the Pennsylvania Attorney General for review as to form and legality. The Pennsylvania Attorney General has 30 days to review this final-form rule. If not rejected by the Pennsylvania Attorney General, the rule will become legally effective upon publication in the *Pennsylvania Bulletin*. This process should take approximately 2 to 3 months.

Accordingly, under sections 501 and 2807(e)(2) of the Public Utility Code (66 Pa.C.S. §§ 501 and 2807(e)(2)), sections 201 and 202 of the act of July 31, 1968 (P. L. 769 No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 and 7.5, the Commission adopts the regulations pertaining to the obligations of EDCs to connect, deliver and acquire

<sup>23</sup> Several parties commented on PECO commercial customers currently receiving generation service from an EGS as a consequence of PECO's Market Share Threshold program. These customers have the right to change their generation service provider at any time. However, the Commission will not, and PECO should not, automatically reassign these customers to default service upon the expiration of the generation rate cap.

electricity at the conclusion of the transition period, as noted and set forth in Annex A; *Therefore,*

*It Is Ordered That:*

1. The regulations of the Commission, 52 Pa. Code Chapters 54 and 57, are amended by amending §§ 54.4—54.6, 54.31, 54.32, 54.41 and 57.178 and by adding §§ 54.123 and 54.181—54.189 to read as set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

3. The Secretary shall submit this order and Annex A to the Governor’s Budget Office for review of fiscal impact.

4. The Secretary shall submit this order and Annex A for review by the designated standing committees of both houses of the General Assembly, and for review and approval by the Independent Regulatory Review Commission.

5. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. The final-form rulemaking becomes effective upon publication in the *Pennsylvania Bulletin*.

7. The contact person for this final-form rulemaking is Shane M. Rooney. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri Delbiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

JAMES J. MCNULTY,  
*Secretary*

*(Editor’s Note:* This final-form rulemaking refers to the statement of policy published at 37 Pa.B. 5019 (September 15, 2007) (Fiscal Note #57-254).)

*(Editor’s Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 4411 (August 4, 2007).)

**Fiscal Note:** Fiscal Note 57-237 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 54. ELECTRICITY GENERATION  
CUSTOMER CHOICE**

**Subchapter A. CUSTOMER INFORMATION**

**§ 54.4. Bill format for residential and small business customers.**

(a) EGS prices billed must reflect the marketed prices and the agreed upon prices in the disclosure statement.

(b) The following requirements apply only to the extent to which an entity has responsibility for billing customers, to the extent that the charges are applicable. The default service provider will be considered to be an EGS for the purposes of this section. Duplication of billing for the same or identical charges by both the EDC and EGS is not permitted.

(1) EDC charges must appear separately from EGS charges.

(2) Charges for basic services must appear before charges for nonbasic services, and appear distinctly separate.

(3) Customer bills must contain the following charges, if these charges are applicable, and these charges must appear in a distinct section of the bill. The designation or label of each charge as either a basic charge or nonbasic charge appears in parenthesis following the name of the charge. This label of either basic or nonbasic is not required to accompany the name of the charge on the bill.

(i) Generation charges (basic).

(A) Generation charges shall be presented in a standard pricing unit for electricity in actual dollars or cents per kWh, actual average dollars or cents per kWh, kW or other Commission-approved standard pricing unit.

(B) Generation charges shall appear first among the basic charges with one exception. EDCs may place the customer charge first among the basic charges.

(ii) Transmission charges (basic).

(iii) Distribution charges (basic).

(iv) Customer charge or basic charge (charge for basic service in § 56.15 (relating to billing information)) (basic).

(v) Advanced metering charges (basic).

(vi) Transition charges (basic).

(vii) Taxes (comply with § 56.15) (basic).

(viii) Late payment charges (basic).

(ix) Security deposit (basic).

(x) Reconnection fee (basic).

(xi) Itemization of nonbasic charges (nonbasic).

(xii) Overall billing total.

(4) The entity reading the meter for billing purposes shall provide the following electricity use data figures:

(i) The total annual electricity use for the past 12 months in kWh, including the current billing cycle. This is a single cumulative number.

(ii) The average monthly electricity use for the past 12 months in kWh, including the current billing cycle. This is a single cumulative number.

(5) The requirements of § 56.15 shall be incorporated in customer bills to the extent that they apply.

(6) Definitions for the following charges and terms are required in a customer’s bill, if they appear as billing items, as contained in “Common Electric Competition Terms” and shall be in a distinctly separate section of the bill:

(i) Generation charges.

(ii) Transmission charges.

(iii) Distribution charges.

(iv) Customer charge/basic charge (charge for basic service in § 56.15).

(v) Advanced metering, if applicable.

(vi) Transition charges.

(7) “General Information” is the required title for customer contact information in a customer’s bill.

(i) The name, address and telephone number for the EGS and EDC shall be included.

(ii) Both EDC and EGS information in subparagraph (i) is required on all customer bills with the billing entity's information first.

(8) When a customer chooses the option to receive a separate bill for generation supply, the EDC shall include in a customer's bill the following information where the EGS charges would normally appear:

(i) The EGS's name.

(ii) A statement that the customer's EGS is responsible for the billing of EGS charges.

(9) When a customer chooses the option to receive a single bill from the EDC, the EDC shall include in the customer's bill the name of the EGS where the EGS charges appear.

(10) For customers who have chosen electric generation services from a competitive supplier, the customer's bill shall include the following statements which may appear together in a paragraph:

(i) "Generation prices and charges are set by the electric generation supplier you have chosen."

(ii) "The Public Utility Commission regulates distribution prices and services."

(iii) "The Federal Energy Regulatory Commission regulates transmission prices and services."

(c) The billing entity shall provide samples of customer bills to the Commission for review.

**§ 54.5. Disclosure statement for residential and small business customers.**

(a) The agreed upon prices in the disclosure statement must reflect the marketed prices and the billed prices.

(b) The EGS shall provide the customer written disclosure of the terms of service at no charge whenever:

(1) The customer requests that an EGS initiate service.

(2) The EGS proposes to change the terms of service.

(3) Service commences from a default service provider.

(c) The contract's terms of service shall be disclosed, including the following terms and conditions, if applicable:

(1) Generation charges shall be disclosed according to the actual prices.

(2) The variable pricing statement, if applicable, must include:

(i) Conditions of variability (state on what basis prices will vary).

(ii) Limits on price variability.

(3) An itemization of basic and nonbasic charges distinctly separate and clearly labeled.

(4) The length of the agreement, which includes:

(i) The starting date.

(ii) The expiration date, if applicable.

(5) An explanation of sign-up bonuses, add-ons, limited time offers, other sales promotions and exclusions, if applicable.

(6) An explanation of prices, terms and conditions for special services, including advanced metering deployment, if applicable.

(7) The cancellation provisions, if applicable.

(8) The renewal provisions, if applicable.

(9) The name and telephone number of the default service provider.

(10) An explanation of penalties, fees or exceptions, printed in type size larger than the type size appearing in the terms of service.

(11) Customer contact information that includes the name of the EDC and EGS, and the EGS's address, telephone number, Commission license number and Internet address, if available. The EGS's information shall appear first and be prominent.

(12) A statement that directs a customer to the Commission if the customer is not satisfied after discussing the terms of service with the EGS.

(13) The name and telephone number for universal service program information.

(d) Customers shall be provided a 3-day right of rescission period following receipt of the disclosure statement.

(1) The 3-day right of rescission is 3 business days.

(2) The 3-day right of rescission begins when the customer receives the written disclosure.

(3) The customer may cancel in writing, orally or electronically, if available.

(4) Waivers of the 3-day right of rescission are not permitted.

(e) Definitions for generation charges and transmission charges, if applicable, are required and shall be defined in accordance with the "Common Electric Competition Terms." Definitions for each of the nonbasic services, if applicable, are required. The definition section of the bill must be distinctly separate.

(f) The EGS shall include in the customer's disclosure statement the following statements which may appear together in a paragraph:

(1) "Generation prices and charges are set by the electric generation supplier you have chosen."

(2) "The Public Utility Commission regulates distribution prices and services."

(3) "The Federal Energy Regulatory Commission regulates transmission prices and services."

(g) Disclosure statements must include the following customer notification:

(1) "If you have a fixed term agreement with us and it is approaching the expiration date or whenever we propose to change our terms of service in any type of agreement, you will receive written notification from us in each of our last three bills for supply charges or in corresponding separate mailings that precede either the expiration date or the effective date of the proposed changes. We will explain your options to you in these three advance notifications."

(h) If the default service provider changes, the new default service provider shall notify customers of that change, and provide customers with its name, address, telephone number and Internet address, if available.

**§ 54.6. Request for information about generation supply.**

(a) EGSs shall respond to reasonable requests made by consumers for information concerning generation energy sources.

(1) EGSs shall respond by informing consumers that this information is included in the annual licensing report and that this report exists at the Commission. Providers

shall explain that the report is available to them and offer to provide it, if requested.

(2) The default service provider shall file at the Commission the annual licensing report as required by the Commission's licensing regulations in this chapter and shall otherwise comply with paragraph (1).

(3) EGSs operating for less than 1 year may respond to customer inquiries about generation energy sources by furnishing the information as described in subsection (b).

(b) Verification of the anticipated generation energy source, of the identifiable resources (if and when they have been "claimed") and the fact that energy characteristics were not sold more than once, shall be conducted by an independent auditor at the end of each calendar year and contained in the annual report to the Commission, relating to information disclosure requirements in subsection (a) and the licensing regulations in this chapter.

(c) Whenever EGSs market their generation as having special characteristics, such as "produced in Pennsylvania" or "environmentally friendly" and the like, providers shall have information available to substantiate their claims.

(1) Disclosure of generation energy sources shall be identifiable, which is defined as electricity transactions which are traceable to specific generation sources by any auditable contract trail or equivalent, such as a tradable commodity system, that provides verification that the electricity source claimed has been sold only once to a retail customer. If generation energy sources are not identifiable, the provider shall disclose this fact.

(d) Electricity providers, whether they make distinguishing claims or not, shall include in their general communications with consumers that electricity is the product of a mix of generation energy sources, that is delivered over a system of wires.

(e) Electricity providers shall respond to reasonable consumer requests for energy efficiency information, by indicating that these materials are available upon request from the Commission or the EDC.

(f) The use of general, unsubstantiated and unqualified claims of environmental benefits, such as "green" and "environmentally friendly," is prohibited. The Commission supports the application of the Federal Trade Commission's (FTC) Guides for the Use of Environmental Marketing Claims (see 16 CFR 260.1—260.8 (relating to guides for the use of environmental marketing claims)), in the enforcement of this section and the following specific principles:

(1) Section 260.6(a) (relating to general principles) which states that qualifications or disclosure should be clear, prominent, and of relative type size and proximity to the claim being qualified. In addition, contrary assertions which undercut the qualifications should not appear.

(2) Section 260.6(c) which states that environmental claims should not overstate the environmental attribute or benefit, expressly or by implication.

(3) Section 260.6(d) which suggests that marketing materials which make comparative claims should clearly state the basis for the comparison, be able to be substantiated, and be accurate at the time they are made.

(4) Section 260.7(a) (relating to environmental marketing claims) which labels unqualified claims of environmental benefit as deceptive.

(5) Section 260.7(f) which addresses claims regarding source reduction, such as reduced toxicity or reductions of other environmentally negative effects.

(g) Residential and small business customers are entitled to receive at no charge and at least once a year, historical billing data from whomever reads the meter for billing purposes.

(1) The EDC is only obligated to provide information that is readily available in its billing system.

(2) The historical billing data shall be conveyed in terms of kWh, and kW, as applicable, and associated charges for the current billing period and for the year preceding the current billing period.

(3) The historical billing data will be updated with each billing cycle.

(h) Electricity providers shall notify consumers either in advertising materials, disclosure statements or bills that information on generation energy sources, energy efficiency, environmental impacts or historical billing data is available upon request.

**Subchapter B. ELECTRIC GENERATION SUPPLIER LICENSING**

**§ 54.31. Definitions.**

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

*Aggregator*—An entity licensed by the Commission, that purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers. See section 2803 of the code (relating to definitions).

*Applicant*—A person or entity seeking to obtain a license to supply retail electricity or electric generation service.

*Broker*—An entity, licensed by the Commission, that acts as an intermediary in the sale and purchase of electric energy but does not take title to electric energy. See section 2803 of the code.

*Code*—The Public Utility Code (66 Pa.C.S. Part I).

*Default service provider*—The incumbent EDC within a certificated service territory or a Commission approved alternative supplier of electric generation.

*Department*—The Department of Revenue of the Commonwealth.

*EDC*—Electric distribution company.

*EGS*—Electric generation supplier

—(i) A person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter (*Editor's Note*: The reference to "this chapter" refers to the code.), brokers and marketers, aggregators or any other entities, that sell to end-use customers electricity or related services utilizing the jurisdictional transmission and distribution facilities of an EDC, or that purchase, broker, arrange or market electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an EDC.

(ii) The term excludes building or facility owner/operators that manage the internal distribution system serving the building or facility and that supply electric power and other related power services to occupants of the building or the facility.

(iii) The term excludes electric cooperative corporations except as provided in 15 Pa.C.S. Chapter 74 (relating to generation choice for customers of electric cooperatives). See section 2803 of the code.

*Interim license*—A temporary license granted to an EGS under interim standards adopted in the Commission's Final Order on Licensing Requirements for Electricity Generation Suppliers, entered February 13, 1997 at Dkt. No. M-00960890 F0004.

*License*—A license granted to an EGS under this subchapter.

*Licensee*—A person or entity which has obtained a license to provide retail electricity or electric generation service.

*Market aggregator*—An entity licensed by the Commission, that purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers. See section 2803 of the code.

*Marketer*—An entity, licensed by the Commission, that acts as an intermediary in the sale and purchase of electric energy but does not take title to electric energy. See section 2803 of the code.

*Marketing*—The publication, dissemination or distribution of informational and advertising materials regarding the EGS's services and products to the public by print, broadcast, electronic media, direct mail or by telecommunication.

*Offer to provide service*—The extension of an offer to provide services or products communicated orally, or in writing to a customer.

*Renewable resource*—As defined in section 2803 of the code.

#### § 54.32. Application process.

(a) An EGS may not engage in marketing, or may not offer to provide, or provide retail electricity or electric generation service until it is granted a license by the Commission.

(b) An application for a license shall be made on the form provided by the Commission. A copy of the application may be obtained from the Commission's Secretary. The application form will also be made available on the Commission's Internet web site. An application shall be verified by an oath or affirmation as required in § 1.36 (relating to verification). See section 2809(b) of the code (relating to requirements for electric generation suppliers).

(c) An original and eight copies of the completed application and supporting attachments shall be filed. An application for a license shall be accompanied by the application fee as established in § 1.43 (relating to schedule of fees payable to the Commission).

(d) Copies of the completed application with supporting documentation shall be served on the following: the Office of Consumer Advocate, the Office of Small Business Advocate, the Department and the Office of the Attorney General and the EDCs through whose transmission and distribution facilities the applicant intends to supply customers.

(e) Incomplete applications and those without supporting attachments, when needed, will be rejected without prejudice. The license application, with supporting attachments, shall be completed in its entirety.

(f) When an answer on the application requires the disclosure of privileged or confidential information not

otherwise available to the public, the applicant may designate at each point in the application where information is disclosed that is confidential and privileged.

(1) One copy of this confidential or privileged information conspicuously marked at the top as "CONFIDENTIAL" may be submitted to the Office of the Secretary with the application. An applicant shall provide reasons for protecting this information.

(2) The request for confidentiality will be treated as a petition for protective order and will be ruled on by the Commission in conjunction with the license application.

(3) Pending disposition, the information will be used solely for the purpose of evaluating the license application, and the confidentiality of this information will be maintained consistent with regulations in this title pertaining to confidentiality.

(g) An EGS who has been granted an interim license shall apply for a license under this subchapter by updating its prior license application to include additional and updated information required by § 54.33 (relating to application form). An updated application shall be submitted by December 7, 1998.

(h) An EDC acting within its certificated service territory as a default service provider is not required to obtain a license.

#### § 54.41. Transfer or abandonment of license.

(a) A license may not be transferred without prior Commission approval. See section 2809(d) of the code (relating to requirements for electric generation suppliers). Approval for transfer shall be obtained by petition to the Commission. The granting of such a petition does not eliminate the need for the transferee to complete and file with the Commission an application that demonstrates the transferee's financial and technical fitness to render service under the transferred license.

(b) A licensee may not abandon service without providing 90 days prior written notice to the Commission, the licensee's customers, the affected distribution utilities and default service providers prior to the abandonment of service. The licensee shall provide individual notice to its customers with each billing, in each of the three billing cycles preceding the effective date of the abandonment.

#### Subchapter E. COMPETITIVE SAFEGUARDS

#### § 54.123. Transfer of customers to default service.

The following standards apply to the transfer of a retail customer's electric generation service from an EGS to a default service provider within the meaning of § 54.182 (relating to definitions):

(1) An EGS may not transfer a retail customer from its electric generation service to the default service provider without the consent of the default service provider, except in the following situations:

(i) Upon Commission approval of the abandonment, suspension or revocation of an EGS license, consistent with §§ 54.41 and 54.42 (relating to transfer or abandonment of license; and license suspension; license revocation).

(ii) Upon nonpayment by a retail customer for services rendered by the EGS.

(iii) To correct an unauthorized or inadvertent switch of a retail customer's account from default service to an alternative EGS's service, consistent with § 57.177 (relating to customer dispute procedures).

(iv) Upon the normal expiration of contracts.



(2) An EGS may initiate transfers in the situations in paragraph (1) through standard electronic data interchange protocols.

(3) The Commission may impose a penalty for every retail customer transferred to default service in violation of this section, consistent with 66 Pa.C.S. §§ 3301—3316 (relating to violations and penalties).

**Subchapter G. DEFAULT SERVICE**

Sec.	
54.181.	Purpose.
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54.186.	Default service procurement and implementation plans.
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54.188.	Commission review of default service programs and rates.
54.189.	Default service customers.

**§ 54.181. Purpose.**

This subchapter implements 66 Pa.C.S. § 2807(e) (relating to duties of electric distribution companies), pertaining to an EDC’s obligation to serve retail customers at the conclusion of the restructuring transition period. The provisions in this subchapter ensure that retail customers who do not choose an alternative EGS, or who contract for electric energy that is not delivered, have access to generation supply at prevailing market prices. The EDC or other approved entity shall fully recover all reasonable costs for acting as a default service provider of electric generation supply to all retail customers in its certificated distribution territory.

**§ 54.182. Definitions.**

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

*Alternative energy portfolio standards*—A requirement that a certain percentage of electric energy sold to retail customers in this Commonwealth by EDCs and EGSs be derived from alternative energy sources, as defined in the Alternative Energy Portfolio Standards Act (73 P.S. §§ 1648.1—1648.8).

*Commission*—The Pennsylvania Public Utility Commission.

*Competitive bid solicitation process*—A fair, transparent and nondiscriminatory process by which a default service provider awards contracts for electric generation supply to qualified suppliers who submit the lowest bids.

*DSP—Default service provider*—The incumbent EDC within a certificated service territory or a Commission approved alternative supplier of electric generation service.

*Default service*—Electric generation supply service provided pursuant to a default service program to a retail electric customer not receiving service from an EGS.

*Default service implementation plan*—The schedule of competitive bid solicitations and spot market energy purchases, technical requirements and related forms and agreements.

*Default service procurement plan*—The electric generation supply acquisition strategy a DSP will use in satisfying its default service obligations, including the manner of compliance with the alternative energy portfolio standards requirement.

*Default service program*—A filing submitted to the Commission by a DSP that identifies a procurement plan, an implementation plan, a rate design to recover all

reasonable costs and other elements identified in § 54.185 (relating to default service programs and periods of service).

*Default service rate*—The rate billed to a default service customer resulting from compliance with a Commission approved default service program.

*EDC—Electric distribution company*—The term has the same meaning as defined in 66 Pa.C.S. § 2803 (relating to definitions).

*EGS—Electric generation supplier*—The term has the same meaning as defined in 66 Pa.C.S. § 2803.

*FERC*—The Federal Energy Regulatory Commission.

*Maximum registered peak load*—The highest level of demand for a particular customer, based on the PJM Interconnection, LLC, “Peak Load Contribution Standard,” or its equivalent, and as may be further defined by the EDC tariff in a particular service territory.

*PTC—Price-to-compare*—A line item that appears on a retail customer’s monthly bill for default service. The PTC is equal to the sum of all unbundled generation and transmission related charges to a default service customer for that month of service.

*Prevailing market price*—The price that is available in the wholesale market at particular points in time for electric generation supply.

*RTO—Regional transmission organization*—A FERC-approved regional transmission organization.

*Retail customer or retail electric customer*—These terms have the same meaning as defined in 66 Pa.C.S. § 2803.

*Spot market energy purchase*—The purchase of an electric generation supply product in a FERC-approved real time or day ahead energy market.

**§ 54.183. Default service provider.**

(a) The DSP shall be the incumbent EDC in each certificated service territory, except as provided for under subsection (b).

(b) The DSP may be changed by one of the following processes:

(1) An EDC may petition the Commission to be relieved of the default service obligation.

(2) An EGS may petition the Commission to be assigned the default service role for a particular EDC service territory.

(3) The Commission may propose through its own motion that an EDC be relieved of the default service obligation.

(c) The Commission may reassign the default service obligation for the entire service territory, or for specific customer classes, to one or more alternative DSPs when it finds it to be necessary for the accommodation, safety and convenience of the public. A finding would include an evaluation of the incumbent EDC’s operational and financial fitness to serve retail customers, and its ability to provide default service under reasonable rates and conditions. In these circumstances, the Commission will announce, through an order, a competitive process to determine the alternative DSP.

(d) When the Commission finds that an EDC should be relieved of the default service obligation, the competitive process for the replacement of the default service provider shall be as follows:

(1) An entity that wishes to be considered for the role of the alternative DSP shall file a petition under 66 Pa.C.S. § 2807(e)(3) (relating to duties of electric distribution companies).

(2) Petitioners shall demonstrate their operational and financial fitness to serve and their ability to comply with Commission regulations, orders and applicable laws pertaining to public utility service.

(3) If no petitioner can meet this standard, the incumbent EDC shall be required to continue the provision of default service.

(4) If one or more petitioners meets the standard provided in paragraph (2), the Commission will approve the DSP best able to fulfill the obligation in a safe, cost-effective and efficient manner, consistent with 66 Pa.C.S. §§ 1103 and 1501 (relating to procedure to obtain certificates of public convenience; and character of service and facilities) and 2807(e).

(5) A petitioner approved to act as an alternative DSP shall comply with applicable provisions of the code, regulations and conditions imposed in approving the petition to act as an alternative DSP.

**§ 54.184. Default service provider obligations.**

(a) A DSP shall be responsible for the reliable provision of default service to retail customers who are not receiving generation services from an alternative EGS within the certificated territory of the EDC that it serves or whose alternative EGS has failed to deliver electric energy.

(b) A DSP shall comply with the code and Chapter 1 (relating to rules of administrative practice and procedure) to the extent that the obligations are not modified by this subchapter or waived under § 5.43 (relating to petitions for issuance, amendment, repeal or waiver of regulations).

(c) A DSP shall continue the universal service and energy conservation program in effect in the EDC's certificated service territory or implement, subject to Commission approval, similar programs consistent with the 66 Pa.C.S. §§ 2801—2812 (relating to Electricity Generation Customer Choice and Competition Act). The Commission will determine the allocation of these responsibilities between an EDC and an alternative DSP when an EDC is relieved of its DSP obligation.

**§ 54.185. Default service programs and periods of service.**

(a) A DSP shall file a default service program with the Commission's Secretary's Bureau no later than 12 months prior to the conclusion of the currently effective default service program or Commission-approved generation rate cap for that particular EDC service territory, unless the Commission authorizes another filing date. Thereafter, the DSP shall file its programs consistent with schedules identified by the Commission.

(b) Default service programs must comply with Commission regulations pertaining to documentary filings in Chapter 1 (relating to rules of administrative practice and procedure), except when modified by this subchapter. The DSP shall serve copies of the default service program on the Pennsylvania Office of Consumer Advocate, Pennsylvania Office of Small Business Advocate, the Commission's Office of Trial Staff, EGSs registered in the service territory and the RTO or other entity in whose control area the DSP is operating. Copies shall be provided upon request to other EGSs and shall be available at the DSP's public internet domain.

(c) The first default service program shall be for a period of 2 to 3 years, or for a period necessary to comply with subsection (d)(4), unless another period is authorized by the Commission. Subsequent program terms will be determined by the Commission.

(d) A default service program must include the following elements:

(1) A procurement plan identifying the DSP's electric generation supply acquisition strategy for the period of service. The procurement plan should identify the means of satisfying the minimum portfolio requirements of the Alternative Energy Portfolio Standards Act (73 P.S. §§ 1648.1—1648.8) for the period of service.

(2) An implementation plan identifying the schedules and technical requirements of competitive bid solicitations and spot market energy purchases, consistent with § 54.186 (relating to default service procurement and implementation plans).

(3) A rate design plan recovering all reasonable costs of default service, including a schedule of rates, rules and conditions of default service in the form of proposed revisions to its tariff.

(4) Documentation that the program is consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of the RTO or other entity in whose control area the DSP is providing service. The default service procurement plan's period of service must align with the planning period of that RTO or other entity.

(5) Contingency plans to ensure the reliable provision of default service when a wholesale generation supplier fails to meet its contractual obligations.

(6) Copies of agreements or forms to be used in the procurement of electric generation supply for default service customers. This includes all documents used as part of the implementation plan, including supplier master agreements, request for proposal documents, credit documents and confidentiality agreements. When applicable, the default service provider shall use standardized forms and agreements that have been approved by the Commission.

(7) A schedule identifying generation contracts of greater than 2 years in effect between a DSP, when it is the incumbent EDC, and retail customers in that service territory. The schedule should identify the load size and end date of the contracts. The schedule shall only be provided to the Commission and will be treated as confidential.

(e) The Commission may, following notice and opportunity to be heard, direct that some or all DSPs file joint default service programs to acquire electric generation supply for all of their default service customers. In the absence of such a directive, some or all DSPs may jointly file default service programs or coordinate the scheduling of competitive bid solicitations to acquire electric generation for all of their default service customers. A multiservice territory procurement and implementation plan must comply with § 54.186.

(f) DSPs shall include requests for waivers from the provisions of this subchapter in their default service program filings. For DSPs with less than 50,000 retail customers, the Commission will grant waivers to the extent necessary to reduce the regulatory, financial or technical burden on the DSP or to the extent otherwise in the public interest.

**§ 54.186. Default service procurement and implementation plans.**

(a) A DSP shall acquire electric generation supply at prevailing market prices for default service customers in a manner consistent with procurement and implementation plans approved by the Commission.

(b) A DSP's procurement plan must adhere to the following standards:

(1) The procurement plan shall be designed to acquire electric generation supply at prevailing market prices to meet the DSP's anticipated default service obligation at reasonable costs.

(2) DSPs with loads of 50 mW or less shall evaluate the cost and benefits of joining with other DSPs or affiliates in contracting for electric supply.

(3) Procurement plans may include solicitations and contracts whose duration extends beyond the program period.

(4) Electric generation supply shall be acquired by competitive bid solicitation processes, spot market energy purchases or a combination of both.

(5) The DSP's supplier affiliate may participate in a competitive bid solicitation process used as part of the procurement plan subject to the following conditions:

(i) The DSP shall propose and implement protocols to ensure that its supplier affiliate does not receive an advantage in the solicitation and evaluation of competitive bids, or other aspect of the implementation plan.

(ii) The competitive bid solicitation process shall comply with the codes of conduct promulgated by the Commission in § 54.122 (relating to code of conduct).

(c) A DSP's implementation plan must adhere to the following standards:

(1) A competitive bid solicitation process used as part of the default service implementation plan must provide, to the extent applicable and at the appropriate time, the following information to suppliers:

- (i) A bidding schedule.
- (ii) A definition and description of the power supply products on which potential suppliers shall bid.
- (iii) Bid price formats.
- (iv) A time period during which the power will need to be supplied for each power supply product.
- (v) Bid submission instructions and format.
- (vi) Price-determinative bid evaluation criteria.
- (vii) Current load data for rate schedules or maximum registered peak load groupings, including the following:
  - (A) Hourly usage data.
  - (B) Number of retail customers.
  - (C) Capacity peak load contribution figures.
  - (D) Historical monthly retention figures.
  - (E) Estimated loss factors.
  - (F) Customer size distribution.

(2) The default service implementation plan must include fair and nondiscriminatory bidder qualification requirements, including financial and operational qualifications, or other reasonable assurances of a supplier of electric generation services' ability to perform.

(3) A competitive bid solicitation process used as part of the implementation plan will be subject to monitoring by the Commission or an independent third party evaluator selected by the DSP in consultation with the Commission. A third party evaluator shall operate at the direction of the Commission. Commission staff and a third party evaluator involved in monitoring the procurement process shall have full access to all information pertaining to the competitive procurement process, either remotely or where the process is administered. A third party evaluator retained for purposes of monitoring the competitive procurement process shall be subject to confidentiality agreements identified in § 54.185(d)(6) (relating to default service programs and periods of service).

(4) The DSP or third party evaluator shall review and select winning bids procured through a competitive bid solicitation process in a nondiscriminatory manner based on the price determinative bid evaluation criteria set forth consistent with paragraph (1)(vi).

(5) The bids submitted by a supplier in response to a competitive bid solicitation process shall be treated as confidential pursuant to the confidentiality agreement approved by the Commission under § 54.185(d)(6). The DSP, the Commission and a third party involved in the administration, review or monitoring of the bid solicitation process shall be subject to this confidentiality provision.

(d) The DSP may petition for modifications to the approved procurement and implementation plans when material changes in wholesale energy markets occur to ensure the acquisition of sufficient supply at prevailing market prices. The DSP shall monitor changes in wholesale energy markets to ensure that its procurement plan continues to reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3) (relating to duties of electric distribution companies).

**§ 54.187. Default service rate design and the recovery of reasonable costs.**

(a) The costs incurred for providing default service shall be recovered through a default service rate schedule. The rate schedule shall be designed to recover fully all reasonable costs incurred by the DSP during the period default service is provided to customers, based on the average cost to acquire supply for each customer class.

(b) Except for rates available consistent with subsection (f), a default service customer shall be offered a single rate option, which shall be identified as the PTC and displayed as a separate line item on a customer's monthly bill.

(c) The rates charged for default service may not decline with the increase in kilowatt hours of electricity used by a default service customer in a billing period.

(d) The PTC shall be designed to recover all default service costs, including generation, transmission and other default service cost elements, incurred in serving the average member of a customer class. An EDC's default service costs may not be recovered through the distribution rate. Costs currently recovered through the distribution rate, which are reallocated to the default service rate, may not be recovered through the distribution rate. The distribution rate shall be reduced to reflect costs reallocated to the default service rate.

(e) A DSP shall use an automatic energy adjustment clause, consistent with 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments) and Chapter 75

(relating to alternate energy portfolio standards), to recover all reasonable costs incurred through compliance with the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1648.1—1648.8). The use of an automatic adjustment clause shall be subject to audit and annual review, consistent with 66 Pa.C.S. § 1307(d) and (e), regarding fuel cost adjustment audits and automatic adjustment reports and proceedings.

(f) A DSP may use an automatic energy adjustment clause to recover reasonable nonalternative energy default service costs. The use of an automatic adjustment clause shall be subject to audit and annual review, consistent with 66 Pa.C.S. § 1307(d) and (e). A DSP may collect interest from retail customers on the recoveries of under collection of default service costs at the legal rate of interest. Refunds to customers for over recoveries shall be made with interest, at the legal rate of interest plus 2%.

(g) The default service rate schedule must include rates that correspond to demand side response and demand side management programs, as defined in section 2 of the Alternative Energy Portfolio Standards Act (73 P. S. § 1648.2), when the Commission mandates these rates pursuant to its authority under 66 Pa.C.S. Chapter 1 (relating to general provisions).

(h) Default service rates shall be adjusted on a quarterly basis, or more frequently, for all customer classes with a maximum registered peak load up to 25 kW, to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices and to reflect the seasonal cost of electricity. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.

(i) Default service rates shall be adjusted on a quarterly basis, or more frequently, for all customer classes with a maximum registered peak load of 25 kW to 500 kW, to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices and to reflect the seasonal cost of electricity. DSPs may propose alternative divisions of customers by maximum registered peak load to preserve existing customer classes.

(j) Default service rates shall be adjusted on a monthly basis, or more frequently, for all customer classes with a registered peak load of equal to or greater than 500 kW to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices and to reflect the seasonal cost of electricity. DSPs may propose alternative divisions of customers by registered peak load to preserve existing customer classes.

(k) When a supplier fails to deliver electric generation supply to a DSP, the DSP shall be responsible for acquiring replacement electric generation supply consistent with its Commission-approved contingency plan. When necessary to procure electric generation supply before the implementation of a contingency plan, a DSP shall acquire supply at prevailing market prices and fully recover all reasonable costs associated with this activity that are not otherwise recovered through its contract terms with the default supplier. The DSP shall follow acquisition strategies that reflect the incurrence of reasonable costs, consistent with 66 Pa.C.S. § 2807(e)(3) (relating to duties of electric distribution companies), when selecting from the various options available in these energy markets.

#### **§ 54.188. Commission review of default service programs and rates.**

(a) A default service program will initially be referred to the Office of Administrative Law Judge for further proceedings as may be required.

(b) The Commission will issue an order within 7 months of a program's filing with the Commission on whether the default service program demonstrates compliance with this subchapter and 66 Pa.C.S. §§ 2801—2812 (relating to the Electricity Generation Customer Choice and Competition Act).

(c) Upon entry of the Commission's final order, a DSP shall acquire generation supply for the period of service in a manner consistent with the terms of the approved procurement and implementation plans and consistent with the standards identified in § 54.186 (relating to default service procurement and implementation plans).

(d) Upon receiving written notice, the Commission will have 1 business day, to approve or disapprove the results of a competitive bid solicitation process used by a DSP as part of its procurement plan. When the Commission does not act within 1 business day the results of the process will be deemed approved. The Commission will not certify or otherwise approve or disapprove a DSP's spot market energy purchases made pursuant to a Commission-approved procurement plan. The Commission will monitor the DSP's adherence to the terms of the approved default service program and 66 Pa.C.S. §§ 2801—2812 (relating to the Electricity Generation Customer Choice and Competition Act). The Commission may initiate an investigation regarding implementation of the DSP's default service program and, at the conclusion of the investigation, order remedies as may be lawful and appropriate. The Commission will not deny the DSP the recovery of its reasonable costs for purchases made pursuant to an approved competitive procurement process unless the DSP concealed or misled the Commission regarding its adherence to the program, or otherwise violated the provisions of this subchapter or the code.

(e) A DSP shall adhere to the following procedures in obtaining approval of default service rates and providing notice to default service customers:

(1) A DSP shall provide all customers notice of the filing of a default service program in a similar manner as found in § 53.68 (relating to notice requirements).

(2) A DSP shall provide all customers notice of the initial default service rates and terms and conditions of service 60 days before their effective date, or 30 days after bidding has concluded, whichever is sooner, unless another time period is approved by the Commission. The DSP shall provide written notice to the named parties identified in § 54.185(b) (relating to default service programs and periods of service) containing an explanation of the methodology used to calculate the price for electric service.

(3) After the initial steps of a default service procurement and implementation plan are completed, the DSP shall file with the Commission tariff supplements designed to reflect, for each customer class, the rates to be charged for default service. The tariff supplements shall be accompanied by supporting documentation adequate to demonstrate adherence to the procurement plan approved by the Commission, the procurement plan results and the translation of those results into customer rates.

(4) A customer or party identified in § 54.185(b) may file exceptions to the initial default service tariffs within

20 days of the date the tariffs are filed with the Commission. The exceptions shall be limited to whether the DSP properly implemented the procurement plan approved by the Commission and accurately calculated the rates. The Commission will resolve filed exceptions by order. The Commission may allow the default rates to become effective pending the resolution of those exceptions.

(f) A DSP shall submit tariff supplements on a quarterly or more frequent basis, consistent with § 54.187(h) and (i) (pertaining to default service rate design and recovery of reasonable costs), to revise default service rates to ensure the recovery of costs reasonably incurred in acquiring electricity at prevailing market prices. The DSP shall provide written notice to the named parties identified in § 54.185(b) of the proposed rates at the time of the tariff filings. The tariff supplements shall be posted to the DSP's public internet domain at the time they are filed with the Commission. A customer or the parties identified in § 54.185(b) may file exceptions to the default service tariffs within 20 days of the date the tariffs are filed with the Commission. The exceptions shall be limited to whether the DSP has properly implemented the procurement plan approved by the Commission and accurately calculated the rates. The DSP shall post the revised PTC for each customer class within 1 business day of its effective date to its public internet domain to enable customers to make an informed decision about electric generation supply options.

**§ 54.189. Default service customers.**

(a) At the conclusion of an EDC's Commission approved generation rate cap, retail customers who are not receiving generation service from an EGS shall be assigned to the Commission-approved DSP in that service territory.

(b) A DSP shall accept applications for default service from new retail customers when the customers comply with Commission regulations pertaining to applications for service, including those in Chapter 56 (relating to standards and billing practices for residential utility service) and accept all retail customers assigned to its default service who switch from an EGS.

(c) A DSP shall treat a customer who leaves an EGS as it would a new applicant for default service.

(d) A default service customer may choose to receive its generation service from an EGS at any time, if the customer complies with all Commission regulations pertaining to changing generation service providers in Chapter 57 (relating to electric service).

(e) A DSP may not charge a fee to a retail customer for changing its generation service provider in a manner consistent with Commission regulations.

**CHAPTER 57. ELECTRIC SERVICE**

**Subchapter M. STANDARDS FOR CHANGING A CUSTOMER'S ELECTRICITY GENERATION SUPPLIER**

**§ 57.178. Default service provider.**

This subchapter does not apply when the customer's service is discontinued by the EGS and subsequently provided by the default service provider because no other EGS is willing to provide service to the customer.

[Pa.B. Doc. No. 07-1697. Filed for public inspection September 14, 2007. 9:00 a.m.]

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# STATEMENTS OF POLICY

## Title 55—PUBLIC WELFARE

### DEPARTMENT OF PUBLIC WELFARE

#### [ 55 PA. CODE CHS. 3270 AND 3280 ]

### Certification of Part-Day Programs for School-Age Children

#### *Scope*

This statement of policy applies to child day care centers and group child day care homes.

#### *Purpose*

The purpose of this statement of policy is to clarify the applicability of the Department of Public Welfare's (Department's) regulations in Chapters 3270 and 3280 (relating to child day care centers; and group child day care homes) with regard to part-day programs for school-age children.

#### *Discussion*

Sections 902(3) and 1002 of the Public Welfare Code (code) (62 P.S. §§ 902(3) and 1002) provide that the Department is mandated to supervise and license child care centers. Sections 911(a)(1) and 1021 of the code (62 P.S. §§ 911(a)(1) and 1021) provide definitions of "child day care" and "child day care center" and provide the Department the authority to promulgate regulations for the supervision and licensure of child care centers. See § 3270.4 (relating to definitions).

Section 1001 of the code (62 P.S. § 1001) defines "child day care" and "child day care center." "Child day care" is defined as "care in lieu of parental care given for part of the twenty-four hour day to children under sixteen years of age, away from their own homes, but does not include child day care furnished in places of worship during religious services." "Child day care center" is defined as "any premises in which child day care is provided simultaneously for seven or more children who are not relatives of the operator, except such centers operated under social service auspices."

The Department's regulations for child care centers and group child care homes address the applicability of Chapters 3270 and 3280 in §§ 3270.3 and 3280.3 (relating to applicability). Sections 3270.3 and 3280.3 provide which facilities are required to comply with the regulations and which facilities are not.

Programs for school-age children have expanded in scope and direction over the past several years in efforts to meet the needs of school-age children and their families. As a result, the Department recognized the need to clarify the applicability of the child care regulations with regard to part-day programs for school-age children.

The Department's Office of Child Development and Early Learning formed a work group to explore the definition of "school-age child care" in response to ongoing questions about which school-age child care programs are required to comply with the regulations for child care centers or group child care homes. The work group included representatives from school districts, nonprofit agencies, advocacy groups, child care providers, the Department of Education and the Department. The work group's mission was to develop recommendations that

would be transparent and objective to aid the Department in fulfilling its statutory responsibilities for the oversight of school-age child care.

In developing its recommendation, the work group used as a basis the concept of "care in lieu of parental care" in the definition of "child day care" in the code and determined that this concept represents a transfer of responsibility from the parent to the caregiver when the child attends the program. The work group also identified two other objective factors to be used in the determination of a school-age child care program: 1) whether the child is free to come and go from the program without parental permission; and 2) whether the program purpose is to focus on one activity or on the care and development of the whole child.

The group recommended criteria for determining whether a part-day school-age program for children who attend kindergarten or older but under 16 years of age is subject to the Department's regulations in Chapters 3270 and 3280. Based on the work group's recommendation, the Department interprets that the regulations in Chapters 3270 and 3280 are not applicable to the following programs:

1. A part-day school-age program that operates for less than 90 consecutive days per calendar year from the date the program opens to the date the program closes. This clarification does not apply to a legal entity that has a certificate of compliance to operate a child care center or group child care home and that increases its enrollment to include school-age children in the summer and on school holidays.
2. A part-day school-age program that operates 2 hours or less per day for 3 or fewer days per week.
3. A part-day school-age program that has a single purpose for the children's attendance and that purpose is the only focus of the program (for example, basketball or art class).
4. Tutoring programs that are licensed by or approved and funded by the Department of Education, for example:
  - Tutoring centers and educational testing and remedial centers licensed by the Department of Education under 22 Pa. Code Chapters 61 and 63 (relating to tutoring centers; and educational testing and remedial centers).
  - Educational assistance programs operated by school districts directly or by contract with an outside provider approved by the Department of Education.
  - Classroom Plus Programs.
  - Supplemental Education Services Programs.
5. A drop-in program where the child may come and go at will.

#### *Effective Date*

This statement of policy is effective upon publication in the *Pennsylvania Bulletin*.

#### *Contact Person*

Comments and questions regarding this statement of policy should be directed to Susan Harrison, Division of

Regulatory Administration, Bureau of Certification Services, Office of Child Development and Early Learning, (717) 346-9320.

ESTELLE B. RICHMAN,  
*Secretary*

(*Editor's Note:* Title 55 of the *Pennsylvania Code* is amended by adding statements of policy in §§ 3270.3a and 3280.3a to read as set forth in Annex A.)

**Fiscal Note:** 14-BUL-075. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 55. PUBLIC WELFARE

#### PART V. CHILDREN, YOUTH AND FAMILIES MANUAL

#### Subpart D. NONRESIDENTIAL AGENCIES, FACILITIES AND SERVICES

#### ARTICLE I. LICENSING/APPROVAL

#### CHAPTER 3270. CHILD DAY CARE CENTERS

#### GENERAL PROVISIONS

#### § 3270.3a. Applicability—statement of policy

This chapter is not applicable to a part-day school-age program for children who attend kindergarten or older but under 16 years of age follows:

(1) A part-day school-age program that operates for less than 90 consecutive days per calendar year from the date the program opens to the date the program closes. This clarification does not apply to a legal entity that has a certificate of compliance to operate a child care center or group child care home and that increases its enrollment to include school-age children in the summer and on school holidays.

(2) A part-day school-age program that operates 2 hours or less per day for 3 or fewer days per week.

(3) A part-day school-age program that has a single purpose for the children's attendance and that purpose is the only focus of the program. For example, basketball or art class.

(4) Tutoring programs that are licensed by or approved and funded by the Pennsylvania Department of Education (PDE), for example:

(i) Tutoring centers and educational testing and remedial centers licensed by PDE under 22 Pa. Code Chapters 61 and 63 (relating to tutoring centers and educational testing; and remedial centers).

(ii) Educational assistance programs operated by school districts directly or by contract with an outside provider approved by PDE.

(iii) Classroom Plus Programs.

(iv) Supplemental Education Services Programs.

(5) A drop-in program where the child may come and go at will.

#### CHAPTER 3280. GROUP CHILD DAY CARE HOMES GENERAL PROVISIONS

#### § 3280.3a. Applicability—statement of policy

This chapter is not applicable to a part-day school-age program for children who attend kindergarten or older but under 16 years of age as follows:

(1) A part-day school-age program that operates for less than 90 consecutive days per calendar year from the date the program opens to the date the program closes. This

clarification does not apply to a legal entity that has a certificate of compliance to operate a child care center or group child care home and that increases its enrollment to include school-age children in the summer and on school holidays.

(2) A part-day school-age program that operates 2 hours or less per day for 3 or fewer days per week.

(3) A part-day school-age program that has a single purpose for the children's attendance and that purpose is the only focus of the program. For example, basketball or art class.

(4) Tutoring programs that are licensed by or approved and funded by the Pennsylvania Department of Education (PDE), for example:

(i) Tutoring centers and educational testing and remedial centers licensed by PDE under 22 Pa. Code Chapters 61 and 63 (relating to tutoring centers; and educational testing and remedial centers).

(ii) Educational assistance programs operated by school districts directly or by contract with an outside provider approved by PDE.

(iii) Classroom Plus Programs.

(iv) Supplemental Education Services Programs.

(5) A drop-in program where the child may come and go at will.

[Pa.B. Doc. No. 07-1698. Filed for public inspection September 14, 2007, 9:00 a.m.]

## Title 52—PUBLIC UTILITIES

### PENNSYLVANIA PUBLIC UTILITY COMMISSION

#### [52 PA. CODE CH. 69]

[M-00072009]

#### Default Service and Retail Electric Markets

The Pennsylvania Public Utility Commission, on May 10, 2007, adopted a final statement of policy order which addresses elements of the default service regulatory framework, including default service program terms, electric generation supply procurement and competitive bid solicitation process.

Public Meeting held  
May 10, 2007

*Commissioners Present:* Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Kim Pizzingrilli; Terrance J. Fitzpatrick

*Default Service and Retail Electric Markets; Doc. No. M-00072009*

#### Final Policy Statement

*By the Commission:*

On February, 8, 2007, the Commission issued a proposed version of this statement of policy and solicited public comments. See 37 Pa.B. 1335 (March 24, 2007). The Commission has completed its review of the comments and issues this final statement of policy. This statement of policy is being issued in conjunction with final form regulations on default service and a final order identifying price mitigation strategies.<sup>1</sup>

<sup>1</sup> *Policies to Mitigate Potential Electricity Price Increases*, Docket No. M-00061957.

In December of 2004 the Commission issued a proposed rulemaking order to define the obligation of electric distribution companies (EDC) to serve retail electric customers at the conclusion of the restructuring transition periods. *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa.C.S. § 2807(e)(2)*, Docket No. L-00040169 (Proposed Rulemaking Order entered December 16, 2004). The Public Comment period for the proposed rulemaking ended in April 2006. The Commission issued an advance notice of final rulemaking (ANOFR) on February 8, 2007. See 37 Pa.B. 1126 (March 10, 2007).

Over the past several years the Commission has studied developments in retail and wholesale energy markets with the objective of developing a final version of these regulations, including the integration of the requirements of the Alternative Energy Portfolio Standards Act of 2004, 73 P.S. § 1648.1, et seq. We also initiated a separate investigation in 2006 to develop policy tools to mitigate the effect of potential electricity price increases. In addition to this statement of policy, we are issuing a final form rulemaking order for default service regulations, and our findings regarding proposals for addressing electricity price mitigation.

In reviewing the comments and considering the revisions to the proposed default service rules, the Commission recognized that there were practical limits to its regulation of large, complex energy markets. Requirements that might seem very appropriate today could be rendered obsolete by changes in markets, applicable law, or advances in technology. Accordingly, the Commission determined that some elements of the default service regulatory framework would be best addressed in the context of a statement of policy that provides guidance to the industry as opposed to strict rules. A statement of policy is more readily subject to change, and can provide needed flexibility to the Commission and market participants in the context of default service as energy markets continue to develop. The Commission anticipates that the initial guidelines will be applied to the first set of default service programs following the expiration of the generation rate caps, and these guidelines will be reevaluated prior to the filing of subsequent default service plans.

This statement of policy, coupled with the default service regulations, and the order on electricity price mitigation, represents a comprehensive strategy for addressing retail rates in the context of expiring rate caps and still developing retail and wholesale energy markets.

Comments and reply comments to the proposed statement of policy were filed at this docket by Allegheny Energy (Allegheny), Citizens for Pennsylvania's Future (PennFuture), Constellation Energy (Constellation), Citizens Electric Company (Citizens), Consolidated Edison Solutions (Con Edison), Direct Energy, LLC (Direct), Dominion Retail, Inc. (Dominion), Duquesne Light Company (Duquesne), the Economic Growth through Competitive Energy Markets Coalition, the Energy Association of Pennsylvania (Energy Association), FirstEnergy Operating Companies<sup>2</sup> (FirstEnergy Companies), the Hess Corporation, the Industrial Energy Consumers of Pennsylvania, et al.<sup>3</sup> (IECPA), Morgan Stanley Capital Group, Inc. (Morgan Stanley), the National Energy Marketers Association (NEM), the Office of Consumer Advocate (OCA),

<sup>2</sup> Pennsylvania Power Company, the Pennsylvania Electric Company, and the Metropolitan Edison Company.

<sup>3</sup> The Industrial Energy Consumers of Pennsylvania, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, and the PP&L Industrial Customer Alliance.

the Office of Small Business Advocate (OSBA), PECO Energy Company (PECO), PPL Electric Utilities Corporation (PPL), PPM Energy (PPM), PSEG Energy Resources & Trade LLC (PSEG ERT), PV Now, Reliant Energy, Inc. (Reliant), Richards Energy Group, Inc., the Retail Energy Supply Association (RESA), Strategic Energy, LLC (Strategic), UGI Utilities, Inc.—Electric Division (UGI), U.S. Steel Corporation, (US Steel), and the Wellsboro Electric Company (Wellsboro). All comments are available on the Commission's public internet domain.

## DISCUSSION

In the following sections we will review each element of this statement of policy.

### A. § 69.1801. and § 69.1802. *Statements of Scope and Purpose*

Sections 69.1801 and 69.1802 identify the Commission's objective for this statement of policy. Given the rapid pace of change in wholesale energy markets, the Commission concludes that it would be unwise to craft a one size fits all approach at this time to every aspect of default service. These guidelines and the associated default service regulations will provide the necessary framework for default service providers (DSPs) and the Commission to manage the default service obligation.

### B. § 69.1803. *Definitions*

For ease of reference, the Commission incorporates many of the default service regulation definitions at this section.

In response to comments from PPL and the Energy Association to the ANOFR and Proposed Statement of Policy, the definitions of "default service provider" and "default service" have been revised. "Default service provider" has been changed to be consistent with the version found in the default service regulations and the definition of "default service" has been simplified.

### C. § 69.1804. *Default service program terms and filing schedules*

In the rulemaking order for default service, we state that we are unable to identify the optimal program duration. There may be no standard program duration that is appropriate to all DSPs in all circumstances. Accordingly, we recommend two year terms for all DSP programs following the initial filing. The Commission may modify this standard as markets mature.

### D. § 69.1805. *Electric generation supply procurement*

The Commission has made the decision, at this time, not to mandate the statewide energy procurement model used by New Jersey. While this approach is attractive to many wholesale energy suppliers, given its administrative efficiencies and manifest transparency, we have concluded that each DSP should craft an approach best suited to its own service territory, within the framework provided herein. Also, our decision to encourage a portfolio approach with regular price adjustments does not readily lend itself to the application of the New Jersey model. Finally, we are not convinced that the New Jersey procurement approach for residential customers has resulted in the lowest prices attainable, produced meaningful market price signals, or allowed significant retail competition to develop for these customers at this time. However, as discussed in the default service regulations, the Commission will consider multi-territory procurement processes proposed by DSPs. However, such multi-territory procurements must incorporate the other aspects



of this regulatory framework, including the regular adjustment of rates, flat rate design, etc.

We acknowledge that the recommendations found in this statement of policy are guidelines, and not regulations. Accordingly, a DSP may propose procurement approaches that vary from those outlined in this statement of policy. However, a DSP should be prepared to offer compelling evidence for taking an alternative approach. While we are giving DSPs some latitude in managing this obligation, we will be closely monitoring their performance. Should our experience lead us to conclude that too much discretion has been afforded to DSPs, we will revise the default service regulations and this statement of policy accordingly.

Section 69.1805 encourages DSPs to consider a portfolio approach in managing their default service obligation. As discussed at length in the ANOFR, the Commission is cognizant of the risks associated with procuring all supply for several years or more at a single point in time. New Jersey has attempted to mitigate this risk by laddering the wholesale energy contracts used to satisfy basic generation service.

We also encourage the laddering of contracts. However, we also recommend that each DSP consider making multiple procurements over the course of a year, and to incorporate spot market purchases into their strategy. We suggest different procurement strategies for different customer classes, consistent with the level of energy knowledge, financial resources, and opportunity to shop associated with these groups.

*E. § 69.1806. Alternative energy portfolio standard compliance*

Many parties have asserted that the portfolio requirement of the Alternative Energy Portfolio Standards Act of 2004 (73 P. S. §§ 1648.1–1648.8) cannot be satisfied without the use of long-term power purchase agreements (PPA) between DSPs and alternative energy suppliers. Without the ability to sell electricity through a long-term contract, some project developers may not be able to acquire needed investment to build these systems.

This is a problematic issue given the requirements of section 2807(e)(3) of the Public Utility Code, 66 Pa.C.S. § 2807(e)(3), that supply for default service customers be acquired at “prevailing market prices.” The alternative energy portfolio requirement, as it impacts sales of electricity to retail customers after the expiration of generation rate caps, is a component of our regulation default service.

In § 69.1806 of this statement of policy, the Commission observes that its default service regulations neither mandate nor prohibit long-term contracts. The term “long-term contract” is not readily subject to definition. A twenty to thirty year contract is certainly long-term. Some parties dispute whether a twenty to thirty year PPA can reflect prevailing market prices. We are reminded of our experience with PPAs approved by the Commission pursuant to the Public Utility Regulatory Policies Act of 1978. The rates negotiated for electricity under these PPA often diverged substantially from prevailing market prices over time. It is less clear whether contracts of shorter duration are as problematic.

*F. § 69.1807. Competitive bid solicitation processes*

This section includes an array of guidelines intended to improve competitive solicitation processes. In this section the Commission expresses its policy preferences on a range of issues. For example, the Commission recom-

mends that load be procured for customer groupings (e.g., small customers vs. large customers), as opposed to slices of the DSP’s overall load.

We also identify several issues that will be referred to an existing proceeding, *Standardization of Request for Proposal Documents and Supplier Master Agreements in the Context of Default Service*, Docket No. M-00061960, for study and policy recommendations. This includes the development of uniform bidder qualification rules, standards for confidential bid information, etc. This working group should provide recommendations on these issues, and those previously assigned, to the Commission at a date to be determined by the Commission.

PSEG ERT recommended that the Commission consider the use of mechanisms that track and adjust default service rates in response to increases in transmission rates. PSEG ERT notes that if wholesale suppliers are at risk for increases in transmission rates, they will include a risk premium in their competitive bids. The incorporation of a mechanism in a supplier master agreement (SMA) that allows these costs to be readily passed through may result in more competitive bids. PSEG ERT states that such a mechanism is used in the New Jersey Basic Generation Service SMA. We agree that this idea is worthy of further study, and have added § 69.1807(9) to address it.

In response to a comment by Constellation, we have revised this section to clarify that while the standard SMAs will be revised, this will only be done on a going forward basis. Changes made to the Commission approved SMA language will not be applied retroactively to existing contracts.

Several parties provided comments in response to the ANOFR or the proposed statement of policy regarding the public availability of information pertaining to winning bids. The OSBA and OCA in particular wished to clarify their access to this information. The Commission is reluctant to issue a uniform rule at this time without the benefit of a working group recommendation. We will work with the OCA and OSBA to responsibly address specific requests for data until a final policy is developed and approved.

*G. § 69.1808. Default service cost elements*

While utility rates were unbundled into transmission, distribution and generation components as part of the restructuring process, there is significant concern on the part of the Commission and others that some generation costs have been improperly allocated, or “embedded,” in EDC distribution rates. The Commission has not undertaken a full-fledged review of distribution rates with the goal of resolving this issue. This was in part due to the existence of rate caps and the agreements reached in the restructuring settlements. With the coming expiration of the remaining rate caps, there is now no obstacle to taking this issue up for consideration.

Our preference is that this issue will be addressed in the next distribution rate case for each EDC. For those EDCs who have not initiated cases by the end of 2007, the Commission reserves the right to initiate a cost allocation proceeding to resolve this issue. We acknowledge that adjustments to rates will be deferred until the expiration of the EDCs’ effective rate caps.

In response to a comment from IECPA, we are revising this section to provide that congestion costs should generally be reflected in the fixed price bids submitted by wholesale energy suppliers. Accordingly, we would not

expect congestion costs to be reconciled with regard to any fixed-price default service supply contracts.

In general, we are open to the concept of addressing the allocation of costs between generation and distribution rates through a collaborative process. We further agree that cost allocation should reflect the level of service, or lack of service, provided to default service and non-default service customers.

*H. § 69.1809. Interim price adjustments and cost reconciliation*

In the ANOFR, the Commission has revised the default service regulations to require regular price adjustments and to permit a DSP to reconcile its costs and revenues. Default service rates, which customers will more clearly understand through the use of a Price-to-Compare (PTC), will change during the term of a default service program for two reasons. First, prices will be adjusted to reflect changes in incurred costs due to the use of a portfolio approach. With a portfolio approach, DSPs will be acquiring electricity through multiple procurements, some of which may be laddered contracts or spot market energy purchases. As the term covered by the laddered contract or spot market energy purchases expire, new contracts, most likely at different prices, will take effect. The PTC must be adjusted accordingly to reflect the change in costs.

Second, the PTC will need to be refined at an adjustment interval to reconcile default service costs and revenues. There will almost certainly be some variation between revenues received and costs incurred on a month to month basis. The Commission encourages the DSP to reconcile its rates at the regular PTC adjustment interval, similar to what a natural gas distribution company does with its gas rates. Specifically, the PTC should be recalculated to correct this divergence, and to eliminate undercollections or overcollections that have accumulated since the last PTC adjustment interval. The revised rate should be designed to eliminate these amounts by the time of the next adjustment.

This statement of policy allows for interim adjustments, that is, a change in rates more frequently than at a normal adjustment interval, if there is a divergence greater than 4%. For example, a DSP may propose to revise the PTC for residential customers every quarter. In the event that incurred costs diverge from revenues by more than 4%, the DSP does not need to wait until the end of the quarter to revise its rates. It instead may file for an interim adjustment and recalculate the PTC.

In response to a comment from Constellation, we wish to clarify that the default service rate, and correspondingly the PTC, should be adjusted prospectively based on changes in the forecasted price of spot market supply products. The PTC should not be adjusted merely to reflect changes in the composition of a DSPs portfolio of energy products. However, the Commission will not be adjusting the suppliers' winning bid prices in response to changes in wholesale energy markets.

We have also adjusted the threshold for interim reconciliation from 5% to 4% in response to the comments to the proposed statement of policy.

*I. § 69.1810. Retail rate design*

The Commission finds that the PTC should reflect the cost of energy incurred, and that any disincentives to energy conservation should be eliminated from rate design. The final regulations expressly prohibit the PTC from being adjusted lower with increased customer usage.

Accordingly, the design feature commonly known as "declining blocks" must be eliminated from default service rate design. The statement of policy reaffirms this, and further provides that demand charges should be removed. We observe that Duquesne Light Company, in its most recent default service filing, is planning to discontinue all declining blocks and demand charges by 2010. Consistent with the final rulemaking order, we note that generation demand charges may be proposed for large commercial and industrial customers if the charges and rate determinants are reasonably related to the wholesale energy cost of providing default service.

*J. § 69.1811. Rate change mitigation*

The Commission recognizes that some customers may experience significant rate increases when the generation rate cap expires in their EDC's service territory. This is more likely to occur in those territories where the generation rate has remained capped significantly below wholesale energy prices. The Commission finds it to be in the public interest that retail customers have reasonable opportunities to mitigate the effect of these price increases.

This statement of policy recommends that DSPs give customers the option to defer paying some portion of a rate increase for a period of time in certain circumstances. Rather than adjusting a customer's PTC to the full market price all at once, the PTC would be moved incrementally over a period of several years. The customer would also gradually pay down the portion of the rate increase that was deferred. It must be acknowledged that the DSP will incur some additional expense with this type of plan, as its recovery of costs is being deferred. A customer who elects to defer some portion of the rate increase will ultimately pay more for their electricity, analogous to paying interest on a loan. Accordingly, we find that customers should have the choice to select such an option, but should not be automatically assigned to such a plan. Those who have the means and inclination to immediately pay market prices should be allowed to do so.

A DSP may propose other reasonable rate mitigation strategies for our consideration. For example, a DSP might offer customers the option to pre-pay some portion of an anticipated rate increase. Customers would be shown the current market price of energy on their monthly bill, compared to the capped rate. They would then have the option to pay the market price. This extra money would remain in the customer's account, plus accumulate interest, and be applied in the event that there was a significant rate increase once the rate cap expired. If the increase was less than expected, the monies could be refunded or credited to the customer's bill. This process would have the added benefit of educating consumers about market prices prior to the expiration of rate caps.

In response to a comment from PPL, we have clarified this section to state that the rate mitigation calculation should be performed on a customer class basis, and not a system-wide basis. A prepay or deferral option should be offered to those customer classes whose total bill increase exceeds 25%.

We also agree with the comments of Con Edison and others that any mitigation strategy be competitively neutral, and appreciate the examples of mitigation proposals they and other parties recommend. Section 69.1811 has been drafted in a way to give the Commission and companies some discretion in crafting reasonable mitigation plans.

We also recognize the challenges presented by rate increase deferrals, including the fact that customers ultimately pay more due to carrying charges. Accordingly, we emphasize that customers must affirmatively select such options to be enrolled. We would expect that customers would have to contact their DSP by phone or electronic mail, or sign and return some written authorization to the DSP, to enroll in such a program.

In response to a comment of Citizens and Wellsboro, we confirm that this provision does not apply to EDCs whose generation rate cap has already expired. These customers are already paying market based rates.

K. §§ 69.1812—69.1817. *Retail market issues*

In these sections the Commission provides guidelines on the integration of default service with the competitive retail market. The Commission has identified a number of issues where opportunities exist to enhance customer choice and facilitate the development of retail markets. Robust, effective markets are vital element of any post-rate cap price mitigation strategy.

We are referring each issue identified in these sections to the Retail Markets Working Group for study and policy recommendations. Commission staff should convene this working group within 45 days of the publication of this final statement of policy in the *Pennsylvania Bulletin*. Within a reasonable period of time after convening the group, Commission staff will propose a schedule to the Commission for the development of policy recommendations. Our expectation is that the activities of this working group will be completed well before the expiration of the remaining generation rate caps.

We also find that customer education is a vital component of fostering effective retail markets. Consumer education plans that address retail choice will be required pursuant to an order we are issuing in the price mitigation proceeding at Docket M-00061957.

Section 69.1812 has been edited at the recommendation of the OCA to emphasize that proper consideration be given to protecting private or sensitive customers information.

In response to a comment by RESA and Hess to the proposed statement of policy, we are amending § 69.1813, to require consideration of “bill ready” billing in addition to rate ready billing in all DSP service territories.

As a general response to the comments to these provisions, the Commission will consider the costs of implementing these policies. We believe that these policies, if properly designed, can serve the public interest. However we recognize that it may not be in the public interest to adopt all of these policies in all EDC service territories.

Finally, we will be monitoring the implementation of the purchase of receivables program in the Duquesne territory. As the OCA noted, this program was adopted in lieu of fully and finally addressing the issue of embedded generation costs in distribution rates. As an interim step in responding to § 69.1808, other EDCs may wish to consider proposing similar programs for Commission review and approval.

#### CONCLUSION

The Commission will closely monitor the implementation of this statement of policy and the associated default service regulations by DSPs. The statement of policy will be revised based on experience gained from future proceedings. Over time, we may find it appropriate to move some elements of this statement of policy to the default service regulations.

Unlike the default service regulations, this statement of policy does not require additional regulatory approvals to become effective. However, we will delay publication of this statement of policy in the *Pennsylvania Bulletin* until the default service regulations have been approved by Pennsylvania General Assembly, the Independent Regulatory Review Commission and the Pennsylvania Attorney General. Should these agencies require amendments to the regulations, this statement of policy may need to be revised. Accordingly, this statement of policy will not be published and take effect until after the default service regulations have received all regulatory approvals; *Therefore,*

*It Is Ordered That:*

1. Title 52 of the *Pennsylvania Code* is amended by adding a statement of policy in §§ 69.1801—69.1817 to read as set forth in Annex A.
2. The Secretary shall submit this order and Annex A to the Governor’s Budget Office for review of fiscal impact.
3. The Secretary shall certify this order and Annex A. This order and Annex A will be deposited with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* after the regulations promulgated at Docket L-00040169 have obtained all regulatory approvals.
4. This statement of policy shall be come effective upon publication in the *Pennsylvania Bulletin*.
5. Alternative formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, (717) 772-4597.
6. The contact person for this matter is Shane Rooney, (717) 787-2871, srooney@state.pa.us.
7. Commission staff will convene the Retail Markets Working Group by October 30, 2007, consistent with the instructions given in this order.

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** Fiscal Note 48-254 remains valid for the final adoption of the subject regulations.

*(Editor’s Note:* This statement of policy refers to the final-form rulemaking published at 37 Pa.B. 4996 (September 15, 2007) (Fiscal Note #57-237).)

#### Annex A

#### TITLE 52. PUBLIC UTILITIES

#### PART I. PUBLIC UTILITY COMMISSION

#### Subpart C. FIXED SERVICE UTILITIES

#### CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

#### DEFAULT SERVICE AND RETAIL ELECTRIC MARKETS

#### § 69.1801. Scope.

Sections 69.1802—69.1817 provide guidelines to default service providers regarding the acquisition of electric generation supply, the recovery of associated costs and the integration of default service with competitive retail electric markets.

**§ 69.1802. Purpose.**

(a) The Commission has adopted regulations governing the default service obligation in §§ 54.181–54.189 (relating to default service), as required by 66 Pa.C.S. § 2807(e) (relating to the duties of electric distribution companies). The regulations address the elements of a default service regulatory framework. The goal of the default service regulations is to bring competitive market discipline to historically regulated markets. This can be accomplished by structuring default service in a way that encourages the entry of new retail and wholesale suppliers. Greater diversity of suppliers will benefit ratepayers and the Commonwealth. However, those rules are not designed to resolve every possible issue relating to the acquisition of electric generation supply, the recovery of reasonable costs, the conditions of service and the relationship with the competitive retail market.

(b) The Commission is very cognizant of the practical limits of regulating large, complex markets. Changes in Federal or State law, improvements in technology, and developments in wholesale energy markets may render obsolete any all-inclusive regulatory approach to this Commonwealth's retail electric market.

(c) The Commission has devised an approach that will allow this Commonwealth to adapt to changes in energy markets and the regulatory environment. The regulations in Chapter 54 (relating to electricity generation customer choice) will serve as a general framework for default service and provide an appropriate measure of regulatory certainty for ratepayers and market participants. This section and §§ 69.1801 and 69.1803–69.1817 will provide guidelines on those matters when a degree of flexibility is required to respond effectively to regulatory and market challenges. The Commission anticipates that the initial guidelines will be applied to the first set of default service plans following expiration of the generation rate caps, and that the guidelines will be reevaluated prior to the filing of subsequent default service plans.

**§ 69.1803. Definitions.**

The following words and terms, when used in this section and §§ 69.1801, 69.1802 and 69.1804–69.1817, have the following meanings, unless the context clearly indicates otherwise:

*Alternative energy portfolio standards*—A requirement that a certain percentage of electric energy sold to retail customers in this Commonwealth by EDCs and EGSs be derived from alternative energy sources, as defined in the Alternative Energy Portfolio Standards Act (73 P.S. §§ 1648.1–1648.8).

*Competitive bid solicitation process*—A fair, transparent and nondiscriminatory process by which a DSP awards contracts for electric generation to qualified suppliers who submit the lowest bids.

*DSP—Default service provider*—The incumbent EDC within a certificated service territory or a Commission approved alternative supplier of electric generation service.

*Default service*—Electric generation supply service provided pursuant to a default service program to a retail electric customer not receiving service from an EGS.

*Default service implementation plan*—The schedule of competitive bid solicitations and spot market purchases, technical requirements and related forms and agreements.

*Default service procurement plan*—The electric generation supply acquisition strategy the DSP will utilize in

satisfying its default service obligations, including the manner of compliance with the alternative energy portfolio standards requirement.

*Default service program*—A filing submitted to the Commission by the DSP that identifies a procurement plan, an implementation plan, a rate design to recover all reasonable costs and all other elements identified in § 54.185 (relating to default programs and periods of service).

*EDC—Electric distribution company*—The term has the same meaning as defined in 66 Pa.C.S. § 2803 (relating to definitions).

*EGS—Electric generation supplier*—The term has the same meaning as defined in 66 Pa.C.S. § 2803.

*Maximum registered peak load*—The highest level of demand for a particular customer, based on the PJM Interconnection, LLC, "peak load contribution standard," or its equivalent, and as may be further defined by the EDC tariff in a particular service territory.

*PTC—Price-to-compare*—A line item that appears on a retail customer's monthly bill for default service. The PTC is equal to the sum of all unbundled generation and transmission related charges to a default service customer for that month of service.

*Prevailing market prices*—Prices that are available in the wholesale market at particular points in time for electric generation supply.

*RTO—Regional transmission organization*—A Federal Energy Regulatory Commission (FERC)-approved regional transmission organization.

*Retail customer or retail electric customer*—These terms have the same meaning as defined in 66 Pa.C.S. § 2803.

*Spot market energy purchase*—The purchase of an electric generation supply product in a FERC-approved real time or day ahead energy market.

**§ 69.1804. Default service program terms and filing schedules.**

The default service regulations provide for a standard initial program term of 2 to 3 years. Initial programs may vary from this standard to comply with the applicable RTO planning year. Subsequent programs should be for 2 years, unless otherwise directed by the Commission. The Commission will monitor developments in wholesale or retail markets and revisit this issue as appropriate. The Commission may revise the duration of the standard program term and program filing schedules based on market developments.

**§ 69.1805. Electric generation supply procurement.**

A proposed procurement plan should balance the goals of allowing the development of a competitive retail supply market and also including a prudent mix of arrangements to minimize the risk of over-reliance on any energy products at a particular point in time. In developing a proposed procurement plan, a DSP should consider including a prudent mix of supply-side and demand-side resources such as long-term, short-term, staggered-term and spot market purchases to minimize the risk of contracting for supply at times of peak prices. Long-term contracts should only be used when necessary and required for DSP compliance with alternative energy requirements, and should be restricted to covering a relatively small portion of the default service load. An over-reliance on long-term contracts would mute demand response, create the potential for future default service customers to bear future above market costs and limit

operational flexibility for DSPs to manage their default service supply. The plan should be tailored to the following customer groupings, but DSPs may propose alternative divisions of customers by registered peak load to preserve existing customer classes.

(1) *Residential customers and nonresidential customers with less than 25 kW in maximum registered peak load.* Initially, the DSP should acquire electric generation supply for these customers using a mix of resources as described in the introductory paragraph to this section. Consideration should be given to procuring most fixed-term supply through full requirements or block contracts of 1 to 3 years in duration. Contracts should be laddered to minimize risk, in which a portion of the portfolio changes at least annually, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices. In subsequent programs, the percentage of supply acquired through shorter duration full requirements contracts and spot market purchases should be gradually increased, depending on developments in retail and wholesale energy markets.

(2) *Nonresidential customers with 25—500 kW in maximum registered peak load.* The DSP should acquire electric generation supply for these customers using a mix of resources as described in the introductory paragraph to this section. Fixed-term contracts should be 1 year in length and may be laddered to minimize risk, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices. In subsequent programs, the percentage of supply acquired through shorter duration purchases and spot market purchases should gradually be increased, depending on developments in retail and wholesale energy markets.

(3) *Nonresidential customers with greater than 500 kW in maximum registered peak load.* Hourly priced or monthly-priced service should be available to these customers. The DSP may propose a fixed-price option for the Commission's consideration.

#### **§ 69.1806. Alternative energy portfolio standard compliance.**

In procuring electric generation supply for default service customers, the DSP shall comply with the Alternative Energy Portfolio Standards Act (73 P. S. §§ 1648.1—1648.8). The Commission's default service regulations neither prohibit nor mandate the use of long-term contracts to satisfy the alternative energy portfolio standards obligation. In satisfying this obligation, a DSP's procurement strategy should reflect the incurrence of reasonable costs.

#### **§ 69.1807. Competitive bid solicitation processes.**

The following guidelines will apply to competitive bid solicitation processes:

(1) DSPs should use standardized request for proposal documents and supplier master agreements approved by the Commission for use in the default service procurements. The Commission will review these documents and agreements on a regular basis and revise them when appropriate after consultation with stakeholders. Revisions to these documents will not be applied retroactively to existing contracts.

(2) The public interest would be served by the adoption of uniform criteria and processes for bidder qualification.

(3) Competitive bid solicitations should be structured along customer classes, consistent with the groupings identified in § 69.1805 (relating to electric generation supply procurement). Bids should be solicited for tranches of load within each customer class. Slice of system bid designs should not be utilized. However, DSPs may allow individual tranches to be stratified by soliciting separate bid prices for residential, commercial and industrial segments when there are too few customers to organize tranches along the groupings identified in § 69.1805.

(4) The Commission finds that a clearly optimal bid solicitation model does not exist at the current stage of wholesale market development. DSPs may utilize various competitive bid solicitation approaches, including request for proposals that result in the submission of sealed bids and real time auctions in which energy suppliers compete with each other for tranches of customer load.

(5) DSPs are encouraged to coordinate their competitive bidding solicitation schedules to minimize conflicts that might negatively affect the ability of suppliers to participate in multiple procurements. DSPs should coordinate their bid conferences and bidding dates to facilitate bid participation and economies of scale, yet also providing opportunities for additional wholesale bidding over reasonable time intervals.

(6) The Commission's objective is to review the results of competitive bidding processes in a manner sensitive to market dynamics but that also allows it to discharge its statutory obligations. The Commission recognizes that bid prices may be negatively affected by the length of time taken for Commission review. In the default service regulations, the Commission has reserved a period of 1 business day to review the results of competitive procurements. As retail and wholesale markets mature, and as other appropriate safeguards become available, the Commission may elect to reduce the amount of time it uses to review bidding results.

(7) The public interest would be served by the adoption of uniform rules for the confidentiality of competitive solicitation information. Supplier participation, bid prices and retail rates may be impacted by protecting certain information, including, the identity of winning and losing bidders, the number of bids submitted, bid prices, the allocation of load among winning bidders, and the like. At the same time, the Commission recognizes that there is a legitimate public interest in knowing some of this information when there is no possibility of any prejudice to ratepayer interests.

(8) The competitive bid solicitation process will be monitored by an independent evaluator. The Commission may direct that this evaluator administer competitive bid solicitations to ensure the independence of the process. This independent party will be selected by the DSP in consultation with the Commission. The DSP may not have an ownership interest in the evaluator, and vice versa, and the DSP should disclose any potential conflicts of interest on the part of the evaluator during this consultation process. The Commission will review conflicts of interest and may disqualify an evaluator to ensure the independence of the position. The evaluator

should have an expertise in the analysis of wholesale energy markets, including methods of energy procurement. The evaluator should monitor compliance with Commission orders relating to a default service program, confidentiality agreements and other directives. The evaluator should report all information it obtains to the Commission.

(9) Wholesale energy suppliers may include a significant risk premium in their competitive bids to hedge against changes in transmission rates during the term of a default service supply contract. The public interest would be served by consideration of mechanisms that allow for the tracking and automatic adjustment of transmission rates during the term of the default service supply contract in order to reduce this premium.

**§ 69.1808. Default service cost elements.**

(a) The PTC should be designed to recover all generation, transmission and other related costs of default service. These cost elements include:

(1) Wholesale energy, capacity, ancillary, applicable RTO or ISO administrative and transmission costs.

(2) Congestion costs will ultimately be recovered from ratepayers. Congestion costs should be reflected in the fixed price bids submitted by wholesale energy suppliers.

(3) Supply management costs, including supply bidding, contracting, hedging, risk management costs, any scheduling and forecasting services provided exclusively for default service by the EDC, and applicable administrative and general expenses related to these activities.

(4) Administrative costs, including billing, collection, education, regulatory, litigation, tariff filings, working capital, information system and associated administrative and general expenses related to default service.

(5) Applicable taxes, excluding Sales Tax.

(6) Costs for alternative energy portfolio standard compliance.

(b) EDC rates should be scrutinized for any generation related costs that remain embedded in distribution rates. This review should occur no later than the next distribution rate case for each EDC filed after September 15, 2007. The Commission may initiate a cost allocation case for an EDC on its own motion if such a case is not initiated by December 31, 2007. Changes to rates resulting from the examination would take effect after the expiration of Commission-approved rate caps.

**§ 69.1809. Interim price adjustments and cost reconciliation.**

(a) Consistent with the default service regulations, default service rates, and correspondingly the PTC, will be adjusted on a regular basis to reflect changes in and ensure the recovery of reasonable costs resulting from changes in wholesale energy prices or other costs from the introduction of new, differently priced energy supply products to the DSP's portfolio, and to correct the under and over collection of costs. For example, the PTC will be adjusted at least every quarter for residential customers and at least every month for large business customers. This PTC adjustment may be driven by changes in spot market prices, the use of laddered contracts, the use of seasonal rate design, and the like.

(b) The public interest may be served if default service and alternative energy compliance costs and the revenues received through default service rates are reconciled as

part of the PTC adjustment process. Reconciliation would ensure that DSPs fully recover their actual, incurred costs without requiring customers to pay more than is required. The PTC adjustment will therefore also reflect changes required due to the reconciliation of costs and revenues. Reconciliation proposals should result in a PTC adjustment that will resolve cumulative under or over recoveries by the time of the next PTC adjustment interval.

(c) It may be in the public interest to reconcile default service costs more frequently than at each PTC adjustment interval. The DSP should propose interim reconciliation prior to the next subsequent PTC adjustment interval when current monthly revenues have diverged from current monthly costs, plus any cumulative over/under recoveries, by greater than 4% since the last rate adjustment. When the divergence is less than 4%, the DSP has the discretion to propose interim reconciliation prior to the next PTC adjustment interval. Interim reconciliation proposals should result in a PTC adjustment that will resolve cumulative under or over recoveries by the time of the next PTC adjustment interval.

**§ 69.1810. Retail rate design.**

Retail rates should be designed to reflect the actual, incurred cost of energy and therefore encourage energy conservation. The PTC should not incorporate declining blocks, demand charges or similar elements. The PTC for a particular customer class may be converted to a time of use design if the Commission finds it to be in the public interest.

**§ 69.1811. Rate change mitigation.**

(a) The following provision should apply when a DSP's total retail rate for a customer class rises by more than 25% following the expiration of a generation rate cap due to wholesale energy prices. When that occurs, DSPs should offer all residential and small business customers of up to 25 kW in maximum registered peak load the opportunity to prepay or defer some portion of the rate increase for as long as 3 years. These competitively neutral mitigation options should be included in the default service program filed for the period that begins with the expiration of the Commission-approved generation rate cap. Customers may not be assigned to a rate increase prepay or deferral program without their affirmative consent. DSPs would be able to fully recover the reasonable carrying costs associated with a rate increase deferral program, including associated administrative costs.

(b) DSPs may propose other reasonable rate mitigation strategies that would reflect the incurrence of reasonable costs.

**§ 69.1812. Information and data access.**

The public interest would be served by common standards and processes for access to retail electric customer information and data. This includes customer names and addresses, customer rate schedule and profile information, historical billing data, and real time metered data. Retail choice, demand side response and energy conservation initiatives can be facilitated if EGSSs, curtailment service providers and other appropriate parties can obtain this information and data under reasonable terms and conditions common to all service territories, that give due

consideration to customer privacy, provide security of information and provide a customer an opportunity to restrict access to nonpublic customer information.

**§ 69.1813. Rate and bill ready billing.**

The public interest would be served by the consideration of the availability of rate and bill ready billing in each service territory.

**§ 69.1814. Purchase of receivables.**

The public interest would be served by the consideration of an EGS receivables purchase program in each service territory.

**§ 69.1815. Customer referral program.**

The public interest would be served by consideration of customer referral programs in which retail customers are referred to EGSs.

**§ 69.1816. Supplier tariffs.**

The public interest would be served by the adoption of supplier tariffs that are uniform as to both form and content. Uniform supplier tariffs may facilitate the participation of EGSs in the retail market of this Commonwealth and reduce the potential for mistakes or misunderstandings between EGSs and EDCs.

**§ 69.1817. Retail choice ombudsman.**

The public interest would be served by the designation of an employee as a retail choice ombudsman at each EDC and the Commission. The ombudsman would be responsible for responding to questions from EGSs, monitoring competitive market complaints and facilitating informal dispute resolution between the DSP and EGSs.

[Pa.B. Doc. No. 07-1699. Filed for public inspection September 14, 2007, 9:00 a.m.]

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# NOTICES

## DELAWARE RIVER BASIN COMMISSION

### Meeting and Public Hearing

The Delaware River Basin Commission (Commission) will hold an informal conference followed by a public hearing on Wednesday, September 26, 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 in West Trenton, NJ.

The conference among the commissioners and staff will begin at 10:15 a.m. Topics of discussion will include a status report by staff of the United States Army Corps of Engineers (USACE) and Commission on the study entitled "Multi-Jurisdictional Use and Management of Water Resources for the Delaware River Basin"; a report on the status of Basin Plan implementation; a presentation by staff of the USACE on a groundwater model for northern Delaware; a presentation on a proposal for permanent designation of the Lower Delaware River as Special Protection Waters; and a report on the status of the proposal for a Flexible Flow Management Program.

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

1. *Forest Park Water (North Penn and North Wales Water Authorities) D-65-76 CP-10.* An application for the renewal of a project to continue to discharge up to 2 million gallons per day (mgd) of treated backwash water from the potable water treatment plant to Pine Run, a tributary of North Branch Neshaminy Creek. No expansion of the water treatment process or the wastewater treatment plant (WWTP) backwash is proposed. The project will continue to serve portions of Bucks and Montgomery Counties, both in this Commonwealth. The project is located in the nontidal portion of the Neshaminy Creek Watershed in Chalfont Borough, Bucks County, PA and is located in the Southeastern Pennsylvania Ground Water Protected Area.

2. *Abington Township D-73-191 CP-2.* An application for approval of an upgrade of the Abington Township WWTP. The application is for the addition of biological nutrient removal, the addition of a 750,000 gallon equalization tank and associated upgrades for wet-weather flow conditions. The WWTP will continue to discharge 3.91 mgd as an annual average flow to the Wissahickon Creek, a tributary to the Schuylkill River. The project is located in Upper Dublin Township, Montgomery County, PA.

3. *Pennsgrove Water Supply Company D-93-77 CP-3.* An application to replace the withdrawal of water from Well No. 11 in the applicant's water supply system with no increase in the total withdrawal. The existing Well No. 11 has become an unreliable source of supply. The total withdrawal from replacement Well No. 11A and all other wells will remain limited to 70.4 million gallons per 30 days (mg/30 days). The project is located in the Potomac-Raritan-Magothy Formation in the Delaware River Watershed in Pennsgrove Borough, Salem County, NJ.

4. *Westwood Golf Club, D-96-3-2.* An application for the renewal of a groundwater withdrawal project to continue

withdrawal of 5 mg/30 days to supply the applicant's golf course from existing Wells Nos. 2 and 3 in the Englishtown Aquifer. The project is located in the Lower Delaware Watershed in West Deptford Township, Gloucester County, NJ, in New Jersey Critical Water Supply Area 2.

5. *William Henry Apartments D-68-92-2.* An application for approval of upgrades of the existing William Henry Apartments WWTP to remedy operational issues. The WWTP will be modified to treat domestic wastewater at the hydraulic design of the facility, which is 69,000 gallons per day (gpd). The applicant's WWTP serves the William Henry Apartment complex and will continue to discharge to the headwaters of Ridley Creek. The project is located in East Whiteland Township, Chester County, PA.

6. *Aqua Pennsylvania, Inc. D-75-78 CP-2.* An application for the renewal of a groundwater withdrawal project to increase withdrawal from 3.6 mg/30 days to 8.3 mg/30 days to supply the applicant's public water supply distribution system from existing Wells Nos. 2—4 and one spring in the Duncannon, Polar Gap and Packerton members of the Catskill Formation. The increased allocation is requested to meet projected increases in service area demand. The project is located in the Van Auken Creek Watershed in Waymart Borough, Wayne County, PA, within the drainage area to the section of the nontidal Delaware River known as the Upper Delaware, which is designated as Special Protection Waters.

7. *Kiamesha Artesian Spring Water Company, Inc. D-90-68 CP-3.* An application for the renewal of a groundwater withdrawal project and to increase withdrawal from 9.8 mg/30 days to 27.78 mg/30 days to supply the applicant's public water supply distribution system from the existing Filtration Plant Well and Fraser Road Well and two existing but heretofore undocketed intakes in Kiamesha Lake. The increased allocation is requested to meet projected increases in service area demand. The project is located in the Kiamesha Creek Watershed in the Town of Thompson, Sullivan County, NY, within the drainage area to the section of the nontidal Delaware River known as the Upper Delaware, which is designated as Special Protection Waters.

8. *Upper Gwynedd Township D-91-88 CP-3.* An application for the approval of the rerate of the Upper Gwynedd Township WWTP from 4.5 mgd to 5.7 mgd as an annual average flow. The docket holder has also requested a 6.5 mgd value for a maximum monthly flow and a hydraulic design capacity. The WWTP will continue to discharge to the Wissahickon Creek, a tributary to the Schuylkill River. The project is located in Upper Gwynedd Township, Montgomery County, PA.

9. *Lehigh County Authority D-2001-20 CP-2.* An application for approval of a groundwater withdrawal project to supply up to 30.94 mg/30 days of water to the applicant's public water supply distribution from new Wells A and B and to increase the existing withdrawal from all wells from 226 mg/30 days to 256.24 mg/30 days. The increased allocation is requested to meet projected increases in service area demand. The project is located in the Allentown, Jacksonburg and Beekmantown formations in the Schaefer Run, Little Lehigh Creek, Cedar Creek and Iron Run watersheds in Upper Macungie Township, Lehigh County, PA, within the drainage area to



the section of the nontidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters.

10. *Coolbaugh Township D-2006-23 CP-2*. An application for approval to upgrade and expand an existing WWTP from 0.052 mgd to 0.1 mgd by the addition of membrane filters to the existing membrane bioreactor. The addition of the membrane filters will improve treatment quality and detention time, so that no new tanks are required. The project is located in Coolbaugh Township, Monroe County, PA. The plant discharges to the Tobyhanna Creek in the Lehigh River Watershed, which is in the drainage area of the Lower Delaware River portion of the DRBC Special Protection Waters. The WWTP will continue to serve a portion of Coolbaugh Township only and will continue to discharge through the existing outfall, which is upstream from Francis E. Walter Dam and Pocono Lake. Coolbaugh Township is currently pursuing the beneficial reuse of the WWTP effluent for irrigation of a nearby golf course during the summer months.

11. *River Road Utilities, Inc. D-2006-38-1*. An application to approve the reconstruction and expansion of the existing Tuscarora WWTP. The discharge is proposed to increase from 49,000 gpd to 66,000 gpd and will continue to be to the Delaware River. The project is located in Upper Mount Bethel Township, Northampton County, PA discharges to the section of the nontidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters.

12. *Wallace Township Municipal Authority D-2006-39 CP-1*. An application for approval of a groundwater withdrawal project to supply up to 8.1 mg/30 days of water to the applicant's public water supply distribution system from new Wells Nos. PW-4, PW-6—PW-8. The project is located in the Granitic Gneiss Formation in the East Brandywine Creek Watershed in Wallace Township, Chester County, PA.

13. *East Brandywine Township Municipal Authority D-2007-2 CP-1*. An application for approval of a WWTP project to serve proposed residential development in East Brandywine Township, Chester County, PA. The proposed facility is designed to provide treatment of 0.3 mgd by means of sequencing batch reactor and tertiary filtration processes. The project is located at the intersection of East Reeceville and Bollinger Roads in East Brandywine Township. Following ultraviolet light disinfection, WWTP effluent will be discharged to a spray irrigation system of the proposed golf course and driving range, and, when necessary to a drip irrigation field.

14. *Forest Glen Estates, LLC D-2007-8-1*. An application for approval to discharge up to 33,750 gpd to a holding pond and subsequently through a spray irrigation system to irrigate 14.5 acres of woodlands. Wastewater will be generated from the applicant's proposed 134 one-acre single-family residential lots and an 18-acre existing homestead on a 313-acre tract. The project is located in the Dingmans Creek Watershed in Delaware Township, Pike County, PA.

15. *Vogel Farm and Broad Mountain Spring Water Companies D-2007-10-1*. An application for approval of a groundwater withdrawal project to supply up to 6.26 mg/30 days of water to the applicant's bottled water truck loading facilities from new Wells VFPW1, VFPW2 and BMPW1. The project is located in the Mauch Chunk Formation in the Quakake Creek Watershed in Packer Township, Carbon County, PA within the drainage area to

the section of the nontidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters.

16. *Hamlet of Bloomville—Community Wastewater Management Program D-2007-11 CP-1*. An application for approval to construct a centralized wastewater treatment system to serve the Hamlet of Bloomville, which is currently served by on-lot septic systems. Two 0.03 mgd septic tanks will be provided, but each will be typically operated at an average flow of 0.015 mgd, so that maintenance can be performed periodically without a disruption of service. The septic tank effluent will be pumped to sand filters prior to subsurface discharge to cut-and-fill adsorption leach beds. The project is located in the Wright Brook and West Branch Delaware River watersheds upstream from Cannonsville Reservoir in the Town of Kortright, Delaware County, NY, which is in the drainage area of the Upper Delaware River portion of the DRBC Special Protection Waters.

17. *Hamlet of Hamden—Community Wastewater Management Program D-2007-12 CP-1*. An application for approval to construct a centralized wastewater treatment system to serve the Hamlet of Hamden, which is currently served by onlot septic systems. Two 0.026 mgd septic tanks will be provided, but each will be typically operated at an average flow of 0.013 mgd, so that maintenance can be performed periodically without a disruption of service. The septic tank effluent will be pumped to sand filters prior to subsurface discharge to cut-and-fill adsorption leach beds. The project is located in the Launt Hollow Creek and the West Branch Delaware River watersheds upstream from Cannonsville Reservoir in the Town of Hamden, Delaware County, NY, which is in the drainage area of the Upper Delaware River portion of the DRBC Special Protection Waters.

18. *Wallace Township Municipal Authority D-2007-17 CP-1*. An application for approval to construct a 0.185 mgd WWTP to serve the proposed Hamilton development, located predominantly in Wallace Township, Chester County, PA. A small portion of the 636-acre site extends into West Nantmeal Township, also in Chester County. Approximately 688 residential dwellings and supporting commercial buildings will be served. Following advanced treatment in parallel sequencing batch reactors, the effluent will be filtered and disinfected by ultra-violet light prior to land application via drip irrigation. The proposed WWTP and drip irrigation fields are located north of the intersection of Fairview and Creek Roads in the East Brandywine Creek Watershed in Wallace Township. No discharge to surface waters is proposed.

19. *Dragon Springs Buddhist, Inc. D-2007-21-1*. An application for approval to construct a 11,000 gpd WWTP and discharge the effluent to a UNT of the Basker Kill, a tributary of the Neversink River. The discharge is located in the drainage area of the Middle Delaware Special Protection Waters. The project is located in the Town of Deerpark, Orange County, NY. The project WWTP will treat wastewater from a proposed multipurpose building, which will be constructed on 4.4 acres of forested land. The existing temple complex is served by septic systems that process less than 10,000 gpd. Several of these mound-type systems will continue to be used due to their remote location on the property and their efficient operation.

20. *Diamond Sand and Gravel, Inc. D-2007-27-1*. An application for approval of a groundwater withdrawal project to supply less than 3.1 mg/30 days of water to the applicant's sand and gravel plant from new Wells Nos. 1

and 2A. The project is located in the Leithsville Formation in the Paulins Kill Watershed in Sparta Township, Sussex County, NJ, within the drainage area to the section of the nontidal Delaware River known as the Lower Delaware, which is designated as Special Protection Waters.

In addition, the Commission's 1:30 p.m. business meeting will include public hearings on: a resolution to approve an interim reservoir operating plan for the New York City Delaware Basin Reservoirs pending completion of rulemaking on Water Code amendments to implement the Flexible Flow Management Program, a resolution to extend temporary designation of the Lower Delaware River as Special Protection Waters pending completion of a rulemaking on permanent designation; and a resolution to restore text inadvertently omitted from the project review fee schedule approved by Resolution No. 2005-1. The Commission also will consider a resolution concerning a Pennsylvania Coastal Zone Management Program grant to develop a pilot special area management plan for the Upper Wissahickon Watershed; and resolutions to authorize participation by the Commission staff in the State of New Jersey Long-Term Care Insurance Program.

The meeting will also include adoption of the minutes of the Commission's July 18, 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 September 26, 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. Please 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. 07-1700. Filed for public inspection September 14, 2007, 9:00 a.m.]

## DEPARTMENT OF AGRICULTURE

### Healthy Farms and Healthy Schools Grant Project

Notice is given of the commencement of an application period for grants under the Healthy Farms and Healthy Schools Grant Program (Program) administered by the Department of Agriculture (Department). The agreement period is July 1, 2007—June 30, 2008. The application period is August 27, 2007—October 5, 2007. The statement of policy describing the program is available at [www.agriculture.state.pa.us](http://www.agriculture.state.pa.us).

In summary, the program provides matching funds to educational institutions located in this Commonwealth

that have a kindergarten program, whether they be public, private or charter schools. The purpose of the Program is to educate kindergarten students and their families about the importance of choosing healthy, locally produced foods while increasing awareness of Pennsylvania agriculture. The application, work plan and budget should reflect a project completion date of June 30, 2008.

Applications for the Program will be accepted by the Department beginning the date of publication in the *Pennsylvania Bulletin* and will continue through Friday, October 5, 2007. Applications must be received by 4 p.m. in the Bureau of Market Development on the closing date. Information on this program may be obtained from Frank Jurbala, Director, Bureau of Market Development, Department of Agriculture, 2301 North Cameron Street, Room 310, Harrisburg, PA 17110-9408. Application documents can be accessed at [www.agriculture.state.pa.us](http://www.agriculture.state.pa.us).

DENNIS C WOLFF,  
*Secretary*

[Pa.B. Doc. No. 07-1701. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Notice of Right-to-Know Procedures—Public Access to Information

**TITLE:** Notice of Right-to-Know Procedures—Public Access to Information

**EFFECTIVE DATE:** September 15, 2007. This notice supplants a May 13, 2006 notice on the same subject.

**AUTHORITY:** This notice is issued pursuant to the Right-to-Know Law (65 P. S. §§ 66.1—66.9) and Pennsylvania Office of Administration Management Directive 205.36.

**GENERAL REQUIREMENT:** Persons requesting access to records kept by the Pennsylvania Department of Agriculture (PDA) pursuant to the Right-to-Know Law (RTKL) should follow the directions provided in this notice. PDA will follow the procedures described in this notice in responding to such requests.

**PURPOSE:** This notice modifies PDA's existing records management procedures to: (1) fulfill its obligations under Pennsylvania Right-to-Know Law (RTKL), as amended by Act 100 of 2002; and (2) comply with the requirement of Management Directive 205.36 that an agency such as PDA give appropriate notice of its RTKL policy.

**APPLICABILITY:** The provisions of this notice apply to all requests under the RTKL regarding any PDA records. These provisions apply to all recorded information, regardless of whether the information exists in written or electronic format.

**DISCLAIMER:** The provisions of this notice are intended to supplement existing requirements. Nothing in these provisions shall affect regulatory requirements. These provisions are not an adjudication or regulation. There is no intent on the part of PDA to give these provisions that weight or deference. This document establishes the framework within which PDA will exercise its administrative discretion in the future. PDA reserves the discretion to deviate from the provisions of this notice if circumstances warrant.

### REQUESTING ACCESS TO RECORDS

PDA maintains thousands of records in its Harrisburg headquarters and 7 Regional Offices spread throughout

the Commonwealth. It also retains records at several remote records storage facilities. It will help persons seeking access to records held by PDA to have an understanding of the difference between a "record" and a "public record." Definitions of these terms are as follows:

**Public record.** Any document that satisfies the general definition of "public record" set forth in the RTKL, that does not fall within any of the exceptions set forth therein. The general definition consists of two parts: (i) any account, voucher or contract dealing with the receipt or disbursement of funds by an agency or its acquisition, use or disposal of services or of supplies, materials, equipment or other property; and (ii) any minute, order or decision by an agency fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons. The statutory exemptions are as follows: The term "public records" shall not mean any report, communication or other paper, the publication of which would disclose the institution, progress or result of an investigation undertaken by an agency in the performance of its official duties, except those reports filed by agencies pertaining to safety and health in industrial plants; it shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Commonwealth or any of its political subdivisions or commissions or State or municipal authorities of Federal funds, excepting therefrom however the record of any conviction for any criminal act.

**Record.** Any document maintained by an agency, in any form, whether public or not.

To help locate the appropriate records, the Department suggests the following:

### 1. Informal Requests for Access to Records.

The majority of requests for access to public records kept by PDA can be handled on an informal basis.

If a person seeks a copy of a statute, regulation, policy or general information, a good starting point is the PDA website ([www.agriculture.state.pa.us](http://www.agriculture.state.pa.us)).

PDA regularly provides more types of records for public inspection than are required by the RTKL, and does not require that informal requests to view and copy records be submitted according to a particular procedure. If a person seeks access to a public record, a telephone request to the appropriate RTKL Liaison will—in most instances—result in the requested public record being photocopied and mailed or made available to the requester. PDA has at least two designated RTKL Liaisons at each of its regional offices, and within each bureau at its headquarters building, in Harrisburg. The names, addresses and telephone numbers of the RTKL Liaisons as of the effective date of this notice are listed below, in Appendices "A" and "B." PDA may have updated these lists of names since the effective date of this notice. If so, the current lists are published at the PDA website ([www.agriculture.state.pa.us](http://www.agriculture.state.pa.us)) or will be provided upon request.

In many cases, a visit to PDA's website or a brief telephone call to the appropriate RTKL Liaison can help focus the records request and save time. Although PDA is not legally obligated to provide information through telephone calls or the PDA website, the agency appreciates that many RTKL requests can be resolved quickly and

efficiently through this type of communication, and will try to be responsive to informal RTKL requests reaching PDA through these channels.

### 2. Formal Written Requests for Access to Records.

In order for a person seeking access to records to have the ability to enjoy the legal rights and remedies provided for in the RTKL, a request for access to records must be in writing, and must be received by the "Right-to-Know Law Coordinator." A request may not be oral, or offered anonymously. A request must, at a minimum, include: (1) the name of the requester; (2) a statement of whether the requester is a resident of the Commonwealth of Pennsylvania; (3) the address to which PDA should send its response; and (4) a clear identification or description of the records sought, with sufficient specificity to enable PDA to ascertain which records are being requested. PDA encourages (but does not require) the use of the Request Form that appears below, in Appendix "C." Written requests for access to records may be delivered to the Right-to-Know Law Coordinator by mail, personal delivery or facsimile transmission (fax), but may not be delivered by e-mail.

If the written request is delivered by mail or personal delivery, it should be delivered to the following person:

Derek Ruhl, Right-to-Know Law Coordinator  
 Pennsylvania Department of Agriculture  
 Bureau of Administrative Services  
 2301 North Cameron Street  
 Harrisburg, PA 17110-9408

If the written request is delivered by fax, it must be sent to the following:

Derek Ruhl, Right-to-Know Law Coordinator  
 (717) 772-2780

The business hours of PDA are from 8:00 a.m. to 4:00 p.m., from Monday through Friday, except those days when the offices of PDA are closed for all or part of a day due to a state holiday; under executive order; due to severe weather (such as a blizzard or ice storm); due to natural or other disaster; or due to the request or direction of local, state or federal law enforcement agencies or officials.

### 3. Schedule of Fees.

PDA is not required to provide a person with copies of requested records—only access to those records that are "public records" under the RTKL.

As referenced below, PDA will provide photocopies of public records without charge for copying or postage if the records comprise ten or fewer pages and can fit in a standard business envelope.

If PDA's fees for copying the records requested are more than \$100, the fees must be paid before PDA will make any copies. The most efficient method by which to make payment is by certified check or money order. Either of these payment methods will result in the prompt copying of the requested material. If payment is by standard check, though, PDA will wait until the check clears before making the requested copies. PDA will not accept cash payments.

**a. Photocopies.** One "photocopy" is either a single-sided copy or one side of a double-sided copy. For originals that are 11" × 17" or smaller, PDA does not charge for the first ten photocopies and charges \$0.15 for each photocopy in excess of the first 10. For maps and other oversize documents, the charge is \$2.50 per photocopy or the actual cost to the PDA if the photocopying is not done by PDA.

**b. Other materials.** PDA charges the following for copying each of the following records: PC diskette—\$5.00; CD—\$7.00; microfilm or microfiche—\$3.00 for the first copy and \$1.50 for each additional copy; paper printouts from microfiche—\$0.50; aperture card—\$0.75.

**c. Staff time and postage.** PDA does not charge for first class postage if the copies fit in a standard business envelope. Otherwise, PDA charges for the cost of postage. There is no charge for staff time for locating records or preparing the records for review. PDA charges \$15.00 per hour for staff time for redacting records, for leaving a PDA office to accomplish off-premises copying, for traveling in order to retrieve records and for other tasks.

**d. Certified copies.** PDA charges \$8.00 per sealed impression for official certification of copies.

**e. Copying not done at PDA offices.** Requesters are prohibited from removing any records from any PDA office. The charges for copying that cannot be done at a PDA office, such as copying of videocassette tapes, is the actual charge to PDA for the copying, plus the \$15.00 per hour charge for PDA staff time.

**f. Charges for retrieving off-site records.** If a requester seeks access to records that have been sent to off-site locations, the charge is the cost of transporting those records to and from the PDA office, including the \$15.00 per hour charge for PDA staff time. PDA will provide the requester an estimate of these charges before retrieving the records.

**g. Charges for special copying.** The previous list is not exhaustive. PDA retains the discretion to impose reasonable charges for copying or record retrieval not described previously.

#### **4. Exceptions: Challenging a Full or Partial Denial (or Deemed Denial) of Access to Public Records.**

PDA may deny access to a public record in several ways. In summary, denial may be in the form of a letter denying—in whole or in part—a written request for access, or may be a “deemed denial” if PDA does not respond to a written request for access within the time frames prescribed by the RTKL. In either event, the requester has the right to file “exceptions” challenging PDA’s denial.

It will help persons seeking to challenge a denial of access to records held by PDA to have an understanding of the following terms:

**Business day.** Any Monday, Tuesday, Wednesday, Thursday or Friday, except those days when the offices of PDA are closed for all or part of a day due to a state holiday; pursuant to executive order; due to severe weather (such as a blizzard or ice storm); due to natural or other disaster; or due to the request or direction of local, state or Federal law enforcement agencies or officials.

**Exceptions.** A written administrative appeal filed with an agency by a requester challenging the agency’s denial or deemed denial of the requester’s RTKL request.

**Exceptor.** A person who files exceptions to a full or partial denial of a request for access to records by PDA.

**RTKL Exceptions Official.** Any official or employee designated by the agency head to consider exceptions, conduct hearings, as appropriate, and issue final determinations resolving those exceptions.

**RTKL Exceptions Unit.** The office designated by the agency head to receive and docket exceptions filed by requesters.

**a. Time within which Exceptions must be filed.** A person who seeks to file exceptions to PDA’s full or partial denial of a request for access to records must do so within 15 business days of the mailing date of PDA’s written denial, or within 15 days of the date the request is deemed denied.

**b. Format and content of Exceptions.** Exceptions must be in writing, and must state the basis for the requester’s position that the record with respect to which access has been denied is a public record. Exceptions should address the reasons stated by PDA for denying the request, unless the request was deemed denied. Exceptions may (but need not) contain a request for a hearing before the RTKL Exceptions Official.

**c. Submitting Exceptions to the RTKL Exceptions Office.** Written exceptions may be submitted to the RTKL Exceptions Office by: (1) regular U. S. mail (in which case the mailing date shall be the date of the postmark on the envelope or, if the postmark is illegible, the date immediately preceding the date upon which the RTKL Exceptions Office receives the exceptions, and the mailing date shall be considered the filing date); or (2) by personal delivery, facsimile transmission, parcel delivery service courier service or similar means of delivery (in which case the filing date shall be the date the exceptions are received at the RTKL Exceptions Office). Exceptions may not be submitted by e-mail. Exceptions should be delivered to the following person:

Renee Stachow, Right-to-Know Law Exceptions Official  
 Pennsylvania Department of Agriculture  
 Bureau of Administrative Services  
 2301 North Cameron Street  
 Harrisburg, PA 17110-9408

If the written request is delivered by fax, it must be sent to the following:

Renee Stachow, Right-to-Know Law Exceptions Official  
 (717) 772-2780

**d. Procedure for Resolving Exceptions.** Unless otherwise agreed to by PDA, the Exceptor and the RTKL Exceptions Official, the following procedures shall apply:

- Within 7 business days after the filing of the exceptions, PDA may submit to the RTKL Exceptions Official a written response to the exceptions.

- If the RTKL Exceptions Official decides to conduct an administrative hearing, the Exceptor will be notified of the date, time, and place. The RTKL Exceptions Official may condition having an administrative hearing on the Exceptor’s agreement to a final determination more than 30 days after the exceptions were mailed.

- The RTKL Exceptions Official may: (1) require that each party, in advance of the administrative hearing, provide a list of witnesses and exhibits to the opposing party and the RTKL Exceptions Official; and (2) at the subsequent administrative hearing, limit the witnesses and exhibits to only those identified on the list.

- Unless otherwise determined by the RTKL Exceptions Official, the administrative hearing will be conducted during a single business day. The RTKL Exceptions Official may limit the time within which each party must present its witnesses and exhibits. The Exceptor will present evidence first.

- Testimony of witnesses at an administrative hearing will be under oath and recorded by a court reporter.

- If an administrative hearing is held, the strict rules of evidence will not be applied. The RTKL Exceptions

Official may admit into evidence testimony and exhibits that are reasonably probative and relevant. Any brief or legal argument must be presented at or before the hearing.

- The General Rules of Administrative Practice and Procedure will not apply. The RTKL Exceptions Official shall rule on procedural matters regarding the exceptions on the basis of justice, fairness, and expeditious resolution.

- The RTKL Exceptions Official may designate another person to conduct hearings or otherwise assist the Exceptions Official.

**e. Review of Exceptions.** The RTKL Exceptions Official may—but need not—convene a hearing on the excep-

tions. The decision as to whether to convene a hearing is not appealable. The RTKL Exceptions Official must issue a written “final determination” by mailing it to the requester within 30 days of the mailing date of the exceptions (or the filing date, if the exceptions are delivered to the RTKL Exceptions Official by means other than by regular U. S. mail), unless this time period is waived by the Exceptor. If the final determination denies the request for access to records, it will contain a written explanation of the reasons for denial. A final determination may be appealed to the Commonwealth Court, in accordance with the Right-to-Know Law.

DENNIS C WOLFF,  
*Secretary*

**APPENDIX “A”**

**List of Right-to-Know Law Liaisons at PDA Regional Offices**

<i>Office</i>	<i>Counties Covered</i>	<i>Telephone Number</i>	<i>Right-To-Know Law Liaison And Alternate</i>
PDA Region I Office 13410 Dunham Road Meadville, PA 16335	Clarion, Crawford, Elk, Erie, Forest, Jefferson, McKean, Mercer, Venango and Warren	(814) 332-6890	Paula Sleptzoff
PDA Region II Office 542 County Farm Road Suite #102 Montoursville, PA 17754	Cameron, Clinton, Columbia, Lycoming, Montour, Northumberland, Potter, Snyder, Tioga and Union	(570) 433-2640	Sherri Holtzman Margaret (Peggy) Bird
PDA Region III Office Route 92 South P. O. Box C Tunkhannock, PA 18657	Bradford, Carbon, Lackawanna, Luzerne, Monroe, Pike, Sullivan, Susquehanna, Wayne and Wyoming	(570) 836-2181	Ann Morgan
PDA Region IV Office 6 McIntyre Road Gibsonia, PA 15044	Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Indiana, Lawrence, Washington and Westmoreland	(724) 443-1585	Irene Corvi Marilyn Rebholz
PDA Region V Office 1307 7th Street Cricket Field Plaza Altoona, PA 16601	Bedford, Blair, Cambria, Clearfield, Centre, Fulton, Huntingdon, Juniata, Mifflin and Somerset	(814) 946-7315	Richard Choboy Elizabeth Santini, DVM
PDA Region VI Office State Farm Show Complex P. O. Box 5184 Harrisburg, PA 17110-0184	Adams, Cumberland, Dauphin, Franklin, Lancaster, Lebanon, Perry and York	(717) 346-3223	Tom Oyler Sally Seeley
PDA Region VII Office Route 113 P. O. Box 300 Creamery, PA 19430	Berks, Bucks, Chester, Delaware, Lehigh, Montgomery, Northampton, Philadelphia and Schuylkill	(610) 489-1003	William Zollers Phyllis Starr

**APPENDIX “B”**

**List of Right-to-Know Law Liaisons at PDA Bureaus, Commissions and Offices**

**Bureaus:**

<i>Office Name</i>	<i>Right-to-Know Law Liaison and Alternate</i>	<i>Telephone Number</i>
Bureau of Administrative Services	Renee Stachow	(717) 787-4854
Bureau of Animal Health and Diagnostic Services	Dr. Jeanine Staller Joyce McLaughlin Sue Berkheimer	(717) 772-2852
Bureau of Dog Law Enforcement	Mary Bender Hedy Logan	(717) 787-4833
Bureau of Farm Show	Patrick Kerwin Chris Seiple	(717) 787-5373

<i>Office Name</i>	<i>Right-to-Know Law Liaison and Alternate</i>	<i>Telephone Number</i>
Bureau of Farmland Preservation	Maggie Hanshue Clara Roy	(717) 783-3167
Bureau of Food Distribution	Nancy Derr Sandy Hopple	(717) 787-2387
Bureau of Food Safety and Laboratory Services	Bill Chirdon Lydia Johnson	(717) 787-4315
Bureau of Market Development	Pam Dailey Stacy Rakocy	(717) 783-1450 (717) 783-3181
Bureau of Plant Industry	Joe Uram John Breitsman	(717) 772-5212 (717) 772-5215
Bureau of Ride and Measurement Standards	Kenneth Deitzler	(717) 787-9089
<b>Other Offices:</b>		
Press Office	Chris Ryder	(717) 787-5085
Equine Toxicology and Research Laboratory	Mark Kaher	(610) 436-3501
Hardwoods Development Council	Keith Craig D. Wayne Bender	(717) 772-3715
<b>Commissions:</b>		
State Harness Racing Commission	Anton Lepler Fonda Civitello	(717) 787-5196
State Horse Racing Commission	Dan Tufano Donna Becknauld	(717) 787-1942

The mailing address of each Bureau, office or commission listed is as follows:

(Name of Bureau, Office or Commission)  
 ATTN: (Name of Right-to-Know Law Liaison)  
 Pennsylvania Department of Agriculture  
 2301 North Cameron Street  
 Harrisburg, PA 17110-9408

Official Use Only—RTKL  
 Request tracking Number

Official Use Only—  
 Date Stamp

**Pennsylvania Department of Agriculture  
 Right-to-Know Law Coordinator  
 Bureau of Administrative Services  
 2301 North Cameron Street  
 Harrisburg, PA 17110-9408  
 PDA Right-To-Know Law Record Request Form**

**Name of Requester:** \_\_\_\_\_  
**(Please print)** Last First MI

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_  
 Street/P. O. Box

City State Zip Code

**Telephone Number:** \_\_\_\_\_ **Fax Number:** \_\_\_\_\_  
 Optional Optional

**Is the requester a resident of the Commonwealth of Pennsylvania? (Check one)** Yes \_\_\_\_ No \_\_\_\_

**If "yes", provide the address of the resident, if different from the Mailing Address provided above:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Please identify each of the documents that is subject to this request. You must identify these documents with sufficient specificity so we may ascertain whether we have these documents and how to locate them.**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Please check one of the following:**

- I am only requesting *access to* the documents identified above.
- I am only requesting *a copy of* the documents identified above.
- I am requesting *access to* the documents identified above **and** a *copy of* those documents.

**If you are requesting a copy of the documents identified above, please check one of the following:**

- I want a **paper copy of the documents.**
- I want a **computer-readable copy of the documents, if available in that format (e.g., diskette or compact disk).**
- Other (please specify):** \_\_\_\_\_

[Pa.B. Doc. No. 07-1702. Filed for public inspection September 14, 2007, 9:00 a.m.]

## DEPARTMENT OF BANKING

### Actions on Applications

The Department of Banking (Department), under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 9, 2002 (P. L. 1572, No. 207), known as the Credit Union Code, has taken the following action on applications received for the week ending August 28, 2007.

#### BANKING INSTITUTIONS

##### Charter Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-27-07	Federated Investors Trust Company of PA Pittsburgh Allegheny County	Pittsburgh	Approved

##### Holding Company Acquisitions

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
8-17-07	Harleysville National Corporation, Harleysville, to acquire 100% of East Penn Financial Corporation, Emmaus, and so indirectly acquire East Penn Bank, Emmaus, which will be merged with and into The Harleysville National Bank and Trust Company, Harleysville (a wholly-owned subsidiary of Harleysville National Corporation).	Harleysville	Filed

**Section 112 Application**

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
8-17-07	Harleysville National Corporation, Harleysville, to acquire up to 19.9% of Berkshire Bancorp, Inc., Wyomissing and so indirectly acquire up to 19.9% of the voting control of Berkshire Bank, Wyomissing, in conjunction with the acquisition of East Penn Financial Corporation, Emmaus, which currently has approval to own up to 19.9% of Berkshire Bancorp, Inc.	Harleysville	Filed

**Branch Applications**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-20-07	Prudential Savings Bank Philadelphia Philadelphia County	28 North Third Street Philadelphia Philadelphia County	Opened
8-24-07	Berkshire Bank Wyomissing Berks County	1 Hearthstone Court Exeter Township Berks County	Opened

**SAVINGS INSTITUTIONS**

No activity.

**CREDIT UNIONS**

No activity.

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

STEVEN KAPLAN,  
*Acting Secretary*

[Pa.B. Doc. No. 07-1703. Filed for public inspection September 14, 2007, 9:00 a.m.]

**Actions on Applications**

The Department of Banking, under the authority contained in the act of November 30, 1965 (P. L. 847, No. 356), known as the Banking Code of 1965; the act of December 14, 1967 (P. L. 746, No. 345), known as the Savings Association Code of 1967; the act of May 15, 1933 (P. L. 565, No. 111), known as the Department of Banking Code; and the act of December 9, 2002 (P. L. 1572, No. 207), known as the Credit Union Code, has taken the following action on applications received for the week ending September 4, 2007.

**BANKING INSTITUTIONS****Charter Application**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-24-07	Monument Bank Doylestown Bucks County  <i>Corresponding Agent</i> John K. Black Bybel Rutledge, LLP 1017 Mumma Road, Suite 302 Lemoyne, PA 17043	Doylestown	Filed

**Consolidations, Mergers and Absorptions**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-16-07	Susquehanna Bank PA Lititz Lancaster County  Purchase of assets/assumption of liabilities of four branch offices of Susquehanna Bank DV, Bryn Mawr, located at:	Lititz	Filed



<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
	2228 State Hill Road Wyomissing Berks County	4930 5th Street Highway Temple Berks County	
	4915 Perkiomen Avenue Reading Berks County	46 West Main Street Fleetwood Berks County	
8-18-07	Elderton State Bank, Elderton, and Elderton Interim Bank, Elderton Surviving Institution— Elderton State Bank, Elderton	Elderton	Filed

Merger is in conjunction with the reorganization of Elderton State Bank to create a bank holding company structure. Elderton State Bank will become the wholly-owned subsidiary of Keystrong Financial, Inc., a new holding company in formation.

**Branch Applications**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-13-07	S & T Bank Indiana Indiana County	1077 Freeport Road Pittsburgh Allegheny County	Opened
8-16-07	First Commonwealth Bank Indiana Indiana County	5853 Forbes Avenue Pittsburgh Allegheny County	Filed
8-31-07	Susquehanna Bank DV Bryn Mawr Montgomery County	2 Aquarium Drive Camden Camden County, NJ	Filed

**Branch Consolidations**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-16-07	Susquehanna Bank PA Lititz Lancaster County	<i>Into:</i> 4930 5th Street Highway Temple Berks County  <i>From:</i> 5318 Allentown Pike Temple Berks County	Filed
8-16-07	Susquehanna Bank PA Lititz Lancaster County	<i>Into:</i> 3199 Cape Horn Road Red Lion York County  <i>From:</i> 3090 Cape Horn Road Red Lion York County  (Branch consolidation pending the proposed merger of CommunityBanks, Harrisburg with and into Susquehanna Bank PA, Lititz)	Filed
8-16-07	Susquehanna Bank PA Lititz Lancaster County	<i>Into:</i> 1205 Carlisle Road York York County  <i>From:</i> 2170 White Street York York County  (Branch consolidation pending the proposed merger of CommunityBanks, Harrisburg with and into Susquehanna Bank PA, Lititz)	Filed
8-16-07	Susquehanna Bank PA Lititz Lancaster County	<i>Into:</i> 200 Willow Valley Lakes Drive Willow Street Lancaster County	Filed

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
		<i>From:</i> 90 Willow Valley Lakes Drive Willow Street Lancaster County  (Branch consolidation pending the proposed merger of CommunityBanks, Harrisburg with and into Susquehanna Bank PA, Lititz)	
8-16-07	Susquehanna Bank PA Lititz Lancaster County	<i>Into:</i> 1 Market Way East York York County  <i>From:</i> 16 North George Street York York County  (Branch consolidation pending the proposed merger of CommunityBanks, Harrisburg with and into Susquehanna Bank PA, Lititz)	Filed
8-29-07	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	<i>Into:</i> 338 West DeKalb Pike King of Prussia Montgomery County  <i>From:</i> 608 DeKalb Pike King of Prussia Montgomery County	Filed

**Branch Discontinuance**

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
8-3-07	S & T Bank Indiana Indiana County	Two Gateway Center 603 Stanwix Street Pittsburgh Allegheny County	Closed

**Savings Institutions**

No activity.

**Credit Unions**

No activity.

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

STEVEN KAPLAN,  
*Acting Secretary*

[Pa.B. Doc. No. 07-1704. Filed for public inspection September 14, 2007, 9:00 a.m.]

## DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

### Community Services Block Grant; Public Meeting

The Department of Community and Economic Development (Department) publishes notice of a public hearing to be held at 10 a.m. on Wednesday, September 26, 2007, in Conference Room 4 West, 4th Floor of the Commonwealth Keystone Building, 400 North Street, Harrisburg, PA. The purpose of this hearing is to receive comments on the Community Services Block Grant proposed State Plan to be submitted to the United States Department of Health and Human Services for program years 2008 and 2009.

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 to JamesEtta Reed, Director, Center for Community Empowerment, 4th Floor, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120 until 5 p.m. on September 26, 2007.

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

DENNIS YABLONSKY,  
*Secretary*

[Pa.B. Doc. No. 07-1705. Filed for public inspection September 14, 2007, 9:00 a.m.]

## DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

### Conservation and Natural Resources Advisory Council Meeting

The Conservation and Natural Resources Advisory Council to the Department of Conservation and Natural Resources will hold a meeting on Wednesday, September 26, 2007, 10 a.m. in Room 105, Lobby Level, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning this meeting or agenda items can be directed to Kurt Leitholf at (717) 705-0031.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact Joan Dupes directly at (717) 705-0031 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

MICHAEL F. DIBERARDINIS,  
*Secretary*

[Pa.B. Doc. No. 07-1706. Filed for public inspection September 14, 2007, 9:00 a.m.]

## DEPARTMENT OF EDUCATION

### Application of Pennsylvania College of Optometry for Approval of Change to University Status, Name Change and Amendment and Restatement of its Articles of Incorporation

#### Notice of Opportunity for Hearing and Invitation to Protest

Under 24 Pa.C.S. § 6503(e) (relating to certification of institutions), the Department of Education (Department) will consider the application of Pennsylvania College of Optometry for a Certificate of Authority approving the institution's change to university status with a corresponding change of name to Pennsylvania Health & Science University. Additionally and in tandem, the Department will consider the request to amend and restate the institution's Articles of Incorporation.

In accordance with 24 Pa.C.S. § 6503(e), the Department will act upon these items without hearing, unless within 30 days after the publication of this notice in the *Pennsylvania Bulletin* a written request for public hearing is filed with the Department, along with a notice of intervention, a petition to intervene or protest in accordance with 1 Pa. Code §§ 35.23—35.24 (relating to protest) or 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

Petitions to intervene, protest and request for hearing shall be filed with Carol M. D. Gisselquist, Higher Education Specialist (717) 787-4448, 333 Market Street, Harrisburg, PA 17126-0333 on or before 4 p.m. on the due date prescribed by this notice. Persons wishing to review the application should phone or write to the aforementioned office to schedule a time for an in-office review. Duplicate copies of the application are not available.

Persons with a disability who wish to attend the hearing, if held, and require an auxiliary aid, service or other accommodation to participate should contact Carol Gisselquist at (717) 787-4448 to discuss how the Department may best accommodate their needs.

GERALD L. ZAHORCHAK, D. Ed.,  
*Secretary*

[Pa.B. Doc. No. 07-1707. Filed for public inspection September 14, 2007, 9:00 a.m.]

**Application of the Interdenominational Theological Center of Atlanta, GA for Approval to Operate in this Commonwealth by Offering Courses in Divinity Leading to the Master of Divinity (M. Div.) Degree**

**Notice of Opportunity for Hearing and  
Invitation to Protest**

Under 24 Pa.C.S. § 6504(a) (relating to fundamental changes), the Department of Education (Department) will consider the application of the Interdenominational Theological Center (ITC), based in Atlanta, GA to have a Certificate of Authority approving its operation by synchronous distance education to classes in Philadelphia, PA. ITC wishes to offer courses in Divinity leading to the Master of Divinity (M. Div.) degree. Completion of the degree program would require students to take classes at the ITC campus in Atlanta.

In accordance with 24 Pa.C.S. § 6503(e), the Department will act upon the application without hearing, unless within 30 days after the publication of this notice in the *Pennsylvania Bulletin* a written request for public hearing is filed with the Department, along with a notice of intervention, a petition to intervene or protest in accordance with 1 Pa. Code §§ 35.23 and 35.24 (relating to protest) or 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

Petitions to intervene, protest and request for hearing shall be filed with Carol Gisselquist, Higher Education Specialist (717) 787-4448, 333 Market Street, Harrisburg, PA 17126-0333 on or before 4 p.m. on the due date prescribed by this notice. Persons wishing to review the application should phone or write to the aforementioned office to schedule a time for an in-office review. Duplicate copies of the application are not available.

Persons with a disability who wish to attend the hearing, if held, and require an auxiliary aid, service or other accommodation to participate, should contact Carol Gisselquist (717) 787-4448 to discuss how the Department may best accommodate their needs.

GERALD L. ZAHORCHAK, D. Ed.,  
*Secretary*

[Pa.B. Doc. No. 07-1708. Filed for public inspection September 14, 2007, 9:00 a.m.]

**Index Calculation Required by Special Session Act 1 of 2006**

Under section 333(l) of the Taxpayer Relief Act (53 P. S. § 6926.333(l)), the Department of Education (Department) has calculated the index for the Fiscal Year (FY) 2008-2009.

The index is the average of the percentage increase in the Statewide average weekly wage and the Employment Cost Index. For the FY 2008-2009, the base index is 4.4%.

For school districts with a market value/income aid ratio greater than .4000, an adjusted index will be posted on the Department's website at [www.pde.state.pa.us/proptax](http://www.pde.state.pa.us/proptax) by September 30, 2007.

GERALD L. ZAHORCHAK, D. Ed.,  
*Secretary*

[Pa.B. Doc. No. 07-1709. Filed for public inspection September 14, 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**

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

<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>
PA0246646 (Sew)	Copart Auto Auction 8 Park Drive Grantville, PA 17028	Lebanon County East Hanover Township	UNT Swatara Creek 7-D	Y
PA0053571 (Sew)	Brian L. Kanach 101 Gristmill Road Boyertown, PA 19512	Berks County Douglass Township	Ironstone Creek 3-D	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>
PA0114081 (Nonmunicipal)	Clear Run, Inc. Woods Edge Estates 181 Draketown Road Bloomsburg, PA 17815	Columbia County Orange Township	UNT to Fishing Creek 5C	Y
PA0112381 (Nonmunicipal)	Columbia Investment Corporation Madison Estates 6009 Columbia Boulevard Bloomsburg, PA 17815	Columbia County Madison Township	Little Fishing Creek 5C	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>
PA0103713	Scrubgrass Generating Company, LP 2151 Libson Road Kennerdell, PA 16374	Scrubgrass Township Venango County	Allegheny River (Outfall 001), Falling Spring Run (Outfall 002) and the UNT to the Allegheny River (Outfall 003) 16-G	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.*

**PA0053929**, Sewage, SIC 4952, **Barryway Enterprises, Inc., Bubba's Pot Belly Stove Restaurant**, 1485 Route 309, Quakertown, PA 18951. This proposed facility is located in Springfield Township, **Bucks County**.

Description of Proposed Activity: Renewal of an NPDES permit to discharge 7,500 gpd of treated sewage into a UNT to Tohickon Creek.

The receiving stream, Tohickon Creek, is in the State Water Plan Watershed 2D and is classified for: TSF. The nearest downstream public water supply intake for PA American Water Company is located on Delaware River and is 32 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 7,500 gpd.

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	50
Suspended Solids	30	60
Ammonia (as N)		
(5-1 to 10-31)	2.0	40
(11-1 to 4-30)	6.0	12.0
Oil and Grease	15	30
Phosphorus (as P)	0.5	1.0
Total Residual Chlorine	0.15	0.4
Fecal Coliform	200 colonies/100 ml as a Geometric Average	
Dissolved Oxygen	Minimum of 4.0 mg/l at all times	
pH	Within limits of 6.0 to 9.0 Standard Units at all times	

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

The EPA waiver is in effect.

Effective disinfection.

**PA0057011**, Sewage, SIC 4952, **Little Washington Wastewater Company**, 762 West Lancaster Avenue, Bryn Mawr, PA 19010. This proposed facility is located in Thornbury Township, **Chester County**.

Description of Proposed Activity: Renewal of an NPDES permit to discharge treated sewage from Bridlewood Farm STP.

The receiving stream, Radley Run, is in the State Water Plan Watershed 3H and is classified for: WWF, aquatic life, water supply and recreation. There is no downstream public water supply intake below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.103 mgd:

<i>Parameters</i>	<i>Mass (lb/day)</i>		<i>Concentration (mg/l)</i>	
	<i>Average Monthly</i>	<i>Average Monthly</i>	<i>Average Monthly</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	21	25	25	50
TSS	26	30	30	60
NH <sub>3</sub> as N				
(5-1 to 10-31)	3.0	3.5	3.5	7.0
(11-1 to 4-30)	6.0	7.0	7.0	14.0
Total Phosphorus	1.7	2.0	2.0	4.0
Total Nitrogen	8.6	10.0	10.0	20.0
TRC		0.2	0.2	0.5
Fecal Coliform		200 lbs/100 ml	200 lbs/100 ml	1,000 lbs/100 ml
Dissolved Oxygen		Minimum of 5.0 mg/l at all times		
pH		Within limits of 6.0 to 9.0 at all times		

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

1. Operator Notification.
2. Remedial Measures if Unsatisfactory Effluent.
3. No Stormwater.
4. Acquire Necessary Property Rights.
5. Small Stream Discharge.
6. Change of Ownership.
7. Chlorine Minimization.
8. Proper Sludge Disposal.
9. Operator Certification.
10. I-Max Limits.
11. No Discharge Condition.
12. 2/Month Monitoring.
13. Maximize Drip Irrigation.

**PA0057487**, Sewage, SIC 5999, **Oldcastle Lawn & Garden, Inc.**, 500 East Pumping Station Road, Quakertown, PA 18951. This proposed facility is located in Richland Township, **Bucks County**.

Description of Proposed Activity: Renewal of an NPDES permit to discharge 1,000 gpd of treated sewage and stormwater into an UNT to Tohickon Creek.

The receiving stream, a UNT to Tohickon Creek, is in the State Water Plan Watershed 2D and is classified for: TSF. The nearest downstream public water supply intake for the PA American Water Company is located on the Delaware River and is 30.5 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 1,000 gpd.

<i>Parameters</i>	<i>Average Monthly</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	10	20
Suspended Solids	10	20
Ammonia as N	3.0	6.0
Total Residual Chlorine	0.5	1.2
Phosphorus as P	Monitor	Monitor
Fecal Coliform	200 lbs/100 ml as a Geometric Average	
Dissolved Oxygen	3.0 (minimum)	
pH	Within limits of 6.0 to 9.0 Standard Units at all times	

The proposed effluent limits for Outfall 002 for stormwater discharge from the facility are as follows:

<i>Parameters</i>	<i>Average Monthly</i>	<i>Daily Maximum (mg/l)</i>
CBOD <sub>5</sub>		Monitor
COD		Monitor
Oil and Grease		Monitor
pH		Monitor
Total Suspended Solids		Monitor
Total Kjeldahl Nitrogen		Monitor
Phosphorus, Total		Monitor
Iron (Dissolved)		Monitor

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

1. Remedial Measures.
2. No Stormwater from STP.
3. Dry Stream Discharge.
4. Minimize Chlorine Usage.
5. Sludge Disposal.
6. Stormwater Requirements.

EPA waiver is in effect.

**PA0050342**, Sewage, SIC 4952, **Upper Pottsgrove Township**, 1309 Farmington Avenue, Pottstown, PA 19464. This proposed facility is located in Upper Pottsgrove Township, **Montgomery County**.

Description of Proposed Activity: This application is for renewal of a NPDES permit to discharge treated sewage from Regal Oaks Subdivision's STP in Upper Pottsgrove Township, Montgomery County. This is an existing discharge to Sprogels Run.

The receiving stream, Sprogels Run, is in the State Water Plan Watershed 3D and is classified for: WWF.

The proposed effluent limits for Outfall 001 are based on a design flow of 17,900 gpd and are in currently in effect until March 31, 2010.

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub> (5-1 to 10-31)	15	30
(11-1 to 4-30)	25	50
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
Total Residual Chlorine	0.024	0.048
Fecal Coliform	200 col/100 ml Geometric Mean	1,000 col/100 ml
Dissolved Oxygen	Minimum of 5.0 mg/l at all times	
pH	Within limits of 6.0 to 9.0 Standard Units at all times	

The proposed effluent limits for Outfall 001 are based on a design flow of 17,900 gpd and will become effective April 1, 2010:

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	0	20
Suspended Solids	10	20
Ammonia (as N) (5-1 to 10-31)	2.0	4.0
(11-1 to 4-30)	6.0	12.0

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Phosphorus as P (5-1 to 10-31)	0.5	1.0
(11-1 to 4-30)	1.0	2.0
Total Residual Chlorine	0.024	0.048
Fecal Coliform	200 col/100 ml Geometric Mean	1,000 col/100 ml
Dissolved Oxygen	Minimum of 5.0 mg/l at all times	
pH	Within limits of 6.0 to 9.0 Standard Units at all times	

The EPA waiver is in effect.

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

1. Abandon STP When Municipal Sewers Become Available.
2. Remedial Measures if Unsatisfactory Effluent.
3. Acquire Necessary Property Rights.
4. Small Stream Discharge.
5. Transfer of Permit.
6. Minimize Chlorine.
7. Proper Sludge Disposal.
8. Instantaneous Maximum Limitation.
9. Twice a Month Monitoring Frequency.
10. TMDL/WLA Requirement.
11. Operator Certification.
12. O & M Plan Submission.
13. Laboratory Certification.
14. I-Max Requirement.

**PA0026603**, Sewage, SIC 4952, **Borough of Ambler**, 122 East Butler Avenue, Ambler, PA 19002-4476. This existing facility is located in Upper Dublin Township, **Montgomery County**.

Description of Proposed Activity: Issuance of NPDES renewal permit for an existing discharge of treated sewage. Permit was issued November 7, 2005. The permit was appealed and, as a result of stipulation of settlement, the phosphorus limits and compliance dates are revised.

The receiving stream, Wissahickon Creek, is in the State Water Plan Watershed 3F and is classified for: TSF, MF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Philadelphia Water Department is located on the Schuylkill River and is approximately 12.95 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 6.5 mgd.

<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub> (5-1 to 10-31)	10	15		20
(11-1 to 4-30)	20	30		40
Total Suspended Solids	30	45		



<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
NH <sub>3</sub> -N				
(5-1 to 10-31)	1.5			3.0
(11-1 to 4-30)	4.5			9.0
Dissolved Oxygen	7.0, I-min.			
pH (Standard Units)	6.0, I-min.			9.0
Fecal Coliform (#col/100 ml)	200			
<b>Ortho-phosphorus as P:</b>				
12-1-08 through Expiration:				
(11-1 to 3-31)	4.0			8.0
4-1-09 through Expiration:				
(04-1 to 10-31)	1.0			2.0
Aluminum, Total	Monitor		Monitor	
Copper, Total	Monitor		Monitor	
Chromium, Hexavalent	Monitor		Monitor	
Chromium, Total	Monitor		Monitor	
Silver, Total	Monitor		Monitor	
Lead, Total	Monitor		Monitor	
Arsenic, Total	Monitor		Monitor	
Cadmium, Total	Monitor		Monitor	
Mercury, Total	Monitor		Monitor	
<i>Parameters</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Nickel, Total	Monitor		Monitor	
Zinc, Total	Monitor		Monitor	
Cyanide, Free	Monitor		Monitor	
Selenium, Total	Monitor		Monitor	
Phenolics, Total	Monitor		Monitor	
Total Residual Chlorine (NO <sub>2</sub> +NO <sub>3</sub> ) as N	0.1			0.3

The proposed effluent limits for Stormwater Outfall 006 are based on a design flow of an average storm event:

<i>Parameters</i>	<i>Average Annual (mg/l)</i>	<i>Average Semi-Annual (mg/l)</i>	<i>Maximum Daily (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	Monitor		Monitor	
COD	Monitor		Monitor	
Oil and Grease	Monitor		Monitor	
pH	Monitor		Monitor	
Total Suspended Solids	Monitor		Monitor	
Total Kjeldahl Nitrogen	Monitor		Monitor	
Total Phosphorus	Monitor		Monitor	
Iron, Dissolved	Monitor		Monitor	
Fecal Coliform (#col/100 ml)	Monitor		Monitor	

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

1. Stormwater Requirements.
2. Pretreatment Program.
3. Upstream Monitoring.
4. Specification of Test Methods.
5. Definition of Average Weekly.
6. Remedial Measures if Public Nuisance.
7. No Stormwater to Sanitary Sewers.
8. Necessary Property Rights.
9. Instantaneous Maximum Limitations.
10. Proper Sludge Handling.
11. Whole Effluent Toxicity Testing with Renewal.
12. Notification of Designation of Responsible Operator.

The EPA waiver is not in effect.

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

**Application No. PA 0248690, CAFO, Barry Good Farm, 1695 Rake Road, Mohrsville, PA 19541.**

Barry Good has submitted an NPDES permit renewal application for the Barry Good Farm, an existing dairy and poultry operation located in Centre Township, **Berks County**. The CAFO is situated near Plum Creek (Watershed 03-C), which is classified as WWF. The CAFO has a target animal population of approximately 524 animal equivalent units

consisting of 109,500 layer chickens, 80 milk cows, 14 dry cows, 35 heifers and 50 calves. There is one liquid manure storage facility on the farm. Liquid dairy manure is stored in a circular concrete structure. Layer manure is handled in solid form and is stored below the animals in the layer house. A release or discharge to waters of the Commonwealth under normal operating conditions is not expected. Normal operating conditions are defined as conditions below a 25-year, 24-hour storm event.

The Department of Environmental Protection (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 issue an 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's files by calling the file review coordinator at (717) 705-4732.

Persons wishing to comment on the proposed permit are invited to submit written comments to the previous address within 30 days from the date of this public notice. Comments received within this 30-day period will be considered in formulating the Department's final determination regarding the application. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the basis of the comment and the relevant facts upon which it is based.

Following the 30-day comment period, the Watershed Management Program Manager will make a final determination regarding the proposed permit. Notice of this determination will be published in the *Pennsylvania Bulletin* at which time the determination may be appealed to the Environmental Hearing Board.

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

**Application No. PA 0023108**, Sewage, **Borough of Elizabethtown**, 600 South Hanover Street, Elizabethtown, PA 17022. This facility is located in Conoy Township, **Lancaster County**.

Description of activity: The application is for renewal of an NPDES permit for existing discharge of treated sewage.

The receiving stream, Susquehanna River, is in Watershed 7-G, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Columbia Water Company is located on the Susquehanna River, approximately 12 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 4.5 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
Total Phosphorus	2		4
Total Residual Chlorine	0.5		1.6
Dissolved Oxygen		Minimum of 5.0 at all times	
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)			

The proposed effluent limits for Outfall 002 to Conoy Creek for a wet weather treated effluent overflow of 9.0 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	20	30	40
Total Suspended Solids	30	45	60
NH <sub>3</sub> N			
(5-1 to 10-31)	5.0		10
(11-1 to 4-30)	8.0		16
Total Phosphorus	2		4
Total Residual Chlorine	0.5		1.6
Dissolved Oxygen		Minimum of 5.0 at all times	
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)			

*Chesapeake Bay Requirements*

	<i>Concentration (mg/L)</i>	<i>Mass (lbs)</i>	
	<i>Monthly Average</i>	<i>Monthly</i>	<i>Annual</i>
Ammonia-N	Report	Report	Report**
Kjeldahl-N	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	XXX
Total Nitrogen	Report	Report	Report

<i>Chesapeake Bay Requirements</i>			
	<i>Concentration (mg/L)</i>	<i>Monthly</i>	<i>Mass (lbs)</i>
	<i>Monthly Average</i>		<i>Annual</i>
Total Phosphorus	Report	Report	Report
Net Total Nitrogen	XXX	Report	82,191*
Net Total Phosphorus	XXX	Report	10,959*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DRM—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DRM—Annual Nutrient Summary by November 28, 2011.

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

The EPA waiver is not in effect.

**Application No. PA 0020320**, Sewage, **Lititz Sewer Authority**, 50 Lititz Run Road, Lititz, PA 17543. This facility is located in Warwick Township, **Lancaster County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Lititz Run, is in Watershed 7-J, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Lancaster Municipal Water Authority is located on the Conestoga River, approximately 10 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 3.85 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Instantaneous Weekly (mg/l)</i>	<i>Average Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	10	15	20
(11-1 to 4-30)	15	22.5	30
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	1.5		3.0
(11-1 to 4-30)	4.5		9.0
Total Residual Chlorine	0.05		0.16
Total Phosphorus	2.0		4.0
Dissolved Oxygen		Minimum of 5.0 at all times	
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)			

<i>Chesapeake Bay Requirements</i>			
	<i>Concentration (mg/L)</i>	<i>Monthly</i>	<i>Mass (lbs)</i>
	<i>Monthly Average</i>		<i>Annual</i>
Ammonia-N	Report	Report	Report**
Kjeldahl-N	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	XXX
Total Nitrogen	Report	Report	Report
Total Phosphorus	Report	Report	Report
Net Total Nitrogen	XXX	Report	70,319*
Net Total Phosphorus	XXX	Report	9,376*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DRMs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DRM—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

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

The EPA waiver is not in effect.

**Application No. PA 0027022**, Sewage, **Altoona City Authority (Westerly Plant)**, 20 Greenwood Road, Altoona, PA 16602-7114. This facility is located in Allegheny Township, **Blair County**.

Description of activity: The application is for renewal of an NPDES permit for existing discharge of treated sewage.

The receiving stream, Beaverdam Branch, is in Watershed 11-A, and classified for TSF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Newport Borough Water Authority is located on the Juniata River, approximately 143 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 10.8 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	20	30	40
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	2.0		4.0
(11-1 to 4-30)	4.0		8.0
Total Phosphorus	2.0		4.0
Total Copper	0.018		0.045
Dissolved Oxygen		Minimum of 5.0 at all times	
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)			

*Chesapeake Bay Requirements*

	<i>Concentration (mg/L) Monthly Average</i>	<i>Monthly</i>	<i>Mass (lbs) Annual</i>
Ammonia-N	Report	Report	Report**
Kjeldahl-N	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	XX
Total Nitrogen	Report	Report	Report
Total Phosphorus	Report	Report	Report
Net Total Nitrogen	XXX	Report	164,381*
Net Total Phosphorus	XXX	Report	21,918*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DRMs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

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

The EPA waiver is not in effect.

**Application No. PA 0024040**, Sewage, **Highspire Borough Authority**, 640 Eshelman Street, Highspire, PA 17034-1698. This facility is located in Highspire Borough, **Dauphin County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Susquehanna River, is in Watershed 7-C, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Columbia Water Company is located on the Susquehanna River, approximately 22 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 2.0 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
Total Phosphorus	2.0		4.0
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform (5-1 to 9-30)		200/100 ml as a Geometric Average	
(10-1 to 4-30)		2,000/100 ml as a Geometric Average	

*Chesapeake Bay Requirements*

<i>Parameter</i>	<i>Concentration (mg/L)</i>		<i>Mass (lbs)</i>	
	<i>Monthly Average</i>	<i>Monthly</i>	<i>Monthly</i>	<i>Annual</i>
Ammonia-N	Report	Report	Report	Report**
Kjeldahl-N	Report	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	Report	XXX
Total Nitrogen	Report	Report	Report	Report
Total Phosphorus	Report	Report	Report	Report
Net Total Nitrogen	XX	Report	Report	36,529*
Net Total Phosphorus	XXX	Report	Report	4,871*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DRMs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

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

The EPA waiver is not in effect.

**Application No. PA 0020885**, Sewage, **Borough of Mechanicsburg**, 36 West Allen Street, Mechanicsburg, PA 17055. This facility is located in Mechanicsburg Borough, **Cumberland County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Conodoguinet Creek, is in Watershed 7-B, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Steelton Municipal Waterworks is located on the Susquehanna River, approximately 19.3 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 2.08 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N (5-1 to 10-31)	9.0		18
(11-1 to 4-30)	16		32
Total Residual Chlorine	0.5		1.6
Total Phosphorus	2.0		4.0
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform (5-1 to 9-30)		200/100 ml as a Geometric Average	
(10-1 to 4-30)		2,000/100 ml as a Geometric Average	

*Chesapeake Bay Requirements*

<i>Parameter</i>	<i>Concentration (mg/L)</i>		<i>Mass (lbs)</i>	
	<i>Monthly Average</i>	<i>Monthly</i>	<i>Monthly</i>	<i>Annual</i>
Ammonia-N	Report	Report	Report	Report**
Kjeldahl-N	Report	Report	Report	XXX

	<i>Chesapeake Bay Requirements</i>		
	<i>Concentration (mg/L)</i> <i>Monthly Average</i>	<i>Monthly</i>	<i>Mass (lbs)</i> <i>Annual</i>
Nitrate-Nitrite as N	Report	Report	XXX
Total Nitrogen	Report	Report	Report
Total Phosphorus	Report	Report	Report
Net Total Nitrogen	XXX	Report	38,565*
Net Total Phosphorus	XXX	Report	5,065*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DRMs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

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

The EPA waiver is not in effect.

**Application No. PA 0080314**, Amendment No. 1, Sewage, **Hampden Township**, 230 South Sporting Hill Road, Mechanicsburg, PA 17050-3097. This facility is located in Hampden Township, **Cumberland County**.

Description of activity: The application is for an amendment of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Conodoguinet Creek, is in Watershed 7-B, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Steelton Municipal Waterworks is located on the Susquehanna River, approximately 15.2 miles downstream. The discharge is not expected to affect the water supply.

The proposed Interim effluent limits for Outfall 001 for a design flow of 4.65 mgd are:

<i>Parameter</i>	<i>Average</i> <i>Monthly (mg/l)</i>	<i>Average</i> <i>Weekly (mg/l)</i>	<i>Instantaneous</i> <i>Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	67
Total Suspended Solids	30	45	81
NH <sub>3</sub> -N			
(5-1 to 10-31)	6.9		18
(11-1 to 4-30)	15		40
Total Residual Chlorine	0.35		1.2
Total Phosphorus	2.0		5.4
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a Geometric Average	
(10-1 to 4-30)		2,000/100 ml as a Geometric Average	

The proposed Final effluent limits for Outfall 001 for a design flow of 4.82 mgd are:

<i>Parameter</i>	<i>Average</i> <i>Monthly (mg/l)</i>	<i>Average</i> <i>Weekly (mg/l)</i>	<i>Instantaneous</i> <i>Maximum (mg/l)</i>
CBOD <sub>5</sub>	10	15	27
Total Suspended Solids	30	45	81
NH <sub>3</sub> -N			
(5-1 to 10-31)	1.8		4.8
(11-1 to 4-30)	5.4		14
Total Phosphorus	2.0		5.4
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a Geometric Average	
(10-1 to 4-30)		2,000/100 ml as a Geometric Average	

*Chesapeake Bay Requirements*

	<i>Concentration (mg/L)</i> <i>Monthly Average</i>	<i>Monthly</i>	<i>Mass (lbs)</i> <i>Annual</i>
Ammonia-N	Report	Report	Report**
Kjeldahl-N	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	XXX
Total Nitrogen	Report	Report	Report
Total Phosphorus	Report	Report	Report
Net Total Nitrogen	XXX	Report	98,872*
Net Total Phosphorus	XXX	Report	12,359*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DRMs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

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 is not in effect.

**Application No. PA 0024431**, Sewage, **Dillsburg Area Authority**, 98 West Church Street, Dillsburg, PA 17109. This facility is located in Carroll Township, **York County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Dogwood Run, is in Watershed 7-E, and classified for CWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for United Water Company is located on the Yellow Breeches Creek, approximately 18.2 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 1.53 mgd are:

<i>Parameter</i>	<i>Average</i> <i>Monthly (mg/l)</i>	<i>Average</i> <i>Weekly (mg/l)</i>	<i>Instantaneous</i> <i>Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	2.5		5.0
(11-1 to 4-30)	7.5		15
Total Phosphorus	2.0		4.0
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a Geometric Average	
(10-1 to 4-30)		2,000/100 ml as a Geometric Average	

*Chesapeake Bay Requirements*

	<i>Concentration (mg/L)</i> <i>Monthly Average</i>	<i>Monthly</i>	<i>Mass (lbs)</i> <i>Annual</i>
Ammonia-N	Report	Report	Report**
Kjeldahl-N	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	XXX
Total Nitrogen	Report	Report	Report
Total Phosphorus	Report	Report	Report
Net Total Nitrogen	XXX	Report	31,345*
Net Total Phosphorus	XXX	Report	3,726*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DRMs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the

Supplemental DMR—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

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

The EPA waiver is not in effect.

**Application No. PA 0026808**, Sewage, **Springettsbury Township**, 3501 North Sherman Street, York, PA 17402. This facility is located in Springettsbury Township, **York County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Codorus Creek, is in Watershed 7-H, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Wrightsville is located on the Susquehanna River, approximately 12.35 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 15.0 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	2.0		4.0
(11-1 to 4-30)	3.0		6.0
Total Residual Chlorine	0.16		0.53
Total Phosphorus	2.0		4.0
Dissolved Oxygen		Minimum of 5.0 at all times	
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)			

*Chesapeake Bay Requirements*

	<i>Concentration (mg/L) Monthly Average</i>	<i>Monthly</i>	<i>Mass (lbs)</i>	<i>Annual</i>
Ammonia-N	Report	Report		Report**
Kjeldahl-N	Report	Report		XXX
Nitrate-Nitrite as N	Report	Report		XXX
Total Nitrogen	Report	Report		Report
Total Phosphorus	Report	Report		Report
Net Total Nitrogen	XXX	Report		273,969*
Net Total Phosphorus	XXX	Report		36,529*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DRMs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

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

The EPA waiver is not in effect.

**Application No. 0026263**, Sewage, **York City Sewer Authority**, 17 East Market Street, York, PA 17401. This facility is located in Manchester Township, **York County**.

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

The receiving stream, Codorus Creek, is in Watershed 7-H, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Wrightsville Water Company is located on the Susquehanna River, approximately 17 miles downstream. The discharge is not expected to affect the water supply.



The proposed effluent limits for Outfall 001 are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	15	22	30
(11-1 to 4-30)	20	30	40
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	1.7		3.4
(11-1 to 4-30)	2.1		4.2
Total Residual Chlorine	Report		
Total Phosphorus	2.0		4.0
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a Geometric Average	
(10-1 to 4-30)		2,000/100 ml as a Geometric Average	

*Chesapeake Bay Requirements*

<i>Parameter</i>	<i>Concentration (mg/L)</i>	<i>Monthly</i>	<i>Mass (lbs)</i>	<i>Annual</i>
	<i>Monthly Average</i>			
Ammonia-N	Report	Report		Report**
Kjeldahl-N	Report	Report		XXX
Nitrate-Nitrite as N	Report	Report		XXX
Total Nitrogen	Report	Report		Report
Total Phosphorus	Report	Report		Report
Net Total Nitrogen	XXX	Report		Report*
Net Total Phosphorus	XXX	Report		Report*

The proposed effluent limits for Outfall 002 for a design flow of 26 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	15	22	30
(11-1 to 4-30)	20	30	40
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	1.7		3.4
(11-1 to 4-30)	2.1		4.2
Total Residual Chlorine	Report		
Total Phosphorus	2.0		4.0
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a Geometric Average	
(10-1 to 4-30)		2,000/100 ml as a Geometric Average	

*Chesapeake Bay Requirements*

<i>Parameter</i>	<i>Concentration (mg/L)</i>	<i>Monthly</i>	<i>Mass (lbs)</i>	<i>Annual</i>
	<i>Monthly Average</i>			
Ammonia-N	Report	Report		Report**
Kjeldahl-N	Report	Report		XXX
Nitrate-Nitrite as N	Report	Report		XXX
Total Nitrogen	Report	Report		Report
Total Phosphorus	Report	Report		Report
Net Total Nitrogen	XXX	Report		474,880*
Net Total Phosphorus	XXX	Report		63,317*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DRMs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

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

The EPA waiver is not in effect.

**Application No. PA 0020923**, Sewage, **New Oxford Municipal Authority**, 409 Water Works Road, New Oxford, PA 17350-1511. This facility is located in Oxford Township, **Adams County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, South Branch Conewago Creek, is in Watershed 7-F, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Wrightsville Water Company is located on the Susquehanna River, approximately 66 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 1.788 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	15	22	30
(11-1 to 4-30)	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	3.5		7.0
(11-1 to 4-30)	7.5		15
Total Residual Chlorine	0.15		0.51
Total Phosphorus	2.0		4.0
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a Geometric Average	
(10-1 to 4-30)		2,000/100 ml as a Geometric Average	

*Chesapeake Bay Requirements*

	<i>Concentration (mg/L) Monthly Average</i>	<i>Monthly</i>	<i>Mass (lbs)</i>	<i>Annual</i>
Ammonia-N	Report	Report		Report**
Kjeldahl-N	Report	Report		XXX
Nitrate-Nitrite as N	Report	Report		XXX
Total Nitrogen	Report	Report		Report
Total Phosphorus	Report	Report		Report
Net Total Nitrogen	XXX	Report		35,057*
Net Total Phosphorus	XXX	Report		4,354*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DRMs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

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

The EPA waiver is not in effect.

**Application No. PA 0020826**, Sewage, **Dover Township**, 2480 West Canal Road, Dover, PA 17315. This facility is located in Conewago Township, **York County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Little Conewago Creek, is in Watershed 7-F, and classified for TSE, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Wrightsville Water Company is located on the Susquehanna River, approximately 27 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 8.0 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	10	15	20
(11-1 to 4-30)	20	30	40
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	1.5		3.0
(11-1 to 4-30)	4.5		9.0
Total Phosphorus	2.0		4.0
Dissolved Oxygen	Minimum of 5.0 at all times		
pH	From 6.0 to 9.0 inclusive		
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a Geometric Average		
(10-1 to 4-30)	2,000/100 ml as a Geometric Average		

*Chesapeake Bay Requirements*

	<i>Concentration (mg/L) Monthly Average</i>	<i>Monthly</i>	<i>Mass (lbs) Annual</i>
Ammonia-N	Report	Report	Report**
Kjeldahl-N	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	XXX
Total Nitrogen	Report	Report	Report
Total Phosphorus	Report	Report	Report
Net Total Nitrogen	XXX	Report	146,117*
Net Total Phosphorus	XXX	Report	19,482*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DRMs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

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

The EPA waiver is not in effect.

**Application No. PA 0027197**, Sewage, **The Harrisburg Authority**, One Keystone Plaza, Front and Market Streets, Harrisburg, PA 17101. This facility is located in Harrisburg City, **Dauphin County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Susquehanna River, is in Watershed 7-C, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Steelton Municipal Waterworks is located on the Susquehanna River, approximately 0.73 mile downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 37.7 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N (Interim)			
(5-1 to 10-31)	17		34
(11-1 to 4-30)	Monitor and Report		
NH <sub>3</sub> -N (Final)			
(5-1 to 10-31)	13		26
(11-1 to 4-30)	Monitor and Report		
Total Residual Chlorine	0.5		1.6
Total Phosphorus	2.0		4.0
Dissolved Oxygen	Minimum of 5.0 at all times		
pH	From 6.0 to 9.0 inclusive		
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a Geometric Average		
(10-1 to 4-30)	2,000/100 ml as a Geometric Average		

	<i>Chesapeake Bay Requirements</i>		
	<i>Concentration (mg/L)</i>	<i>Monthly</i>	<i>Mass (lbs)</i>
	<i>Monthly Average</i>		
Ammonia-N	Report	Report	Report**
Kjeldahl-N	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	XXX
Total Nitrogen	Report	Report	Report
Total Phosphorus	Report	Report	Report
Net Total Nitrogen	XXX	Report	688,575*
Net Total Phosphorus	XXX	Report	91,810*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DRMs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

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

The EPA waiver is not in effect.

**Application No. PA 0026875**, Sewage, **Borough of Hanover**, 44 Frederick Street, Hanover, PA 17331. This facility is located in Conewago Township, **Adams County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, South Branch of Conewago Creek, is in Watershed 7-F, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for New Oxford Municipal Authority is located on the South Branch Conewago Creek, approximately 5 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 4.5 mgd are:

<i>Parameter</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
CBOD <sub>5</sub>			
(5-1 to 10-31)	15	22	40
(11-1 to 4-30)	20	30	54
Total Suspended Solids	30	45	81
NH <sub>3</sub> -N			
(5-1 to 10-31)	1.5		4.0
(11-1 to 4-30)	3.0		8.1
Total Residual Chlorine	0.15		0.49
Total Phosphorus	2.0		5.4
Dissolved Oxygen		Minimum of 5.0 at all times	
pH		From 6.0 to 9.0 inclusive	
Fecal Coliform			
(5-1 to 9-30)		200/100 ml as a Geometric Average	
(10-1 to 4-30)		2,000/100 ml as a Geometric Average	

	<i>Chesapeake Bay Requirements</i>		
	<i>Concentration (mg/L)</i>	<i>Monthly</i>	<i>Mass (lbs)</i>
	<i>Monthly Average</i>		
Ammonia-N	Report	Report	Report**
Kjeldahl-N	Report	Report	XXX
Nitrate-Nitrite as N	Report	Report	XXX
Total Nitrogen	Report	Report	Report
Total Phosphorus	Report	Report	Report
Net Total Nitrogen	XXX	Report	83,441*
Net Total Phosphorus	XXX	Report	10,959*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DRMs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

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

The EPA waiver is not in effect.

**Application No. PA 0020893**, Sewage, **Manheim Borough Authority**, 15 East High Street, Manheim, PA 17545. This facility is located in Manheim Borough, **Lancaster County**.

Description of activity: The application is for renewal of an NPDES permit for an existing discharge of treated sewage.

The receiving stream, Chickies Creek, is in Watershed 7-G, and classified for WWF, water supply, recreation and fish consumption. The nearest downstream public water supply intake for Columbia Water Company is located on the Susquehanna River, approximately 20 miles downstream. The discharge is not expected to affect the water supply.

The proposed effluent limits for Outfall 001 for a design flow of 1.14 mgd are:

Parameter	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
CBOD <sub>5</sub>	25	40	50
Total Suspended Solids	30	45	60
NH <sub>3</sub> -N			
(5-1 to 10-31)	4.0		8.0
(11-1 to 4-30)	12		24
Total Residual Chlorine	0.46		1.5
Total Phosphorus	2.0		4.0
Dissolved Oxygen	Minimum of 5.0 at all times		
pH	From 6.0 to 9.0 inclusive		
Fecal Coliform			
(5-1 to 9-30)	200/100 ml as a Geometric Average		
(10-1 to 4-30)	2,000/100 ml as a Geometric Average		

*Chesapeake Bay Requirements*

	Concentration (mg/L) Monthly Average	Monthly	Mass (lbs)	Annual
Ammonia-N	Report	Report		Report**
Kjeldahl-N	Report	Report		XXX
Nitrate-Nitrite as N	Report	Report		XXX
Total Nitrogen	Report	Report		Report
Total Phosphorus	Report	Report		Report
Net Total Nitrogen	XXX	Report		21,847*
Net Total Phosphorus	XXX	Report		2,776*

\* The permit contains conditions which authorize the permittee to apply nutrient reduction credits, to meet the Net Total Nitrogen and Net Total Phosphorus effluent limits, under the Department of Environmental Protection's (Department) Trading of Nutrient and Sediment Reduction Credits Policy and Guidelines (392-0900-001, December 30, 2006). The conditions include the requirement to report application of these credits in Supplemental Discharge Monitoring Reports (DRMs) submitted to the Department.

\* Net Total Nitrogen and Net Total Phosphorus limits compliance date will begin on October 1, 2010. Since these reporting requirements are annual loads, reporting on compliance with the annual limitations will be required on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011. The facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until October 1, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

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 is not in effect.

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

**PA0023531**, Sewage, SIC 4952, **Borough of Danville**, 239 Mill Street, Danville, PA 17821. This existing facility is located in the Borough of Danville, **Montour County**.

Description of Proposed Activity: The applicant seeks to renew the major NPDES permit for the wastewater treatment facility consisting of primary settling, contact stabilization, final settling and chlorine disinfection.

The receiving stream for Outfall 001, the Susquehanna River, is in the State Water Plan Watershed 5E and is classified for: WWF. The nearest public water supply surface water intake, owned by Merck and Company Inc., is located on the Susquehanna River, 0.95 mile below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 3.62 mgd.

Parameter	Concentration (mg/l)				Mass (lbs)	
	Monthly Average	Weekly Average	Daily Maximum	Instantaneous Maximum	Monthly Load	Annual Load
CBOD <sub>5</sub>	25	40		50		
Total Suspended Solids	30	45		60		
Total Chlorine Residual	0.5			1.6		
Fecal Coliforms (5-1 to 9/30)	200 col/100 ml as a Geometric Mean					
(10-1 to 4/30)	2,000 col/100 ml Geometric Mean					
pH	Within the range of 6.0 to 9.0					

#### Chesapeake Bay Tributary Strategy Nutrient Requirements

Parameter	Concentration (mg/L)		Mass (lbs)	
	Monthly Average	Monthly Load	Monthly Load	Annual Load
Ammonia-N	Report	Report	Report	Report**
Kjeldahl-N	Report	Report	Report	
Nitrate-Nitrate as N	Report	Report	Report	
Total Nitrogen	Report	Report	Report	Report
Total Phosphorus	Report	Report	Report	Report
Net Total Nitrogen			Report	66,118*
Net Total Phosphorus			Report	8,816*

\* This permit contains conditions which authorize the permittee to apply nutrient reduction credits to meet the Net Total Nitrogen and the Net Total Phosphorus effluent mass limits, under the Department of Environmental Protection's (Department) Trading of Nutrients and Sediment Reduction Credits Policy and Guidelines (Document #392-0900-001, December 30, 2006). The condition includes the requirement to report the application of these credits in Supplemental Discharge Monitoring Reports (DMRs) submitted to the Department.

\* The compliance date for Net Total Nitrogen and Net Total Phosphorus will begin on October 1, 2010. Since these reporting requirements are annual loads, the reporting on compliance with the annual limitations will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011. This facility is required to monitor and report for Net Total Nitrogen and Net Total Phosphorus from the effective date of the permit until September 30, 2010.

\*\* Total Annual Ammonia Load will be required to be reported on the Supplemental DMR—Annual Nutrient Summary by November 28, 2011.

#### Outfall S01—Stormwater—Best Management Practices

In addition to the effluent limits and best management practices, the permit contains the following major permit conditions:

1. Chesapeake Bay Nutrient Requirements.
2. Requirements Applicable to Stormwater Outfalls.

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

**PA0102326**, Sewage, **State Regional Correction Center at Mercer**, 801 Butler Pike, Mercer, PA 16137. This proposed facility is located in Findley Township, **Mercer County**.

Description of Proposed Activity: New NPDES permit replacing an expired 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 Beaver Falls Municipal Authority is located on the Beaver River and is approximately 33 miles below point of discharge.

The receiving stream, Neshannock Creek, is in Watershed 20-A and classified for: TSF, aquatic life, water supply and recreation.

The proposed effluent limits for Outfall 001 are based on a design flow of 0.160 mgd.

Parameters	Loadings			Concentrations	
	Average Monthly (lb/day)	Average Weekly (lb/day)	Average Monthly (mg/l)	Average Weekly (mg/l)	Instantaneous Maximum (mg/l)
Flow (mgd)	XX	XX			
CBOD <sub>5</sub>	31.3		25		50
Total Suspended Solids	37.5		30		60

<i>Parameters</i>	<i>Loadings</i>		<i>Concentrations</i>		<i>Instantaneous Maximum (mg/l)</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>	
NH <sub>3</sub> -N					
(5-1 to 10-31)	2.5		18		36
(11-1 to 4-30)	31.3		26		50
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		1.6
pH			6.0 to 9.0 Standard Units at all times		

XX—Monitor and report on monthly DMRs.

The EPA waiver is in effect.

**PA0020346**, Sewage, **Borough of Punxsutawney, Mahoning East Civic Center**, 301 East Mahoning Street, Punxsutawney, PA 15767. This existing facility is located in Punxsutawney Borough, **Jefferson County**.

Description of Proposed Activity: New NPDES permit for an existing discharge of treated sewage and industrial waste. Brine may also be treated at the treatment plant.

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 Kittaning Suburban Joint Water Authority, located on the Allegheny River, and is approximately 67.3 miles below point of discharge.

The receiving stream, the Mahoning Creek, is in Watershed 17-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 2.4 mgd.

<i>Parameters</i>	<i>Loadings</i>			<i>Concentrations</i>		
	<i>Average Monthly (lb/day)</i>	<i>Average Weekly (lb/day)</i>	<i>Daily Maximum (mg/l)</i>	<i>Average Monthly (mg/l)</i>	<i>Average Weekly (mg/l)</i>	<i>Instantaneous Maximum (mg/l)</i>
Flow	XX	XX				
CBOD <sub>5</sub>	360	540		18	27	36
Total Suspended Solids	600	900		30	45	60
NH <sub>3</sub> -N						
(5-1 to 10-31)	130			6.5		13
(11-1 to 4-30)	390			19.5		39
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		1.6
Barium (**)	122		244			
Cadmium (**)	7.7		15.4			
Cobalt (**)	0.035		0.07			
Dissolved Iron (**)	15.3		30.6			
Osmotic Pressure (**)				3940 mOs/kg		
Total Iron (**)	87.6		175.2			
Zinc (**)	10.7		21.4			
pH			6.0 to 9.0 Standard Units at all times			

XX—Monitor and report on monthly DMRs.

(\*)—See Special Condition 2 in Part C of the permit, regarding TRC use.

(\*\*)—See Special Condition 5 in Part C of the permit, regarding monitoring while treating brine.

Part C Conditions:

1. Management and Control of CSOs.
2. Chlorine Optimization.
3. Operation and Implementation of the Pretreatment Program.
4. WETT.
5. Monitoring for brine parameters.
6. CSO Related Bypass Authorization.

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)

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

**WQM Permit No. 4107401**, Sewerage 4952, **Penn Township**, 4600 Beaver Lake Road, Hughesville, PA 17737. This proposed facility is located in Penn Township, **Lycoming County**.

Description of Proposed Action/Activity: Replacement of the wastewater treatment plant serving the Beaver Lake Development. The new wastewater treatment facilities will have a design capacity of 0.0275 mgd.

**WQM Permit No. 1473406-A1**, Sewerage, **Philipsburg Borough**, 4 North Centre Street, Philipsburg, PA 16866. This proposed facility is located in Philipsburg Borough, **Centre County**.

Description of Proposed Action/Activity: Replacement of approximately 60,800 LF of sewer collection piping, 40,000 LF of laterals, manholes and associated appurtenances.

**WQM Permit No. 1707403**, Sewerage 4952, **Mahaffey Borough Municipal Authority**, P. O. Box 202, Mahaffey, PA 15757. This proposed facility is located in Bell Township and Mahaffey Borough, **Clearfield County**.

Description of Proposed Action/Activity: The applicant proposes the installation sewer extensions serving Mahaffey Campgrounds and Byers Settlement. Also proposed are improvements to an existing pump station on Locust Street in the Mahaffey Borough.

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

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

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

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

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

##### *NPDES*

<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024807011	Lafayette College Attn: Bruce Ferretti Markle Hall Easton, PA 18042-1768	Northampton	Forks Township	Bushkill Creek HQ-CWF
PAI024807012	Watchung Valley Dev., LLC Attn: Nicholas P. Braco, Jr. 23 Sutton Road Lebanon, NJ 08833	Northampton	Bethlehem Township	Nancy Run HQ-CWF, MF
PAS10U184R	Nic Zawarski & Sons Developers, Inc. 1441 Linden Street Bethlehem, PA 18018	Northampton	Forks Township	Bushkill Creek HQ-CWF

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

*Conservation District: McKean County Conservation District, 17137 Route 6, Smethport, PA 16749, (814) 887-4001.*

##### *NPDES*

<i>Permit No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI004207001	Allegheny Bradford Corp.	McKean	Lewis Run Borough	Lewis Run HQ-CWF

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

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

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### **PUBLIC WATER SUPPLY (PWS) PERMIT**

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

Persons wishing to comment on a permit application are invited to submit a statement to the office listed before the application within 30 days of this public notice.

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



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

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

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

### SAFE DRINKING WATER

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

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

##### Application No. 0907517, Public Water Supply.

Applicant	<b>Sellersville Borough</b>
Township	Sellersville Borough
County	<b>Bucks</b>
Responsible Official	Alan S. Frick 140 East Church Street Sellersville, PA 18960
Type of Facility	PWS
Consulting Engineer	Cowan Associates, Inc. 120 Penn-Am Drive P. O. Box 949 Quakertown, PA 18951
Application Received Date	June 15, 2007
Description of Action	Modification to well No. 4 for installation of arsenic removal treatment units.

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

##### Application No. 4007506, Public Water Supply.

Applicant	<b>C &amp; N Dining, LLC</b> Dallas Township <b>Luzerne County</b>
Responsible Official	Perry G. Dunford C & N Dining, LLC P. O. Box 70 Dallas, PA 18612
Type of Facility	PWS
Consulting Engineer	Michael P. Goodwin, P. E. Milnes Engineering, Inc. 12 Frear Hill Road Tunkhannock, PA 18657
Application Received Date	August 14, 2007

Description of Action	The applicant proposes the construction of a new PWS system to serve a planned residential townhouse development with some commercial businesses, known as Yalick Farms. The PWS system will include two new well sources, distribution storage, chemical treatment for disinfection and corrosion control and distribution and fire protection facilities.
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## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995

#### PREAMBLE 1

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

Sections 302—305 of the Land Recycling and Environmental Remediation Standards Act (act) require the Department of Environmental Protection (Department) to publish in the *Pennsylvania Bulletin* an acknowledgment noting receipt of Notices of Intent to Remediate. An acknowledgment of the receipt of a Notice of Intent to Remediate is used to identify a site where a person proposes to, or has been required to, respond to a release of a regulated substance at a site. Persons intending to use the Background Standard, Statewide Health Standard, the Site-Specific Standard or who intend to remediate a site as a special industrial area must file a Notice of Intent to Remediate with the Department. A Notice of Intent to Remediate filed with the Department provides a brief description of the location of the site, a list of known or suspected contaminants at the site, the proposed remediation measures for the site and a description of the intended future use of the site. A person who demonstrates attainment of one, a combination of the cleanup standards or who receives approval of a special industrial area remediation identified under the act will be relieved of further liability for the remediation of the site for any contamination identified in reports submitted to and approved by the Department. Furthermore, the person shall not be subject to citizen suits or other contribution actions brought by responsible persons not participating in the remediation.

Under sections 304(n)(1)(ii) and 305(c)(2) of the act, there is a 30-day public and municipal comment period for sites proposed for remediation using a Site-Specific Standard, in whole or in part, and for sites remediated as a special industrial area. This period begins when a summary of the Notice of Intent to Remediate is published in a newspaper of general circulation in the area of the site. For the sites identified, proposed for remediation to a Site-Specific Standard or as a special industrial area, the municipality within which the site is located may request to be involved in the development of the remediation and reuse plans for the site if the request is made within 30 days of the date specified. During this comment period, the municipality may request that the person identified as the remediator of the site develop and implement a public involvement plan. Requests to be involved and comments should be directed to the remediator of the site.

For further information concerning the content of a Notice of Intent to Remediate, contact the environmental cleanup program manager in the Department regional office before which the notice appears. If information concerning this acknowledgment is required in an alternative form, contact the community relations coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following Notices of Intent to Remediate:

*Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.*

**The Shop at the Wellington Ridge**, City of Chester, **Delaware County**. Samuel Kucia, Env. Consulting, Inc., 500 East Washington Street, Norristown, PA 19401 on behalf of Michael Milone, Brandywine Real Estate Management Services Corp., 2 Ponds Edge Drive, P. O. Box 500, Chadds Ford, PA 19317 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted by release of inorganics and lead. The future use of the subject property is planned to consist of a retail shopping center.

**WaWA Convenience Store No. 192**, Bristol Township, **Bucks County**. Curt Herman, Austin James Associates, Inc., P. O. Box U, Pocono Pines, PA 18350 on behalf of Matt Winters, WaWa Inc., 260 West Baltimore Pike, WaWa, PA 19603 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted with release of unleaded gasoline. The future use of the site is nonresidential. A summary of the Notice of Intent to Remediate was reported to have been published in the Buck County Courier Times on April 6, 2006.

**USPS Truck Terminal Annex**, City of Philadelphia, **Philadelphia County**. Christopher Orzechowski, PG, Keating Env. Management, Inc., 123 John Robert Thomas Drive, Exton, PA 19341, Brad A. Molotsky, Brandywine Cira South LP, 55 East Lancaster Avenue, Suite 100, Radnor, PA 19087 on behalf of Kyle Rosato, University of Pennsylvania, 3101 Walnut Street, Philadelphia, PA 19104 has submitted a Notice of Intent to Remediate. Soil and groundwater at the site has been impacted by release of PCB. The future use of the site is intended to be developed for mixed uses, including a combination of commercial, office, residential and parking.

*Northeast Region: Ronald S. Brezinski, Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**Former BEF Corporation/Keystone Precision Instruments**, Hanover Township, **Lehigh County**. Jamie C. Kleinle, Barry Isett & Associates, Inc., 85 South Route 100 and Kessler Lane, P. O. Box 147, Trexlertown, PA 18087-0147 has submitted a Notice of Intent to Remediate (on behalf of his client, Keith Border, Keystone Precision Instruments, 1670 East Race Street, Allentown, PA 18109), concerning the remediation of soil found to have been impacted by silver as a result of the refurbishing process of used photographic minilabs. The applicant proposes to remediate the site to meet the Residential Statewide Health Standard. The proposed future use of the property will be the nonresidential use as Keystone Precision Instruments' sales and service headquarters for surveying and construction equipment. A summary of the Notice of Intent to Remediate was published in *The Morning Call* on August 14, 2007.

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

**David Yurista Residence**, West Hempfield Township, **Lancaster County**. Patriot Environmental Management, LLC, P. O. Box 629, Douglassville, PA 19518, on behalf of David Yurista, 3659 Horizon Drive, Lancaster, PA 17601-1115, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with No. 2 fuel oil leaked from a defective valve on an aboveground storage tank. The applicant seeks to remediate to the Statewide Health Standard. The property is and will remain a private residence. The NIR was received by the Department of Environmental Protection on August 28, 2007.

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

**Shamokin Former MGP Site**, City of Shamokin, **Northumberland County**. The Mahfood Group LLC, 260 Miller Run Road, Bridgeville, PA 15017 on behalf of PPL Gas Utilities Corp., 2 North 9th Street, (GENTW17), Allentown, PA 18101-1179 has submitted a Notice of Intent to Remediate soil and groundwater contaminated with PAHS, benzene, toluene, ethylbenzene and xylenes. The applicant proposes to remediate the site to meet the Site-Specific Standard. Future use of the property includes maintaining the property as a natural gas regulator station.

**ACP Manufacturing**, Lawrenceville Borough, **Tioga County**. Teeter Environmental, R. R. 1, Box 124B, Sayre, PA 1840 on behalf of ACP Manufacturing, 115 Gulick Street, Blossburg, PA 16912 has submitted a Notice of Intent to Remediate groundwater contaminated with propylene glycol. The applicant proposes to remediate the site to meet the Statewide Health Standard. The future use of the property will remain industrial.

#### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Application received, under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904) and Regulations to Operate Solid Waste Processing or Disposal Area or Site.**

*Southwest Region: Regional Solid Waste Manager, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, (412) 442-4000.*

**Permit ID No. 300809. Allegheny Energy Supply Company, LLC**, 800 Cabin Hill Drive, Greensburg, PA 15601. Mitchell Power Station CCB Landfill, 50 Electric Way, Courtney, PA 15067. Application for the permit renewal of a residual waste landfill in Union Township, **Washington County** was received in the Regional Office on August 29, 2007.

### 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.

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**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.**

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

**39-309-071: Lafarge North America** (5160 Main Street, Whitehall, PA 18052) for replacement of the induced draft fan in the No. 2 Portland cement kiln system at their facility in Whitehall Township, **Lehigh County**.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.*

**25-066F: Accuride Corp.** (10156 12th Street, Erie, PA 16503) resubmittal of a plan approval for installation of a 2006 Heat Treat Line for producing Aluminum Truck Wheels at their Erie Facility in the City of Erie, **Erie County**.

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**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.**

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

**01-05025D: Valley Quarries, Inc.** (P. O. Box J, Chambersburg, PA 17201-0809) for the use of No. 4 and No. 5 oils for their drum mix asphalt plant, Gettysburg Quarry, Cumberland Township, **Adams County**. The asphalt plant is subject to New Source Performance Standards, 40 CFR 60, Subpart I. Emissions for CO, NOx and SOx are estimated to be 78, 33 and 34.8 tpy respectively. The plan approval and subsequent State-only operating permit administrative amendment will include restrictions, work practice standards, testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

**67-03083B: Utz Quality Foods, Inc.** (900 High Street, Hanover, PA 17331) for construction of a continuous snack food fryer controlled by a mist eliminator at their snack food manufacturing facility in Hanover Borough, **York County**. The facility has the following annual potential emissions: 3.0 tons PM10; 0.3 ton NOx and 0.1 ton CO. The plan approval and subsequent State-only operating permit administrative amendment will include emission restrictions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

**67-03115A: Garrod Hydraulics, Inc.** (1050 Locust Point Road, York, PA 17406) for installation of a chromium electroplating system and emission controls at the existing plant in East Manchester Township, **York County**. The chromium electroplating equipment is subject to 40 CFR Part 63, Subpart N—National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks. The plan approval for the non-Title V facility will include provisions for stack testing, work practices, monitoring, recordkeeping and reporting designed to ensure the facility complies with the applicable air quality requirements.

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

**04-00044: Zinc Corp. of America-Horsehead Corp.** (300 Frankfort Road, Monaca, PA 15061) for their primary zinc smelter and powder facility in Potter Township, **Beaver County**. The company operates pyrometallurgical furnaces, sinter line and two coal fired boilers to produce zinc and zinc oxide at the site. In order to opt out of Best Available Retrofit Requirements (BART), owner/operator has requested to modify their permit to establish Federally enforceable permit limits for BART Affected Sources.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.*

**61-210B: Glenn O. Hawbaker, Inc.** (1041 Stevenson Road, Harrisville, PA 16038) for modification of a stack testing condition in a plan approval to construct an

asphalt plant that will burn alternative fuels at their Plant in Barkeyville Township, **Venango County**.

In accordance with 25 Pa. Code §§ 127.44(b) and 127.424(b), the Department of Environmental Protection intends to issue a plan approval to modify a stack testing condition in a plan approval to construct an asphalt plant that will burn alternative fuels at Glenn O. Hawbaker, Inc., Barkeyville Plant in Barkeyville Township, Venango County. This plan approval will, in accordance with 25 Pa. Code § 127.450, be incorporated into a Synthetic Minor operating permit at a later date.

#### OPERATING PERMITS

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

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

**46-00018: Brown Printing Co.** (668 Gravel Pike, East Greenville, PA 18041) for a renewal of the Title V Operating Permit for printing of magazines, magazine inserts and newspaper inserts in Upper Hanover Township, **Montgomery County**. The initial permit was issued on September 14, 2001. As a result of potential emissions of VOCs, 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 Title V Operating Permit will contain Compliance Assurance Monitoring conditions pursuant to 40 CFR Part 64 for the six offset lithographic presses and the thermal oxidizers used to control VOC emissions. The renewal contains all applicable requirements including monitoring, recordkeeping and reporting.

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

**28-05005: York International Corp.—Frick** (100 CV Avenue, P. O. Box 997, Waynesboro, PA 17268-0997) for operation of their commercial refrigeration and air conditioning equipment plant in the Borough of Waynesboro, **Franklin County**. This action is a renewal of the Title V operating permit issued in 2002. This facility is a Title V facility due to its potential to emit VOC's from its finishing operations. The Title V operating permit contains restrictions, monitoring, testing, work practice standards, recordkeeping and reporting conditions designed to keep the facility operating within all applicable air quality requirements.

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

**65-00163: Department of Public Welfare** (P. O. Box 111, Torrance, PA 15779) for the facility's major sources which include three boilers and several emergency generators. The facility is considered to emit major quantities of SOx at Torrance State Hospital in Derry Township, **Westmoreland County**.

**04-00044: Zinc Corporation of America—Horsehead Corp.** (300 Frankfort Road, Monaca, PA 15061) for their primary zinc smelter and powder facility in Potter Township, **Beaver County**. The company operates pyrometallurgical furnaces, sinter line and two coal fired boilers to produce zinc and zinc oxide at the site. In order to opt out of Best Available Retrofit Requirements

(BART), owner/operator has requested to modify their permit to establish Federally enforceable permit limits for BART Affected Sources.

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

*Southeast Region: Air Quality Program, 2 East Main Street, Norristown, PA 19428, Edward Jurdones Brown, Facilities Permitting Chief, (484) 250-5920.*

**46-00053: Superior Metal Products Co., Inc.** (116 Berks Street, Pottstown, PA 19464) for renewal of the State-only Operating Permit in Pottstown Borough, **Montgomery County**. The initial permit was issued on 1-28-2003. The facility's primary emission points include: two air atomizing spray paint booths, two electrostatic spray paint booths, a paint line process oven and three No. 2 fuel oil fired boilers.

**09-00088: Chicago Steel (PA) LLC** (80 Roebling Road, Fairless Hills, PA 19030) for a renewal of a Non-Title V Facility, State-only, Natural Minor Permit in Falls Township, **Bucks County**. Chicago Steel (PA) LLC is a steel manufacturing facility. The sources of emissions are from a steel cleaning process equipped with a fume scrubber. Monitoring, recordkeeping and reporting requirements have been added to the permit to address applicable limitations.

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

**07-03039: Altoona Area Crematory** (2036 Broad Avenue, Altoona, PA 16601-2014) for operation of a human crematory in the City of Altoona, **Blair County**. This is a renewal of the State-only operating permit issued on December 9, 2002.

**36-05109: Amerimax Home Products, Inc.** (P. O. Box 4515, Lancaster, PA 17604) for operation of their building shapes manufacturing facility in East Hempfield Township, **Lancaster County**. The State-only operating permit will include emission restrictions, work practice standards and testing, monitoring, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements. This is a renewal of the State-only operating permit issued in 2002.

*Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, New Source Review Chief, (814) 332-6940.*

**10-00333: Penn United Technologies, Inc.** (799 North Pike Road, PA 16023) for a State-only permit facility to manufacture special dies, tools, jigs and fixtures in Jefferson Township, **Butler County**. The facility's major emission sources include three small boilers, batch vapor degreaser and three cold cleaning degreasers. This is an original issuance of the State-only permit.

**25-00916: Ridg-U-Rak, North East Plant** (120 South Lake Street, North East, PA 16428) for a State-only, Natural Minor Operating Permit Issuance to operate a Metal Shelving Manufacturing Facility in North East Borough, **Erie County**. The emissions from this facility have been reduced to well below major source levels and the Title V Permit has been changed to a Natural Minor Operating Permit.

## 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 (resulting 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 17031301 and NPDES Permit No. PA0235571, Parkwood Resources, Inc.**, (511 Railroad Avenue, Homer City, PA 15748-1422), to revise the permit for the Cherry Tree Mine in Montgomery Township, **Indiana County** and Burnside Township, **Clearfield County** to add underground permit and subsidence control plan area acres. Underground Acres Proposed 581.0, Subsidence Control Plan Acres Proposed 581.0. No additional discharges. Application received July 23, 2007.

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

**4274SM11 and NPDES No. PA0212512. New Enterprise Stone & Lime Company, Inc.**, P. O. Box 77, New Enterprise, PA 16664, revision of an existing bituminous surface mine to allow the deepening of mining for 13.3 acres on Phase 2A from the current 1,050' elevation to 850' elevation. A request is also made to add 37.1 acres to the northeast side of the SMP for the purpose of support only. A variance is requested to disturb within 100 feet of Halter Creek. The variance begins 1,300 feet downstream from Halter Creek's uppermost crossing of SR 0036, and extends for 700 feet on the east side of the stream. The mining activity will consist of overburden removal to within 50 feet of the stream in Taylor Township, **Blair County**, affecting 467.1 acres. Receiving streams: Halter Run and Plum Creek classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received August 23, 2007.

**32010111 and NPDES No. PA0249050. Alverda Enterprises, Inc.**, P. O. Box 87, Alverda, PA 15710, revision of an existing bituminous surface mine to add 10.7 acres in Pine Township, **Indiana County**, affecting 45.5 acres. Receiving streams: UNT to Yellow Creek classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received August 24, 2007.

*Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.*

**03020114 and NPDES Permit No. PA0250287. AMFIRE Mining Company, LLC** (One Energy Place, Suite 2800, Latrobe, PA 15650). Renewal application for reclamation only to an existing bituminous surface mine, located in Kiskiminetas Township, **Armstrong County**, affecting 44.8 acres. Receiving stream: UNT to Crooked Creek, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Renewal application received August 28, 2007.

*Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**33030106 and NPDES Permit No. PA0242373. Falls Creek Energy Co., Inc.** (568 Silvis Hollow Road, Kittanning, PA 16201). Renewal of an existing bituminous surface strip and auger operation in Porter Township, **Jefferson County** affecting 163.5 acres. Receiving stream: Pine Run, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received July 10, 2007.

**33960109 and NPDES Permit No. PA0227331. TDK Coal Sales, Incorporated** (P. O. Box 259, Brockway, PA 15824). Renewal of an existing bituminous surface strip and auger operation in Union Township, **Jefferson County** affecting 157.4 acres. Receiving streams: UNT to Little Mill Creek, classified for the following use: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application for reclamation only. Application received August 29, 2007.

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

**54011301R. Alfred Brown Coal** (71 Hill Road, Hegins, PA 17938), renewal of an existing anthracite underground mine operation in Blythe Township, **Schuylkill County** affecting 3.0 acres, receiving stream: UNT. Application received August 21, 2007.

**40930102C9. Mammoth Anthracite, LLC** (P. O. Box Q, Milnesville, PA 18239), boundary correction to an existing anthracite surface mine, coal refuse reprocessing and coal preparation plant operation to add 18.0 acres for a total of 492.0 acres permitted in Hazle Township, **Luzerne County**, receiving stream: none. Application received August 22, 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* pH*		greater than 6.0; less than 9.0	

\* 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.*

**Permit 7573SM1 and NPDES Permit No. PA0592722. Hempt Brothers, Inc.**, 205 Creek Road, P. O. Box 278, Camp Hill, PA 17001-0278, renewal of NPDES Permit, Dickinson Township, **Cumberland County**. Receiving stream: Mountain Creek classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received August 27, 2007.

**Permit No. 7575SM1 and NPDES Permit No. PA0594296, Hempt Brothers, Inc.**, 205 Creek Road, P. O. Box 278, Camp Hill, PA 17001-0278, renewal of NPDES Permit, Silver Spring Township, **Cumberland County**. Receiving stream: UNT Hogestown Run, classified for the following use: CWF. The first downstream potable water supply intake from the point of discharge is

PA American Water Company West—Conodoguinet Creek. NPDES renewal application received August 27, 2007.

**4404GP01. Earth Tech Consulting, Inc.**, 2373 Progress Drive, Hebron, KY 41048, bond release on a small noncoal (industrial minerals) operation in Derry Township, **Mifflin County**, affecting 5.0 acres. Receiving streams: UNTs to Jacks Creek. Application received August 24, 2007.

*Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.*

**30070602 and NPDES Permit No. PA0251216. Fayette Coal & Coke, Inc.**, 2611 Memorial Boulevard, Connellsville, PA 15425. Application for commencement, operation and reclamation of a large noncoal surface mine located in Dunkard Township, **Greene County**, affecting 28 acres. Receiving streams: Dunkard Creek, Monongahela River and UNTs to Dunkard Creek, classified for the following use: WWF. The potable water supplies with intakes within 10 miles downstream from the point of discharge: Greensboro Water Authority and Masontown Water Authority. Application received August 17, 2007.

*Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.*

**37070301 and NPDES Permit No. PA0258407. Terra Resources, LLC** (267 Gilmore Road, Enon Valley, PA 16120). Commencement, operation and restoration of a limestone operation in Slippery Rock Township, **Lawrence County** affecting 74.0 acres. Receiving streams: UNT to Slippery Rock Creek (unclassified) and Slippery Rock Creek, classified for the following: CWF. There are no potable surface water supply intakes within 10 miles downstream. Application received August 27, 2007.

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

**64032801. Middle Creek Quarry**, 53 Skyview Lane, Hawley, PA 18428, Stage I and II bond release for a quarry operation in Cherry Ridge Township, **Wayne County** affecting 1.0 acre on property owned by Ron and Ruthann Malti. Application received August 20, 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)).**

### WATER OBSTRUCTIONS AND ENCROACHMENTS

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

**EA15-006. K. Hovnanian at East Brandywine LLC**, 1170 Wheeler Way, Suite 200, Langhorne, PA 19047, East Brandywine Township, **Chester County**, ACOE Philadelphia District.

A request for an Environmental Assessment approval for impacts associated with the modification, operation and maintenance of the nonjurisdictional dam and modification to an existing pond situated across and along a UNT to the Beaver Creek (TSF, MF). The proposed dam will provide stormwater management for Weaver Tract residential subdivision.

The site is located about 500 feet southeast of the intersection of Bollinger Road and SR 322 (Wagontown, PA, Quadrangle N: 6.6 inches; W: 3.2 inches) Horseshoe Pike (SR 0322) and Bondsville Road (SR 4015) (Wagontown, PA, USGS Quadrangle N: 2.9 inches; W: 1.9 inches).

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

**E40-675. Daniel and Patricia Silverstein**, 112 Wellington Road, Shavertown, PA 18708, in Harveys Lake Borough, **Luzerne County**, United States Army Corps of Engineers, Baltimore District.

To construct and maintain a pile supported dock having a surface area of approximately 2,166 SF upon which will be built a 1,377 SF boat house structure in Harveys Lake (HQ-CWF). The structure will extend 38 feet from the shore of the Lake and will be installed adjacent to an existing 1,148 SF dock. The project is located on the eastern side of the Lake at Pole No. 66 (Harveys Lake, PA Quadrangle N: 21.3 inches; W: 5.4 inches).

**E45-512. LTS Development, LLC**, P. O. Box 160, Shawnee-On-Delaware, PA 18356, Price Township, **Monroe County**, United States Army Corps of Engineers Philadelphia District.

To construct and maintain a road crossing of Michaels Run (HQ-CWF) consisting of twin, open-bottom, precast concrete arch culverts and twin, high-density polyethylene pipe culverts for the purpose of providing access to the The Falls at Michaels Run residential subdivision. This project is located approximately 750 feet southwest of the intersection of Wooddale and School House Roads (East Stroudsburg, PA Quadrangle N: 12.4 inches; W: 9.4 inches) in Price, Smithfield and Stroud Townships, Monroe County.

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

**E28-341: Tex R. Myers**, 13204 Worleytown Road, Greencastle, PA 17225-9655, Antrim Township, **Franklin County**, ACOE Baltimore District.

To construct and maintain: (1) a 58-foot 8-inches sanitary sewer pipe stream crossing; (2) a 94-foot 8-inches sanitary sewer pipe stream crossing; (3) a 22-foot span by 5-foot rise, 40-lineal foot concrete box culvert; and (4) a 8-foot span by 4-foot rise, 60-lineal foot concrete box culvert, all impacting a UNT to the Conococheague Creek (CWF, MF). The project is located west of the Williamsport Pike (SR 3001) approximately 1.7 miles south of the intersection with Route 11 (Williamson, PA Quadrangle,



North 1.8 inches; West 1.3 inches, Latitude: 39° 45' 46"; Longitude: 77° 45' 32") in Antrim Township, Franklin County.

**E01-272: David Rice, Rice Fruit Company Inc./Rice Fruit Company Land Development**, P. O. Box 66, Gardners, PA 17324-0066, Commercial Building in Menallen Township, **Adams County**.

To fill 0.13 acre of palustrine emergent wetlands associated to a UNT to Opossum Creek (WWF) at a point just west of Route 34 (Biglerville, PA Quadrangle N: 22.5 inches; W: 13.0 inches, Latitude: 39° 59' 55"; Longitude: 77° 13' 7.0") in Menallen Township, Adams County. The Applicant proposes 0.15 acre of wetland mitigation.

**E67-833: City of York**, 1 Marketway West, 3rd Floor, York, PA 17401, City of York, **York County**, ACOE Baltimore District.

To construct and maintain an access platform ramp and steps in the existing boat basin along Codorus Creek (WWF) for the purpose of improving recreational opportunities and public access to the creek. The project will impact 180 lineal feet of Codorus Creek along its western bank. The project is located between Philadelphia Street and Clark Avenue (York, PA Quadrangle, N: 4.5 inches; W: 5.75 inches, Latitude: 39° 57' 42"; Longitude: 76° 43' 59") in the City of York, York County.

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

**E63-588-A1. Canonsburg Borough**, 68 East Pike Street, Canonsburg, PA 15317. To construct bank protection along Chartiers Creek in Canonsburg Borough, **Washington County**, Pittsburgh ACOE District (Canonsburg, PA Quadrangle N: 1.34 inches; W: 10.55 inches, Latitude: 40° 15' 26.58"; Longitude: 80° 12' 2.28"). The applicant proposes to construct and maintain approximately 800 linear feet of channel bank protection using R-6 rock riprap along the right bank of Chartiers Creek (WWF) located north of Strabane Avenue. This is an amendment to permit E63-588, which was issued on October 19, 2006.

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

**E20-560. Department of Transportation, Engineering District 1-0**, 255 Elm Street, Oil City, PA 16301. SR 0079, Section A06 Roadway Reconstruction and widening over Van Horne Creek in Vernon Township, **Crawford County**, ACOE Pittsburgh District (Geneva, PA Quadrangle N: 41° 37' 21"; W: 80° 10' 25").

To: (1) construct and maintain a 19' and 24' culvert extension up and downstream respectively to the existing 26' wide by 8' high by 179.31' long reinforced concrete box culvert located at N: 41° 37' 20" and W: 80° 10' 54" carrying SR 0006 over Van Horn Creek (WWF); (2) construct and maintain seven 18" diameter outfall pipes and one 18" diameter outfall pipe extension to Van Horn Creek; (3) to repair and maintain the existing wing walls on the reinforced concrete box culverts located at N: 41° 37' 04" and W: 80° 10' 25" Northbound and N: 41° 37' 32" and W: 80° 11' 09" Southbound on I-79 carrying Van Horn Creek; and (4) to place and maintain fill within 0.034 acre of PEM/PFO wetlands all for the roadway reconstruction project at the I-79 and SR 0006 interchange.

**E20-561, South Lake Preserve, Inc.**, P. O. Box 5233, Conneaut Lake, PA 16316, in Conneaut Lake Borough and Sadsbury Township, **Crawford County**, ACOE Pittsburgh District (Conneaut Lake, PA Quadrangle N: 7.0 inches; W: 4.4 inches).

The applicant proposes to construct a 1.5 acre park (Ice House Park) at the NE corner of 1st Street and SR 322 at the southern end of Conneaut Lake involving: 1) to remove the existing docks; 2) to construct and maintain pile supported and floating docks having approximately 33 total slips; 3) to maintain the existing boat hoist, to construct and maintain an approximately 250-foot long cantilevered boardwalk; 4) to construct and maintain a boat launch ramp; 5) installing additional riprap protection along approximately 250 feet of shoreline under the boardwalk; and 6) to construct and maintain a sidewalk and landscaping within 50-feet of the top of the bank of Conneaut Lake involving minor grading. Conneaut Lake is a perennial body of water classified as a HQ-WWF.

**E25-715, Daniel R. Shipley**, 200 Wolf Point Drive, Erie, PA 16505. Groin Structures, in Millcreek Township, **Erie County**, ACOE Pittsburgh District (Swanville, PA Quadrangle 42° 5' 30.6" North; 80° 11' 37.9" West).

The applicant proposes to construct and maintain two low-profile groin structures, at elevation below (lakeward of) the ordinary high water mark (OHWM), at the Miller property, located at 200 Wolf Point Drive, in Millcreek Township. The groins would be constructed of 2 foot by 2 foot by 6 foot (2' x 2' x 6') concrete blocks. The western groin would extend into Lake Erie a distance not to exceed 42 feet from the OHWM, and the eastern groin would extend into Lake Erie a distance not to exceed 38 feet from the OHWM. Depending upon lake bottom elevations at the locations of groin placement, both groins would extend to the ordinary low water mark (OLWM), and not beyond that elevation, which could make the total groin length less than stated above. Both groins are proposed to be no higher than 18 inches above the Lake Erie nearshore bottom profile. Lake Erie is a body of water classified as a CWF. This project proposes to directly impact approximately 0.1 acre of Lake Erie.

**E25-716, Elizabeth M. Miller**, 100 Wolf Point Drive, Erie, PA 16505. Groin Structure, in Millcreek Township, **Erie County**, ACOE Pittsburgh District (Swanville, PA Quadrangle 42° 5' 30.6" North; 80° 11' 37.9" West).

The applicant proposes to construct and maintain two low-profile groin structures, at elevation below (lakeward of) the ordinary high water mark (OHWM), at the Miller property, located at 100 Wolf Point Drive, in Millcreek Township. The groins would be constructed of 2 foot by 2 foot by 6 foot (2' x 2' x 6') concrete blocks. The western groin would extend into Lake Erie a distance not to exceed 30 feet from the OHWM, and the eastern groin would extend into Lake Erie a distance not to exceed 32 feet from the OHWM. Depending upon lake bottom elevations at the locations of groin placement, both groins would extend to the ordinary low water mark (OLWM), and not beyond that elevation, which could make the total groin length less than stated above. Both groins are proposed to be no higher than 18 inches above the Lake Erie nearshore bottom profile. Lake Erie is a body of water classified as a CWF. This project proposes to directly impact approximately 0.1 acre of Lake Erie.



**STORAGE TANKS****SITE-SPECIFIC INSTALLATION PERMITS**

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

**The following applications have been received for Storage Tank Site-Specific Installation Permits under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504, 6021.1101—6021.1102) and under 25 Pa. Code Chapter 245, Subchapter C.**

<i>SSIP Application No.</i>	<i>Applicant Name &amp; Address</i>	<i>County</i>	<i>Municipality</i>	<i>Tank Type</i>	<i>Tank Capacity</i>
07011	S & M Management Inc. P. O. Box 1429 Milford, PA 18337 Attn: Salvatore Sciascia	Pike	Milford Township	Three ASTs storing petroleum products	36,000 gallons total

**ACTIONS**

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

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

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

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

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

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

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

**I. NPDES Renewal Permit Actions**

*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>
PA0209376 (Nonmunicipal)	Linda Geyer 2713 Carson Hill Road DuBois, PA 15801	Clearfield County Brady Township	UNT to Limestone Run 17D	Y
PA0114880 (Nonmunicipal)	Church of Christ of Latter Day Saints P. O. Box 483 Holidaysburg, PA 16648	Columbia County North Centre Township	UNT to West Branch Briar Creek 5D	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>
PA0004766 Amendment 1	Ellwood National Forge Company One Front Street Irvine, PA 16329	Brokenstraw Township Warren County	Brokenstraw Creek 16-B	Y
PA0102644	Williams Mobile Home Park 320 Dinnerbell Road Butler, PA 16002-8899	Penn Township Butler County	UNT to Thorn Creek 20-C	Y
PA0238741	Don W. Neff 111 Beach Road Chicora, PA 16025	Concord Township Butler County	UNT to the Connoquenessing Creek 20-C	Y
PA0102555	Rocco A. Defranco 1593 Silver Creek Road Johnsonburg, PA 15845	Jones Township Elk County	Silver Creek 17-A	Y

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

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

**NPDES Permit No. PAI120502**, CAFO, **John D. St. John**, 1141 State Road, Lincoln University, PA 19352. This proposed facility is located in New London Township, **Chester County**.

Description of Size and Scope of Proposed Operation/Activity: Approval for the issuance of an Individual NPDES CAFO Permit. The permit authorizes the operation of an 1,174 AEUs.

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

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

**WQM Permit No. 1406411**, Sewerage 4952, **Millheim Borough**, 225 East Main Street, P. O. Box 421, Millheim, PA 16854-0421. This proposed facility is located in Penn Township, **Centre County**.

Description of Proposed Action/Activity: The applicant proposes to construct and operate a new sewage plant consisting of activated sludge, biological nitrogen removal, phosphorus removal and membrane filtration.

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

**WQM Permit No. WQG018567**, Sewerage, **Jessica M. and Larry D. Powell, Jr.**, P. O. Box 1030, Meadville, PA 16335. This proposed facility is located in Hayfield Township, **Crawford County**.

Description of Proposed Action/Activity: A Single Residence Sewerage Treatment Plant.

**WQM Permit No. WQG018567**, Sewerage, **Dennis E. and Susan E. Motzer**, 612 Williamson Road, Meadville, PA 16335. This proposed facility is located in East Mead Township, **Crawford County**.

Description of Proposed Action/Activity: A Single Residence Sewerage Treatment Plant.

**WQM Permit No. WQG028311**, Sewerage, **Brokenstraw Valley Area Authority**, R. R. 2, Box 284, Youngsville, PA 16371. This proposed facility is located in Pittsfield Township, **Warren County**.

Description of Proposed Action/Activity: Construction, modification and operation of sewage wastewater facilities consisting of five separate sewer extensions for a pressurized sewer system with grinder pumps.

**WQM Permit No. WQG018552**, Sewerage, **Monte Holland**, P. O. Box 300, Laughlintown, PA 15655. This proposed facility is located in Brady Township, **Butler County**.

Description of Proposed Action/Activity: A Single Residence Sewerage 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**

*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>
PAI024806027	Northampton Area School District 2014 Laubach Avenue Northampton, PA 18067	Northampton	Bath Borough	Monocacy Creek HQ-CWF

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

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

**List of NPDES and/or Other General Permit Types**

PAG-1	General Permit for Discharges From Stripper Oil Well Facilities
PAG-2	General Permit for Discharges of Stormwater Associated With Construction Activities (PAR)
PAG-3	General Permit for Discharges of Stormwater From Industrial Activities
PAG-4	General Permit for Discharges From 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 Nonexceptional Quality Sewage Sludge by Land Application to Agricultural Land, Forest, a Public Contact Site or a Land Reclamation Site
PAG-8 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-8 General Permit Coverage
PAG-9	General Permit for Beneficial Use of Residential Septage by Land Application to Agricultural Land, Forest, or a Land Reclamation Site
PAG-9 (SSN)	Site Suitability Notice for Land Application Under Approved PAG-9 General Permit Coverage
PAG-10	General Permit for Discharge Resulting from Hydrostatic Testing of Tanks and Pipelines
PAG-11	(To Be Announced)
PAG-12	Concentrated Animal Feeding Operations (CAFOs)
PAG-13	Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

*General Permit Type—PAG-02*

*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>
Washington Township Schuylkill County	PAG2005407005	Lloyd High, High Builders 539 Woleber Road Myerstown, PA 17067	Tributary to Lower Little Swatara CWF	Schuylkill Co. Cons. Dist. (570) 622-3742
Susquehanna Township Dauphin County	PAR10I309R	Progress Avenue, LP 101 South US Route 15 Dillsburg, PA 17019	Paxton Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
Susquehanna Township Dauphin County	PAG2002207027	Commonwealth of PA Department of General Services 18th and Herr Street Harrisburg, PA 17125	Asylum Run WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
Lower Paxton Township Dauphin County	PAG2002207036	Crown Realty Trust Co. 8150 Derry Street Harrisburg, PA 17111	Beaver Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
Conewago Township Dauphin County	PAG2002207041	Paul E. Zimmerman 975A Lincoln Road Lititz, PA 17543	Conewago Creek TSF Hoffer Creek TSF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018

*Facility Location:  
Municipality &  
County**Permit No.**Applicant Name & Address**Receiving Water/Use**Contact Office &  
Phone No.*

Lower Paxton Township Dauphin County	PAG2002207028	Paul Biko Clear View Construction 2205 Forest Hills Drive Suite 10 Harrisburg, PA 17112	Paxton Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
East Hanover Township Dauphin County	PAG2002207035	Wayne Isett Grantville Fire Co. P. O. Box 39 Grantville, PA 17028	Bow Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
Lower Swatara Township Dauphin County	PAR10I297R	Conewago Contractors, Inc. P. O. Box 688 Edgegrove Road Hanover, PA 17331	Swatara Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018
Mount Pleasant Township Adams County	PAG2000107011	Kenneth G. Stremmel 199 Brookside Lane Biglerville, PA 17307	South Branch Conewago Creek WWF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 (717) 334-0636
Cumberland Township Adams County	PAG2000107009	Jayanti Patel Jayjyoti Corporation 387 Heritage Drive Gettysburg, PA 17325	UNT to Rock Creek WWF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 (717) 334-0636
Conewago Township Adams County	PAG2000107008	Joseph A. Myers J. A. Myers Builders 160 Ram Drive Hanover, PA 17331	South Branch Conewago Creek WWF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 (717) 334-0636
Bonneauville Borough Adams County	PAG2000107005	Pete Paturzo Brown Meadows Limited, Inc. P. O. Box 7333 Camp Hill, PA 17001	Chicken Run WWF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 (717) 334-0636
Straban Township Adams County	PAR100105R	John Eckert 3607 Beaufort Street Harrisburg, PA 17111-2121	UNT to Rock Creek WWF	Adams County Conservation District 670 Old Harrisburg Road Suite 201 Gettysburg, PA 17325 (717) 334-0636
Broad Top Township Huntingdon County	PAG2003107004	Broad Top Township Ernest Fuller P. O. Box 57 Defiance, PA 16633	Shreves Run WWF	Huntingdon County Conservation District 10605 Raystown Road Suite A Huntingdon, PA 16652-9603 (814) 627-1627

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<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>
Jackson Township Lebanon County	PAG2003807015	Adam B. Heisey 232 W. Carpenter Avenue Myerstown, PA 17067	Little SwataraCreek WWF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 Ext. 4
North Londonderry Township Lebanon County	PAG2003807017	David F. Lavipour North Londonderry Investors, LP 444 Park Avenue South Suite 302 New York, NY 10016-7321	Killinger Creek TSF	Lebanon County Conservation District 2120 Cornwall Road Suite 5 Lebanon, PA 17042 (717) 272-3908 Ext. 4
Shippensburg Township Shippensburg Borough Cumberland County	PAG2002106046	Continuum Investments, Inc. John Hoover P. O. Box 701 Maugansville, MD 21767	Burd Run CWF	Cumberland County Conservation District 310 Allen Road Carlisle, PA 17013 (717) 240-7812
Wyomissing Borough Berks County	PAG2000607045	Spartan Properties, LLC Larry Harnish 560 Van Reed Road Wyomissing, PA 19610-1799	Schuylkill River WWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657 Ext. 201
Perry Township Berks County	PAG2000607037	Eugene Bell P. O. Box 238 Shoemakersville, PA 19555	Pigeon Creek WWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657 Ext. 201
Amity Township Berks County	PAG2000606100	Gerald L. Fry 1002 Hamilton Boulevard Allentown, PA 18101	Leaf Creek—Delaware River WWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657 Ext. 201
Southampton Township Cumberland County	PAG2002107021	Coyote Builders, LLC Kirk Martin 4961 Cumberland Highway Chambersburg, PA 17201	UNT to Middle Spring Creek CWF	Cumberland County Conservation District 310 Allen Road Carlisle, PA 17013 (717) 240-7812
Susquehanna Township Harrisburg City Dauphin County	PAG2002207018	Department of General Services Richard J. Smith 18th and Herr Street Harrisburg, PA 17120	Paxton Creek WWF	Dauphin County Conservation District 1451 Peters Mountain Road Dauphin, PA 17018 (717) 921-8100

*Facility Location:  
Municipality &  
County*

*Contact Office &  
Phone No.*

<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>
Armstrong County Manor Township	PAG2000307004	Armstrong School District 410 Main Street Ford City, PA 16226	Tub Mill Run WWF	Armstrong County CD (724) 548-3425
Indiana County White Township	PAG2003207006	Naren Patel Pride Hotel 1924 Leesburg Grove City Road Grove City, PA 16127	McCarthy Run, UNT to McCarthy CWF	Indiana County CD (724) 463-8547
Butler County Jackson Township	PAR10E194R	Jackson Realty Partners Kennry Ross Automotive Route 19 Expansion 5989 Penn Circle South Pittsburgh, PA 15206	Breakneck Creek WWF	Butler Conservation District (724) 284-5270
Butler County Cranberry Township	PAG2001006033	Philip Haag United States Army Corp of Engineers P. O. Box 59 Louisville KY 40201-0259	UNT to Brush Creek WWF	Butler Conservation District (724) 284-5270
Elk County City of St. Marys	PAG2002407024	City of St. Marys, Industrial Steel and Pipe Supply Company P. O. Box 1994 St. Marys, PA 15857	Elk Creek CWF	Elk Conservation District (814) 776-5373
Erie County Summit Township	PAG2002507012	Hilton Garden Inn/ Courtyard by Marriot/ The Ambassador Banquet Facility Scott's Development Company 8040 Peach Street Erie, PA 16509	Walnut Creek CWF; MF	Erie Conservation District (814) 825-6403
Erie County Waterford Township	PAG2002507018	Bryan R. Kowalczyk 1357 Lane Road Waterford, PA 16441	Elk Creek Tributary CWF; MF; WWF	Erie Conservation District (814) 825-6403
Jefferson County Perry Township	PAG2003307002	Frank Fairman Private Golf Driving Range 137 Aspen Road Punxsutawney, PA 15767	Sawmill Run and a UNT to Mahoning Creek CWF	Jefferson Conservation District (814) 849-7463
Mercer County Pine Township	PAG2004307006	Mercer County Pine Township District Court Building 100 North Diamond Street Mercer, PA 16137	Wolf Creek CWF	Mercer Conservation District (724) 662-2242
Mercer County City of Hermitage	PAG2004307007	David Smith Preferred Communities, Inc. Settlers Walk Subdivision P. O. Box 9 Canfield, OH 44406	Pine Hollow Run WWF	Mercer Conservation District (724) 662-2242
Lawrence County Slippery Rock Township	PAG2003707004	ALLFAB Manufacturing Attention Roseanne Pisano 1602 Old Princeton Road New Castle, PA 16101	Big Run WWF	Lawrence Conservation District (724) 652-4512
Venango County Cherrytree Township	PAG2006107005	David Klapac 201 Deer Run Trail Oil City, PA 16301	UNT Cherrytree Run CWF	Venango Conservation District (814) 676-2832

NOTICES

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*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>
Decatur Township Clearfield County	PAR304804	Junior Coal Contracting, Inc. 2330 Six Mile Road Philipsburg, PA 16866	Moshannon Creek TSF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3664
City of Williamsport Lycoming County	PAR504809	County of Lycoming Lycoming County Transfer Station 447 Alexander Drive Montgomery, PA 17752	West Branch Susquehanna River WWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3664
Snow Shoe Township Centre County	PAR214815	Snow Shoe Refractories, Inc. 895 Clarence Road Snow Shoe, PA 16874	North Fork Beech Creek CWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3664
Center Township Snyder County	PAR214833	United Stone Veneer, LLC 149 Keene Lane Middleburg, PA 17842	Penns Creek WWF Dry Run CWF	Northcentral Regional Office Water Management Program 208 West Third Street Suite 101 Williamsport, PA 17701 (570) 327-3664

*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>
Wrightstown Township Bucks County	PAG040079	Franklin Kolp 1191 Swamp Road Furlong, PA 18925	UNT to Neshaminy Creek	Southeast Regional Office 2 East Main Street Norristown, PA 19401
Hayfield Township Crawford County	PAG049366	Jessica M. and Larry D. Powell, Jr. P. O. Box 1030 Meadville, PA 16335	UNT to Wolf Run 16-A	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
East Mead Township Crawford County	PAG049367	Dennis E. and Susan E. Motzer 612 Williamson Road Meadville, PA 16335	UNT to Tamarack Lake 16-D	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*Facility Location:  
Municipality &  
County*Brady Township  
Butler CountyPermit No.  
PAG049349*Applicant Name & Address*  
Monte Holland  
P. O. Box 300  
Laughlintown, PA 15655*Receiving Water/Use*  
UNT to Glade Run  
20-C*Contact Office &  
Phone No.*  
DEP—NWRO  
Water Management  
230 Chestnut Street  
Meadville, PA  
16335-3481  
(814) 332-6942*General Permit Type—PAG-8**Facility Location:  
Municipality &  
County*City of Allentown  
Lehigh CountyPermit No.  
PAG082203*Applicant Name & Address*  
City of Allentown  
112 Union Street  
Allentown, PA  
18102-4912*Site Name &  
Location*  
City of Allentown  
Wastewater  
Treatment Plant  
112 Union Street  
Allentown, PA 18102*Contact Office &  
Phone No.*  
NERO  
2 Public Square  
Wilkes-Barre, PA  
18711-0790  
(570) 826-2511*General Permit Type—PAG-8 (SSN)**Facility Location:  
Municipality &  
County*Greenwich Township  
Berks CountyPermit No.  
PAG080002  
PAG080003  
PAG080004  
PAG080006  
PAG080008  
PAG080018  
PAG082201  
PAG082203  
PAG083501  
PAG083502  
PAG083506  
PAG083515  
PAG083517  
PAG083518  
PAG083522  
PAG083535  
PAG083540  
PAG083542  
PAG083547  
PAG083551  
PAG083556  
PAG083565  
PAG083567  
PAG083596  
PAG083600  
PAG083825  
PAG089903  
PAG089904  
PAG089905*Applicant Name & Address*  
Synagro  
P. O. Box B  
1605 Dooley Road  
Whiteford, MD 21160*Site Name &  
Location*  
Todd Benjamin Farm  
Greenwich Township  
Berks County*Contact Office &  
Phone No.*  
DEP—SCRO  
909 Elmerton Avenue  
Harrisburg, PA  
17110-8200  
(717) 705-4707*General Permit Type—PAG-12**Facility Location &  
Municipality*East Nottingham  
TownshipPermit No.  
PAG120002*Applicant Name & Address*  
Raymond Harnish  
491 Barnsley Road  
Oxford, PA 19363*Receiving Water/Use*  
Northeast Creek  
7K*Contact Office &  
Phone No.*  
Southeast Regional  
Office  
2 East Main Street  
Norristown, PA 19363



**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**

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

**Permit No. 0807501—Construction, Public Water Supply.**

Applicant	<b>Sherwood Retirement and Personal Care Home</b>
Township or Borough	Canton Township
County	<b>Bradford</b>
Responsible Official	Jim Sherwood Sherwood Retirement and Personal Care Home R. R. 1 Box 35A Canton, PA 17724
Type of Facility	Public Water Supply—Construction
Consulting Engineer	Thomas O'Conner Hawk Engineering, PC One Progress Plaza Suite 12 Towanda, PA 18848
Permit Application Date	August 30, 2007

Description of Action Construction of Well No. 1 with disinfection, internal piping, a new storage tank and a new wooden building with concrete floor.

*Northwest Region: Watershed Management Program Manager; 230 Chestnut Street, Meadville, PA 16335.*

**Wellhead Protection Program Approval** issued to the **Barkeyville Municipal Authority**, 1610 Barkeyville Road, Grove City, PA 16127, PWSID No. 6610036, Barkeyville Borough, **Venango County** on August 28, 2007.

**Wellhead Protection Program Approval** issued to **Smethport Borough**, 201 West Main Street, Smethport, PA 16749, PWSID No. 6420023, Smethport Borough, **McKean County** on August 28, 2007.

**SEWAGE FACILITIES ACT PLAN APPROVAL**

**Plan Approvals Granted under section 5 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.5)**

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

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Earl Township	517 North Railroad Avenue New Holland, PA 17557	Lancaster

*Plan Description:* The approved plan provides for a capacity rerate of the Earl Township Authority to 0.4 mgd and also provides an official sewer service delineation representing ultimate build out within the service area. The Department of Environmental Protection's review of the sewage facilities update revision has not identified any significant environmental impacts resulting from this proposal. Any required NPDES Permits or WQM Permits must be obtained in the name of the municipality or authority as appropriate.

**SEWAGE FACILITIES ACT PLAN DISAPPROVAL**

**Plan Disapprovals Granted under section 5 of the Pennsylvania Sewage Facilities Act (35 P. S. § 750.5)**

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

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Jackson Township	439 Roth's Church Road Spring Grove, PA 17362	York County

*Plan Description:* Pigeon Hill Estates, A3-67931-212-2: The plan consists of a 21 lot single-family residential subdivision on 48 with total proposed sewage flows of 10,000 gpd to be treated by individual onlot disposal systems. The proposed development is located on the east and west sides of Orchard Road, just south of Three Hill Road in Jackson Township, York County. The plan was disapproved because a submission was not received in response to Department of Environmental Protection's incomplete letter dated September 28, 2005 requesting

additional project information and establishing a 60-day response time period prior to mandatory disapproval action.

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
Fawn Township	245 Alum Rock Road P. O. Box 229 New Park, PA 17352-0229	York County

*Plan Description:* South Eastern School District Administration Building, A3-67921-136-3: The plan consists of a two lot institutional subdivision on 105 acres with total proposed sewage flows of 750 gpd tributary to the South Eastern School District Wastewater Treatment Plant. The proposed development is located on the south side of Main Street (SR 0851), approximately 0.7 mile west of Market Street (SR 0425) in Fawn Township, York County. The plan was disapproved because a submission was not received in response to the Department of Environmental Protection's incomplete letter dated January 5, 2005 requesting additional project information and establishing a 60-day response time period prior to mandatory disapproval action.

*Plan Location:*

<i>Borough or Township</i>	<i>Borough or Township Address</i>	<i>County</i>
West Manheim Township	31 Fairview Drive Hanover, PA 17331	York County

*Plan Description:* 260 Leppo Mill Road, A3-67964-206-2: The plan consists of a two lot single-family residential subdivision on 13.5 acres with total proposed sewage flows of 400 gpd to be treated by an individual onlot disposal system. The proposed development is located on the east side of Grand Valley Road and south side of Leppo Mill Road in West Manheim Township, York County. The plan revision was disapproved because the groundwater easement is sited up gradient from the proposed onlot sewage disposal systems, thus resulting in improper dilution of nitrate-nitrogen in the subdivision.

## 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.*

**US Steel Fairless Works Lot 8 KIPC**, 1 Ben Fairless Drive, **Bucks County**. Jeffrey Smith, Langan Engineering & Environmental Services, Inc., 30 South 17th Street, Suite 1300, Philadelphia, PA 19103 on behalf of Kathleen Mayher, United States Steel Corp., Inc., 600 Grant Street, Pittsburgh, PA 15219 has submitted a Remedial Investigation/Final Report concerning remediation of site soil contaminated with other organics. The report is intended to document remediation of the site to meet the Site-Specific Standards.

**Wasserman Property**, City of Philadelphia, **Philadelphia County**. Kurt Spiess, EMG Remediation Services, 5066R West Chester Pike, Edgemont, PA 19028 on behalf of T. Wasserman, 550 Pinetown Road, Suite 440, Ft. Washington, PA 191034 has submitted a Baseline Environmental Report concerning remediation of site soil and groundwater contaminated with chlorinated solvents. The report is intended to document remediation of the site to meet the Special Industrial Area Standards.

*Northeast Region: Ronald S. Brezinski, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**Elementis Pigments, Inc.**, City of Easton, **Northampton County**. Michael Gonshor, Principal Hydrogeologist, Roux Associates, Inc., 1222 Forest Parkway, Suite 190, West Deptford, NJ 08066, has submitted a Final Report (on behalf of his client Elementis America, Inc., Wyckoffs Mill Road, P. O. Box 700, Hightstown, NJ 08520), concerning the remediation of groundwater found to have been impacted with lead, VOCs and semi-VOCs as the result of historic petroleum UST releases. The addendum to the Final Report demonstrates attainment of the Nonresidential Statewide Health Standard.

**David Billig Residence**, Lowhill Township, **Lehigh County**. Donald Rood, J. Rockwood & Associates, Inc., P. O. Box 1006, Easton, PA 18044-1006 has submitted a Final Report (on behalf of his client, David Billig, 7715 Claussville Road, Orefield, PA 18069), concerning the remediation of site soil and groundwater impacted by No. 2 fuel oil as a result of an accidental release. The report

was submitted to document attainment of the Residential Statewide Health Standard. The future use of the property will remain residential. A Public Notice was published in *The Morning Call* on August 6, 2007.

**Former BEF Corporation/Keystone Precision Instruments**, Hanover Township, **Lehigh County**. Jamie C. Kleinle, Barry Isett & Associates, Inc., 85 South Route 100 and Kessler Lane, P. O. Box 147, Trexlertown, PA 18087-0147 has submitted a Final Report (on behalf of his client, Keith Border, Keystone Precision Instruments, 1670 East Race Street, Allentown, PA 18109), concerning the remediation of soil found to have been impacted by silver as a result of the refurbishing process of used photographic minilabs. The report was submitted to document attainment of the Residential Statewide Health Standard. A public notice regarding the submittal of the final report was published in *The Morning Call* on August 14, 2007.

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

**Lot 1A, Former Teledyne Readco Holdings, LLC**, Spring Garden Township, **York County**. Gannett Fleming, Inc., 805 Estelle Drive, Suite 102, Lancaster, PA 17601, on behalf of York College of Pennsylvania, 439 Country Club Road, York, PA 17403, submitted a Final Report concerning remediation of site soils and groundwater contaminated with metals and chlorinated solvents. The report is intended to document remediation of the site to the Site-Specific Standard.

**Culbertson Agway Crop Center**, Greene Township, **Franklin County**. Groundwater Sciences Corporation, 2601 Market Place, Suite 310, Harrisburg, PA 17110, on behalf of Agway Liquidating Trust, LLC, 5790 Widewaters Parkway, DeWitt, NY 13214, submitted a combined Remedial Investigation and Final Report concerning remediation of site soils and groundwater contaminated with herbicides, pesticides and fertilizers. The report is intended to document remediation of the site to a combination of the Statewide Health and Site-Specific Standards.

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

**Keller Residence**, Pine Creek Township, **Jefferson County**. Blazosky Associates, Inc., 2525 Green Tech Drive, State College, PA 16803, on behalf of Art Keller, 1402 North SR 380, Brookville, PA 15825 has submitted a Final Report concerning remediation of site soil contaminated with benzene, cumene, ethyl benzene, fluorene, naphthalene, phenanthrene and toluene from a home heating oil spill. The report is intended to document remediation of the site to meet the Statewide Health Standard.

## LAND RECYCLING AND ENVIRONMENTAL REMEDIATION

### UNDER ACT 2, 1995

#### PREAMBLE 3

**The Department has taken action on the following plans and reports under the Land Recycling and Environmental Remediation Standards Act (35 P. S. §§ 6026.101—6026.908).**

Provisions of 25 Pa. Code § 250.8, administration of the Land Recycling and Environmental Remediation Standards Act (act), require the Department of Environmental Protection (Department) to publish in the *Pennsylvania*

*Bulletin* a notice of final actions on plans and reports. A final report is submitted to document cleanup of a release of a regulated substance at a site to one of the remediation standards of the act. A final report provides a description of the site investigation to characterize the nature and extent of contaminants in environmental media, the basis of selecting the environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, a description of the remediation performed and summaries of sampling methodology and analytical results which demonstrate that the remediation has attained the cleanup standard selected. Plans and reports required by provisions of the act for compliance with selection of remediation to a Site-Specific Standard, in addition to a final report, include a remedial investigation report, risk assessment report and cleanup plan. A remedial investigation report includes conclusions from the site investigation, concentration of regulated substances in environmental media, benefits of refuse of the property and, in some circumstances, a fate and transport analysis. If required, a risk assessment report describes potential adverse effects caused by the presence of regulated substances. If required, a cleanup plan evaluates the abilities of potential remedies to achieve remedy requirements. A work plan for conducting a baseline remedial investigation is required by provisions of the act for compliance with selection of a special industrial area remediation. The baseline remedial investigation, based on the work plan, is compiled into the baseline environmental report to establish a reference point to show existing contamination, describe proposed remediation to be done and include a description of existing or potential public benefits of the use or reuse of the property. The Department may approve or disapprove plans and reports submitted. This notice provides the Department's decision and, if relevant, the basis for disapproval.

For further information concerning the plans and reports, contact the Environmental Cleanup Program manager in the Department regional office before which the notice of the plan or report appears. If information concerning a final report is required in an alternative form, contact the Community Relations Coordinator at the appropriate regional office. TDD users may telephone the Department through the AT&T Relay Service at (800) 654-5984.

The Department has received the following plans and reports:

*Southeast Region: Environmental Cleanup Program Manager, 2 East Main Street, Norristown, PA 19401.*

**Pathan Chemical Site**, City of Philadelphia **Philadelphia County**. Bill Schmidt, Pennoni Associates, Inc., 3001 Market Street, Philadelphia, PA 19104 on behalf of Sandy Salzman, New Kensington CDC, 2515 Frankford Avenue, Philadelphia, PA 19125 has submitted a Cleanup Plan concerning the remediation of site soil and groundwater contaminated with inorganic, lead, PAHs and chlorinated. The Cleanup Plan was approved by the Department of Environmental Protection on June 4, 2007.

**United Transportation**, Morton Borough, **Delaware County**. Richards Burns, Conestoga-Rovers & Assoc., 410 Eagleview Boulevard, Suite 110, Exton, PA 19341 on behalf of Stephan Perrson, United Transportation has submitted a Final Report concerning the remediation of site groundwater contaminated with chlorinated solvents and MTBE. The Final report demonstrated attainment of

the Site Specific Standards and was approved by the Department of Environmental Protection on August 20, 2007.

*Northeast Region: Ronald S. Brezinski, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.*

**PPL Gas Utilities Corp.—Former Leighton MGP Site, Leighton Borough, Carbon County.** John J. Mahfood, Project Manager, The Mahfood Group, 260 Miller Run Road, Bridgeville, PA 15017 submitted a Risk Assessment Report and a Cleanup Plan (on behalf of his client PPL Gas Utilities Corporation, 2 North Ninth Street, Allentown, PA 18101) concerning the associated risks and proposed remediation of site soils and groundwater impacted by polycyclic aromatic hydrocarbons associated with the manufacture of coal gas. The reports were submitted in partial fulfillment of the Site-Specific Standard and were approved on August 20, 2007.

**David Billig Residence, Lowhill Township, Lehigh County.** Donald Rood, J. Rockwood & Associates, Inc., P. O. Box 1006, Easton, PA 18044-1006 submitted a Final Report (on behalf of his client, David Billig, 7715 Claussville Road, Orefield, PA 18069), concerning the remediation of site soil and groundwater impacted by No. 2 fuel oil as a result of an accidental release. The report demonstrated attainment of the Residential Statewide Health Standard and was approved on August 30, 2007.

**Elementis Pigments, Inc., City of Easton, Northampton County.** Michael Gonshor, Principal Hydrogeologist, Roux Associates, Inc., 1222 Forest Parkway, Suite 190, West Deptford, NJ 08066, submitted a Final Report (on behalf of his client Elementis America, Inc., Wyckoffs Mill Road, P. O. Box 700, Hightstown, NJ 08520), concerning the remediation of groundwater found to have been impacted with lead, VOCs and semi-VOCs as the result of historic petroleum UST releases. The addendum to the Final Report demonstrated attainment of the Nonresidential Statewide Health Standard and was approved on August 28, 2007.

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

**Shiple Group/Tom's Mobil—Shrewsbury, Shrewsbury Township, York County.** Alliance Environmental Services, Inc., 1820 Linglestown Road, Harrisburg, PA 17110, on behalf of Shiple Group, P. O. Box 1509, York, PA 17405, submitted a Final Report concerning the remediation of site soils contaminated with diesel fuel from a leaking tractor trailer fuel tank. The final report demonstrated attainment of the Residential Statewide Health Standard and was approved by the Department of Environmental Protection on August 27, 2007.

**Turkey Hill Store No. 93, Lower Windsor Township, York County.** Liberty Environmental, Inc., 10 North Fifth Street, Suite 800, Reading, PA 19601, on behalf of Turkey Hill Minit Markets, Inc., 257 Centerville Road, Lancaster, PA 17603-4059, submitted a Final Report concerning the remediation of site soil contaminated with unleaded gasoline leaked from a vehicle gas tank. The final report demonstrated attainment of the Residential Statewide Health Standard and was approved by the Department on August 28, 2007.

#### OPERATE WASTE PROCESSING OR DISPOSAL AREA OR SITE

**Application received under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Municipal Waste Planning, Recycling and Waste**

#### **Reduction Act (53 P. S. §§ 4000.101—4000.1904) and Regulations to Operate Solid Waste Processing or Disposal Area or Site.**

*Southcentral Region: Regional Solid Waste Manager, 909 Elmerton Avenue, Harrisburg, PA 17110.*

**S. S. Fisher Steel Corporation,** Pequea Township, Lancaster County, Permit No. 300971. This approves a modification to the closure plan, allowing the storage of steel and steel components on closed portions of S. S. Fisher Residual Waste Landfill, issued in accordance with Article V of the Solid Waste Management Act (35 P. S. § 6018.508).

#### RESIDUAL WASTE GENERAL PERMITS

**Permits Issued Under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and the Beneficial Use of Residual Waste other than Coal Ash.**

*Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.*

**General Permit Number WMGR114. PPT Research Inc.,** 460 and 515 Business Park Lane, Allentown, PA 18109. General Permit Number WMGR114 authorizes the processing of spent polyethylene glycol slurry containing silicon and silicon carbide or diamond and beneficial use in fresh slurry and in production of silicon ingots and silicon carbide. The processing is limited to mechanical separation, including filtration, thin film vacuum evaporation, spray drying, classification and grinding. The permit was issued by Central Office on August 31, 2007.

Persons interested in reviewing the general permit should contact Ronald C. Hassinger, Chief, General Permits/Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users should contact the Department of Environmental Protection through the Pennsylvania Relay Service, (800) 654-5984.

#### MUNICIPAL WASTE GENERAL PERMITS

**Permits Issued Under the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003); the Municipal Waste Planning, Recycling and Waste Reduction Act (53 P. S. §§ 4000.101—4000.1904); and Municipal Waste Regulations for a General Permit to Operate Municipal Waste Processing Facilities and the Beneficial Use of Municipal Waste.**

*Central Office: Division of Municipal and Residual Waste, Rachel Carson State Office Building, 14th Floor, 400 Market Street, Harrisburg, PA 17105-8472.*

**General Permit Application No. WMGM028D003, Greentree Landfill Gas Company, LLC,** 7913 Westpark Drive, Suite 101, McLean, VA 22102-4201.

General Permit Number WMGM028D003 is for the processing and beneficial use of landfill gas (LFG), generated at the Greentree Landfill Gas Company Processing Plant, located in Fox Township, Elk County, for use as: (1) a substitute for high or medium Btu-LFG for natural gas or other fuel; (2) a substitute for natural gas or other fuel

to be interconnected with another pipeline for consumer use; and (3) an alternative fuel for the electric generators to produce electricity.

Originally, Greentree Landfill Gas Company, LLC submitted a determination of applicability (DOA) application for coverage under the General Permit (No. WMGM002) for processing and beneficial use of LFG, generated at the Greentree Landfill Gas Company Processing Plant. The Department of Environmental Protection does not intend to renew the WMGM002 when it expires on December 24, 2007. All beneficial use activities authorized in the soon to be expired WMGM002 are incorporated into the WMGM028. Therefore, the WMGM028D003 is issued to Greentree Landfill Gas Company, LLC for the beneficial use of LFG as requested. The general permit was issued by Central Office on August 20, 2007.

Persons interested in reviewing the general permit should contact Ronald C. Hassinger, Chief, General Permits and Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users should contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

**General Permit Application No. WMGM028D002. Imperial Landfill Gas Company, LLC,** 7913 Westpark Drive, Suite 101, McLean, VA 22102-4201.

General Permit Number WMGM028D002 is for the processing and beneficial use of landfill gas (LFG), generated at the Imperial Landfill Gas Company Processing Plant, located in Findlay Township, Allegheny County, for use as: (1) a substitute for high or medium Btu-LFG for natural gas or other fuel; (2) a substitute for natural gas or other fuel to be interconnected with another pipeline for consumer use; and (3) an alternative fuel for the electric generators to produce electricity.

Originally, Imperial Landfill Gas Company, LLC submitted a determination of applicability (DOA) application for coverage under the General Permit (No. WMGM002) for processing and beneficial use of LFG, generated at the Imperial Landfill Gas Company Processing Plant. The Department of Environmental Protection does not intend to renew the WMGM002 when it expires on December 24, 2007. All beneficial use activities authorized in the soon to be expired WMGM002 are incorporated into the WMGM028. Therefore, the WMGM028D002 is issued to Imperial Landfill Gas Company, LLC for the beneficial use of LFG as requested. The general permit was issued by Central Office on August 20, 2007.

Persons interested in reviewing the general permit should contact Ronald C. Hassinger, Chief, General Permits and Beneficial Use Section, Division of Municipal and Residual Waste, Bureau of Waste Management, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users should contact the Department through the Pennsylvania Relay Service, (800) 654-5984.

## AIR QUALITY

**General Plan Approval and Operating Permit Usage Authorized under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code Chapter 127 to construct, modify, reactivate or operate air contamination sources and associated air cleaning devices.**

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

**48-329-006GP9: Fresenius Medical Care of North America** (95 Hayden Avenue, Lexington MA 02420-9192) on August 29, 2007, to install and operate a Diesel I/C Engine at their site in Bethlehem, **Northampton County.**

**40-329-004GP9: Fresenius Medical Care of North America** (95 Hayden Avenue, Lexington MA 02420-9192) on August 29, 2007, to install and operate a Diesel I/C Engine at their site in Wilkes-Barre, **Luzerne County.**

**54-329-004GP9: Fresenius Medical Care of North America** (95 Hayden Avenue, Lexington MA 02420-9192) on August 29, 2007, to install and operate a Diesel I/C Engine at their site in East Norwegian Township, **Schuylkill County.**

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

**GP1-01-03003B: Mott's, Inc.** (45 Aspers North Road, Aspers, PA 17034-0068) on August 27, 2007, for Small Gas and No. 2 Oil Fired Combustion Units under GP1 in Menallen Township, **Adams County.**

**GP19-67-03081: Finishing Systems, Inc.** (70 Willow Springs Circle, York, PA 17406) on August 28, 2007, for Dry Abrasive Blasting Operations under GP19 in Manchester Township, **York County.**

**Plan Approvals Issued under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and regulations in 25 Pa. Code Chapter 127, Subchapter B relating to construction, modification and reactivation of air contamination sources and associated air cleaning devices.**

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

**01-05017E: Quebecor World Fairfield, Inc.** (100 North Main Street, Fairfield, PA 17320-9707) on August 27, 2007, to construct a 4-unit double web heatset offset lithographic printing press at their Fairfield plant in Fairfield Borough, **Adams County.**

**67-03143A: ESAB Welding & Cutting Products** (1500 Karen Lane, Hanover, PA 17331-7948) on August 29, 2007, to construct a flux powder operation controlled by a fabric collector at their welding equipment manufacturing facility in Hanover Borough, **York 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.*

**46-0251: Anders Detweiler Funeral Home** (130 East Broad Street, Souderton, PA 18964) on August 28, 2007, to operate a power-pak II cremator in Souderton Borough, **Montgomery County.**

**15-0114: Action Manufacturing Co.** (500 Bailey Crossroads Road, Atglen, PA 19310) to operate a thermal treatment unit in West Fallowfield Township, **Chester County.**

**09-0124F: Fairless Energy, LLC** (5000 Dominion Boulevard, Glen Allen, VA 23060) on August 29, 2007, to operate an auxiliary boiler retrofit in Falls Township, **Bucks County.**

**46-0237A: Numonic, Corp.** (101 Commerce Drive, Montgomeryville, PA 18936) on August 31, 2007, to operate a spray booth w/top exhaustion in Montgomery Township, **Montgomery County**.

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

**06-05069H: East Penn Manufacturing Co., Inc.** (Deka Road, P. O. Box 147, Lyon Station, PA 19536) on August 27, 2007, to modify their lead/acid battery assembly facility in Richmond Township, **Berks County**. This plan approval was extended.

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

**04-00709B: Colona Transfer, LP** (P. O. Box 311, Portersville, PA 16051) on August 28, 2007, to allow for additional control measures to be included at their Colona Dock No. 2 in Monaca Borough, **Beaver 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.*

**46-00005: Merck & Co., Inc.** (770 Sumneytown Pike, West Point, PA 19486-0004) on August 31, 2007, for renewal of their Title V Operating Permit in Upper Gwynedd Township, **Montgomery County**. The original Title V Operating Permit was issued on August 6, 2002, and became effective on September 1, 2002. The facility's major emission points boilers, incinerators, power generation equipment and support equipment for R & D and manufacturing processes, which emit major levels of NOx, SOx, VOCs and PM/PM10. The renewed Title V operating permit will contain sufficient monitoring, recordkeeping, reporting and work practice standards to keep the facility operating within all applicable air quality requirements. Sources at this facility are subject to CAM (40 CFR Part 64), which has been addressed at this time.

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

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

**40-00092: Rad Woodwork Co., Inc.** (P. O. Box 531, Maple Street, Nescopeck, PA 18635) on August 30, 2007, to issue a State-only (Natural Minor) Operating Permit to operate a wood fired boiler and associated air-cleaning devices at their facility in Nescopeck Borough, **Luzerne County**.

**45-00026: Hanson Aggregates Pennsylvania, Inc.** (1900 Sullivan Trail, Easton, PA 18040) on August 31, 2007, to issue a State-only (Synthetic Minor) Operating Permit to operate a batch asphalt plant and associated air cleaning devices at their Stroudsburg facility in Hamilton Township, **Monroe County**.

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

**06-03021: Post Precision Castings, Inc.** (P. O. Box A, Strausstown, PA 19559) on August 29, 2007, to operate their casting foundry in Strausstown, **Berks County**. This is a renewal of the State-only operating permit.

**06-03074: Kolors East** (2380 Camp Swatara Road, Myerstown, PA 17067) on August 29, 2007, to operate their sandblasting and painting operation in Bethel Township, **Berks County**. This is a renewal of the State-only operating permit.

**36-05094: Keystone Wood Specialties, Inc.** (P. O. Box 10127, Lancaster, PA 17605-0127) on August 22, 2007, for a wood working operation in East Lampeter Township, **Lancaster County**. This is a renewal of the State-only operating permit.

*Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-9476.*

**S03-001: Kirkbride Center** (111 North 49th Street, Philadelphia, PA 19139) on August 28, 2007, to operate a psychiatric hospital in the City of Philadelphia, **Philadelphia County**. The facility's air emission source includes three 16.7 mmBtu/hr boilers, three emergency generators and one emergency sprinkler pump.

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**ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS**

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**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).**

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*Coal Applications Returned*

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17990102 and NPDES No. PA0238236. River Hill Coal Company, Inc.,** P. O. Box 141, Kylertown, PA 16847, revision of an existing bituminous surface mine to reevaluate the stream and wetland relocation/reconstruction plan in Decatur Township, **Clearfield County**, affecting 344.2 acres. Receiving stream: Laurel Run, classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received May 7, 2007. Application denied August 24, 2007.

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*Coal Permits Actions*

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

**56970102 and NPDES No. PA0234508. Hoffman Mining, Inc.,** P. O. Box 130, 118 Runway Road, Friedens, PA 15541, permit renewal for reclamation only of a bituminous surface mine in Paint Township, **Somerset**

**County**, affecting 283.3 acres. Receiving streams: Weaver Run, UNT to Shade Creek, UNT to Roaring Fork classified for the following use: CWF. The first downstream potable water supply intake from the point of discharge is Cambria Somerset Authority Stonycreek SWI. Application received July 23, 2007. Permit issued August 24, 2007.

**32990109 and NPDES No. PA0235148. Walter L. Houser Coal Company, Inc.**, 12968 US Route 422, Kittanning, PA 16201, revision of an existing bituminous surface auger mine adding acreage for mining in Washington Township, **Indiana County**, affecting 56.9 acres. Receiving streams: UNTs to/and Sugarcamp Run classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received July 3, 2007. Permit issued August 29, 2007.

**7574046 and NPDES Permit No. PA0613029. Valley Quarries, Inc.**, P. O. Box J, Chambersburg, PA 17201, renewal of NPDES Permit, Southampton Township, **Cumberland County**, affecting UNT to Bulls Head Branch classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received July 2, 2007. Permit issued August 29, 2007.

*Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.*

**17850143 and NPDES No. PA0596663. Sky Haven Coal, Inc.**, 5510 State Park Road, Penfield, PA 15849, revision of an existing bituminous surface mine to change land use in Lawrence Township, **Clearfield County**, affecting 27.0 acres. Receiving streams: Wall Run to West Branch Susquehanna River, classified for the following uses: CWF, WWF. There are no potable water supply intakes within 10 miles downstream. Application received June 19, 2007. Revision issued August 27, 2007.

**17813084 and NPDES No. PA0609994. Sky Haven Coal, Inc.**, 5510 State Park Road, Penfield PA 15849, revision of an existing bituminous surface mine to change land use in Lawrence Township, **Clearfield County**, affecting 41.0 acres. Receiving streams: Wall Run to West Branch Susquehanna River, classified for the following uses: CWF, WWF. There are no potable water supply intakes within 10 miles downstream. Application received June 19, 2007. Revision issued August 27, 2007.

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

**54860110R4. Reading Anthracite Company**, P. O. Box 1200, Pottsville, PA 17901, renewal of an existing anthracite surface mine operation in Cass and Foster Townships, **Schuylkill County** affecting 99.0 acres, receiving stream: none. Application received March 22, 2007. Renewal issued August 28, 2007.

**54813224T. Fox Coal Company, Inc.**, 1380 Tioga Street, Coal Township, PA 17866, transfer of an existing anthracite coal refuse reprocessing operation in Butler Township, **Schuylkill County** affecting 9.6 acres, receiving stream: none. Application received March 5, 2007. Transfer issued August 28, 2007.

**40930102C8. Mammoth Anthracite, LLC**, P. O. Box Q, Milnesville, PA 18239, correction to an existing anthracite surface mine, coal refuse reprocessing and coal preparation plant operation to include a stone crushing plant in Hazle Township, **Luzerne County**, receiving stream: none. Application received December 22, 2006. Correction issued August 29, 2007.

#### *Noncoal Permits Actions*

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

**5376SM16C6 and NPDES Permit No. PA0593915. American Asphalt Paving Company**, 500 Chase Road, Shavertown, PA 18708, renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Jackson Township, **Luzerne County**, receiving stream: Brown's Creek. Application received July 10, 2007. Renewal issued August 27, 2007.

**58070834. Julie Carol Harding**, R. R. 4, Box 4290, Meshoppen, PA 18630, commencement, operation and restoration of a quarry operation in Auburn Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received June 11, 2007. Permit issued August 30, 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.*

**32074008. New Enterprise Stone & Lime Company, Inc.**, P. O. Box 77, New Enterprise, PA 16664, blasting activity permit issued for road construction project development in East and West Wheatfield Townships, **Indiana County**. Blasting activity permit end date is June 15, 2010. Permit issued August 27, 2007.

**28074145. David H. Martin Excavating, Inc.**, 4961 Cumberland Highway, Chambersburg, PA 17201-9655, blasting activity permit issued for residential development in Greene Township, **Franklin County**. Blasting activity permit end date is December 16, 2008. Permit issued August 21, 2007.

**21074159. M & J Explosives, Inc.**, P. O. Box 608, Carlisle, PA 17013-0608, blasting activity permit issued for residential development in Silver Spring Township, **Cumberland County**. Blasting activity permit end date is August 31, 2008. Permit issued August 21, 2007.

**21074160. John W. Gleim, Jr., Inc.**, 625 Hamilton Street, Carlisle, PA 17013-1925, blasting activity permit issued for residential development in Carlisle Borough, **Cumberland County**. Blasting activity permit end date is December 15, 2007. Permit issued August 24, 2007.

**28074146. Jemco, Inc.**, 3338b Prices Distillery Road, Ijamsville, MD 21754-9315, blasting activity permit issued for residential development in Washington Township, **Franklin County**. Blasting activity permit end date is August 23, 2008. Permit issued August 24, 2007.

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

**15074116. Horst Drilling & Blasting, Inc.**, 141 Ranck's Church Road, New Holland, PA 17557, construction blasting for Charlestown Meadows in Charlestown Township, **Chester County** with an expiration date of December 10, 2007. Permit issued August 23, 2007.



**48074115. Silver Valley Drilling & Blasting, Inc.**, R. R. 4, Box 4196, Saylorsburg, PA 18353, construction blasting for Bushkill Creek Estates in Forks Township, **Northampton County** with an expiration date of September 1, 2008. Permit issued August 23, 2007.

**35074121. Hayduk Enterprises, Inc.**, 257 Riverside Drive, Factoryville, PA 18419, construction blasting for a single dwelling on Big Bass Lake in Clifton Township, **Lackawanna County** with an expiration date of August 31, 2008. Permit issued August 24, 2007.

**06074122. Brubacher Excavating, Inc.**, P. O. Box 528, Bowmansville, PA 17507, construction blasting at the Glen-Gery Quarry in Perry Township, **Berks County** with an expiration date of August 22, 2008. Permit issued August 28, 2007.

**46074122. Allan A. Myers, Inc. d/b/a Independence Construction Materials**, P. O. Box 98, Worcester, PA 19490, construction blasting for Burbank Grove in Upper Providence Township, **Montgomery County** with an expiration date of August 21, 2008. Permit issued August 28, 2007.

**09074124. Newville Construction Services, Inc.**, 408 Mohawk Road, Newville, PA 17241, construction blasting for Deep Run Sewage Treatment Plant in Bedminster Township, **Bucks County** with an expiration date of August 24, 2008. Permit issued August 29, 2007.

**40074003. Franzosa Trucking**, 1037 Peace Street, Hazleton, PA 18203 and Bernard J. Hasara, 1125 East Mahanoy Avenue, Mahanoy City, PA 17948, construction blasting for Contract No. 1 Hazle Township Sewer Southside in Hazle Township, **Luzerne County** with an expiration date of March 31, 2008. Permit issued August 29, 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.

**Actions on applications for the following activities filed under the Dam Safety and Encroachments Act (32 P.S. §§ 693.1—693.27), section 302 of the Flood Plain Management Act (32 P.S. § 679.302) and The Clean Streams Law (35 §§ 691.1—691.702) and Notice of Final Action for Certification under section 401 of the FWPCA (33 U.S.C.A. § 1341).**

*Permits, Environmental Assessments and 401 Water Quality Certifications Issued*

### WATER OBSTRUCTIONS AND ENCROACHMENTS

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

**E09-897. Richland Township**, 1328 California Road, Suite A, Quakertown, PA 18951, Richland Township, **Bucks County**, ACOE Philadelphia District.

To construct and maintain approximately 467 linear feet of trail that will connect the existing Hunters Crossing Trail and existing Brayton Gardens II Trail. The proposed municipal trail is located within the 100-year floodplain of Beaver Run and will impact 0.042 acre of wetland. The trail will consist of 237 linear feet of 5-foot wide super deck trail through the wetlands and 230 linear feet of 80 foot wide asphalt trail in the floodplain. The site is located at 280 Trumbauresville Road (Quakertown, PA, USGS Quadrangle, N: 1.25; W: 15 inches).

**E51-219. Pacific Atlantic Terminals LLC**, 3400 South 67th Street, Philadelphia, PA 19153, Philadelphia City, **Philadelphia County**, ACOE Philadelphia District.

To perform the following water obstruction and encroachment activities at the existing Philadelphia South Terminal Port Facility along the western bank of the Schuylkill River (WWF, MF):

1. To modify and maintain a dock. Work will include removing and replacing a loading platform, strengthening piles associated with lateral breasting dolphins by jacketing existing steel piles in concrete and replacing appurtenances.

2. To dredge approximately 32,000 cubic yards of accumulated sediment deposits from the ship berthing area, measuring approximately 850 feet by 110 feet, by clamshell method.

3. To maintain over 1,500 linear feet of timber bulkhead and to modify and maintain approximately 760 linear feet of that bulkhead by placing new steel pipe pile bents.

This project is located approximately 2,500 feet southwest of the intersection Essington Avenue and 70th Street (Philadelphia, PA, USGS Quadrangle N: 6 inches; W: 13.25 inches) and adjacent to the S. T. Services Facility authorized by Permit E51-202 in the City and County of Philadelphia.



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

**E15-704. Wawa, Inc.**, 260 West Baltimore Pike, Wawa, PA 18901, East Brandywine Township, **Chester County**, ACOE Philadelphia District.

Giving its consent to the following water obstructions and encroachments associated with the road widening and traffic improvements to facilitate access to a proposed Wawa food market:

1. To remove 65 linear feet of existing retaining wall and fill from the floodplain to facilitate channel relocation.

2. To construct approximately 330 linear feet of gravity retaining wall along the east bank and within the assumed 100-year floodway of the UNT adjacent to the proposed Wawa food market parking area.

3. To construct and maintain 50 linear feet of 16' by 4' open bottom culvert spanning the relocated channel noted in Item 1. The structure will serve as the access to the proposed Wawa food market.

The project will impact 420 linear feet of watercourse. The site is located immediately southeast of the intersection of Horseshoe Pike (SR 0322) and Bondsville Road (SR 4015) (Wagontown, PA, USGS Quadrangle N: 2.9 inches; W: 1.9 inches).

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

**E15-732. Department of Transportation**, 7000 Geerdes Boulevard, King of Prussia, PA 19406, East Brandywine Township, **Chester County**, ACOE Philadelphia District.

To perform the following water obstructions and encroachments associated with the road widening and traffic improvements to facilitate access to a proposed Wawa food market:

1. To relocate 155 linear feet of the UNT to Beaver Creek (TSF, MF) then place fill in the abandoned channel.

2. To remove 35 linear feet of existing 48-inch CMP culvert, which conveys a UNT of Beaver Creek under an existing driveway access.

3. To modify and extend an existing stream enclosure, which conveys a UNT to Beaver Creek under the Horseshoe Pike and Bondsville Road intersection. The enclosure consists of 40 additional feet of 6' by 8' arch culvert.

4. To construct approximately 330 linear feet of gravity retaining wall along the west bank and within the assumed 199-year floodway of the UNT adjacent to the widened Bondsville Road.

5. To modify and extend three outfall structures from road surfaces through the proposed retaining walls noted above discharging to the UNT of Beaver Creek.

The project will impact 420 linear feet of watercourse. The site is located immediately southeast of the intersection of Horseshoe Pike (SR 0322) and Bondsville Road (SR 4015) (Wagontown, PA USGS Quadrangle N: 2.9 inches; W: 1.9 inches).

**E09-908. Department of Transportation, District 6-0**, 7000 Geerdes Boulevard, King of Prussia, PA 19406-1525, Tinicum Township, **Bucks County**, ACOE Philadelphia District.

To rehabilitate the superstructure of the existing bridge carrying Byram Road over Pennsylvania Canal (TSF). This work also includes construction and maintenance a temporary stream crossing. The site is located approximately 200 feet west of the intersection of Byram Road (SR 1006, Section 80S) and Larkin Road (Lumberville, PA USGS Quadrangle N: 16.6 inches; W: 12.0 inches).

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

**E15-753. Phillips Road Associates**, 202 Phillips Road, Exton, PA 19341, Uwchlan Township, **Chester County**, ACOE Philadelphia District.

To place and maintain fill in 0.05 acre of wetlands associated with the expansion of the existing Tennis Addiction Sports Club. The site is located approximately 1,500 feet east of the intersection of Welsh Pool and Phillip Roads (Downingtown, PA, USGS Quadrangle N: 11.5 inches; W: 1.7 inches) in Uwchlan Township, Chester County.

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

**E23-469. DELCORA**, 100 East High Street, P. O. Box 999, Chester, PA 19016-0999, City of Chester, **Delaware County**, ACOE Philadelphia District.

To modify, replace and maintain approximately 2,000 linear feet of an existing 48-inch diameter combined sewer outfall associated with DELCORA's CSO No. 8 and a portion of bulkhead situated in and along the 100-year floodway of the Delaware River.

The work will begin near the intersection of Tilghman and West Front Streets and terminate where Norris Street meets the Delaware River (Bridgeport, PA Quadrangle N: 15.6 inches; W: 17.2 inches).

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

*Northeast Regional Office, Watershed Management Program Manager; 2 Public Square, Wilkes-Barre, PA 18711-0790, (570) 826-2511.*

**E48-366. Portland Industrial Park, LLP**, 102 Demi Road, Portland, PA 18351, Upper Mount Bethel Township and Portland Borough, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To authorize fill that was previously placed in a 0.45 acre water-filled quarry pit; to place fill in approximately 0.23 acre of PFO wetlands and to construct and maintain an approximate 380 L.F. channel change in a tributary to the Delaware River (CWF) for the purpose of constructing an access road to serve two proposed industrial building lots; and to construct and maintain four utility line stream crossings in a tributary to the Delaware River (CWF) and adjacent PFO wetlands. The permittee is required to provide 0.24 acre of replacement wetlands. This work is associated with the Portland Industrial Park development located south of the intersection of River Road and SR 0611. (Portland, PA-NJ. Quadrangle N: 7.5 inches; W: 13.2 inches). Subbasin: 1F.

**E35-384. Rapid Pallet Company**, P. O. Box 123, Jermyn, PA 18433, Jermyn Borough, **Lackawanna County**, United States Army Corps of Engineers, Baltimore District.

To fill 1.13 acres of POW wetlands and 0.22 acre of PEM wetlands for the purpose of expanding an industrial facility. The project is located at the southwest corner of Rushbrook Street (SR 0107) and Bonnie Drive (Carbondale, PA Quadrangle N: 5.4 inches; W: 5.8 inches).

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

**E67-817: Dillsburg Area Authority**, 98 West Church Street, Dillsburg, PA 17019, Monroe Township, **Cumberland County** and Carroll Township, **York County**, ACOE Baltimore District.

To construct and maintain a 24-inch ductile iron sanitary sewer line crossing of the Yellow Breeches Creek (CWF, Scenic River) at a point east of Williams Grove (Mechanicsburg, PA Quadrangle, N: 4.0 inches; W: 3.1 inches, Latitude: 40° 8' 49"; Longitude: 77° 1' 20") in Monroe Township, Cumberland County and Carroll Township, York County.

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

**E60-184. Dale L. Miller**, 225 Highfields Lane, Lewisburg, PA 17937. Pedestrian Bridge, in Hartley Township, **Union County**, ACOE Baltimore District (Lewisburg, PA Quadrangle N: 1.7 inches; W: 3.9 inches).

To construct, operate and maintain a 38-foot clear span pedestrian wood and steel beam bridge with a 7.0-foot underclearance, concrete wing wall abutments built out of the 30 foot stream channel and the associated clean fill earthen ramps for private recreational crossing of Turtle Creek, located 1,085 feet upstream of the Stein Lane bridge. This permit was issued under 25 Pa. Code § 105.13(e) "Small Projects." This permit also includes 401 Water Quality Certification.

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

**E02-1565. Department of Transportation, Engineering District 11-0**, 45 Thoms Run Road, Bridgeville, PA 15017. To construct and maintain 90 feet of stream relocation in Bethel Park Borough, **Allegheny County**, Pittsburgh ACOE District. (Bridgeville, PA Quadrangle N: 10.0 inches; W: 8.1 inches, Latitude: 40° 18' 17"; Longitude: 80° 3' 30"). To construct and maintain 90 ft. of stream relocation within 150 ft. of rock stream bank stabilization in Piney Fork (TSF). This project is intended to stabilize slope failure and stream bank erosion in conjunction with minor road improvements of SR 3004, Clifton Road.

**E63-592. Chartiers Township**, 2 Bucaneer Drive, Houston, PA 15432. To construct a box culvert in

Chartiers Township, **Washington County**, Pittsburgh ACOE District. (Washington East, PA Quadrangle N: 17.9 inches; W: 13.1 inches, Latitude: 40° 13' 25"; Longitude: 80° 13' 8"). To construct and maintain a 90-ft. long, 16.5 ft. wide by 6-ft. concrete box culvert, depressed 1-ft. in a UNT to Chartiers Creek (WWF) with a drainage area of 2.36 square miles to replace the existing 5-ft. diameter culvert lined Pike Street Bridge (SR 1009). This project is coordinated with the approved adjoining Department of Transportation (E63-593) culvert replacement project. Both projects provide for road and safety improvements to the intersections of Racetrack Road (SR 1041), Pike Street (SR 1009) and Allison Hollow Road (T641). To compensate for some of the stream impacts, this permit also authorizes the removal of an existing utility line stream crossing across Laughlintown Run (HQ) located on the south side of SR 30 where it crosses Laughlintown Run in Ligonier Township, Westmoreland County.

**E63-593. Department of Transportation, District 12-0**, North Gallatin Avenue Extension, Uniontown, PA 15401. To construct a box culvert in Chartiers Township, **Washington County**, Pittsburgh ACOE District. (Washington East, PA Quadrangle N: 17.9 inches; W: 13 inches, Latitude: 40° 13' 25"; Longitude: 80° 13' 08"). To construct and maintain a 90-ft. long, 16.5-ft. wide by 6-ft. concrete box culvert, depressed 1-ft. in a UNT to Chartiers Creek (WWF) with a drainage area of 2.36 square miles to replace the existing 5-ft. diameter culvert lined Pike Street (SR 1009) bridge. This project is coordinated with the proposed adjoining Chartiers Township (E63-592) stream relocation and culvert replacement project. Both projects provide for road and safety improvements to the intersections of Racetrack Road (SR 1041), Pike Street (SR 1009) and Allison Hollow Road (T641). To compensate for some of the stream impacts, this permits also authorizes the removal of an existing utility line stream crossing across Laughlintown Run (HQ) located on the south side of SR 30 where it crosses Laughlintown Run in Ligonier Township, Westmoreland County.

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

**E43-337. Dominion Peoples**, 5600 Community Center Drive, Gibsonia, PA 15044. Kimberly Drive Pipeline Installation. Liberty Township, **Mercer County**, ACOE Pittsburgh District. (Grove City Quadrangle, N: 41° 08' 03"; W: 80° 05' 48").

To install, operate and maintain 875 feet of 4-inch plastic pipe for a gas utility line by directional drilling under a wetland (PFO1C). Earth disturbance will be minimal (less than 0.02 acre) and outside of the wetland area. The line will run from North Liberty Drive to Kimberly Drive north of Brian Way. Installation of this structure was authorized by the Department of Environmental Protection Emergency Permit No. EP4306603

## STORAGE TANKS

### SITE-SPECIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permits, under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504, 6021.1101 and 6021.1102) 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>
07-48-004	MINRAD, Inc. P. O. Box 21170 Lehigh Valley, PA 18002-1170 Attn: Daniel J. Boek	Northampton	Hanover Township	Two ASTs storing highly hazardous substances	12,500 gallons total

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### SPECIAL NOTICES

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#### Notice of Planning Grant Awards Under Section 901 of the Municipal Waste Planning Recycling and Waste Reduction Act (53 P. S. § 4000.901)

The Department of Environmental Protection (DEP) hereby announces the following grants to counties under section 901 of the Municipal Waste Planning, Recycling and Waste Reduction Act (act) (53 P. S. § 4000.901), section 208 of the Waste Tire Recycling Act (35 P. S. § 6029.208) and Small Business and Household Pollution Prevention Act (35 P. S. §§ 6029.201—6029.209)

Planning grants are awarded to counties for 80% of approved costs for preparing municipal waste management plans as required by the act, for carrying out related studies, surveys, investigations, inquiries, research and analysis, including those related to siting, environmental mediation, education programs on pollution prevention and household hazardous waste and providing technical assistance to small businesses for pollution prevention. Grants may be awarded for feasibility studies and project development for municipal waste processing or disposal facilities, except for facilities for the combustion of municipal waste that are not proposed to be operated for the recovery of energy. All grant awards are predicated on the receipt of recycling fees required by sections 701 and 702 of the act (53 P. S. §§ 6029.701 and 6029.702) the availability of moneys in the Recycling Fund.

Inquiries regarding the grant offerings should be directed to Sally Lohman, Chief, Waste Planning Section, Department of Environmental Protection, Bureau of Waste Management, Division of Waste Minimization and Planning, P. O. Box 8472, Harrisburg, PA 17105-8472.

KATHLEEN MCGINTY,  
*Secretary*

#### Act 101, Section 901 Planning Grants

<i>Region</i>	<i>County</i>	<i>Applicant</i>	<i>Project Description</i>	<i>Grant Award</i>
Southeast	Montgomery County	Montgomery County	Plan Revision	\$200,000
Southwest	Cambria County	Cambria County	Recycling Program Feasibility Study	\$27,528

#### Notice of Certification to Perform Radon-Related Activities in Pennsylvania

In the month of August 2007, the Department of Environmental Protection of the Commonwealth of Pennsylvania, under the authority contained in the Radon Certification Act, (63 P. S. §§ 2001—2014) and regulations promulgated thereunder at 25 Pa. Code Chapter 240, has certified the persons listed below to perform radon-related activities in Pennsylvania. The period of certification is 2 years. For a complete list of persons currently certified to perform radon-related activities in this Commonwealth and for information as to the specific testing devices that persons certified for testing or laboratory are certified to use, contact the Bureau of Radiation Protection, Radon Division, P. O. Box 8469, Harrisburg, PA 17105-8469, (800) 23RADON.

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Ronald Black	2203 Greenmeadow Drive Macungie, PA 18062	Testing
Diane Clerkin	1114 Bergan Road Oreland, PA 19075	Testing
George Curry	505 Philmar Court Unit "D" Springfield, PA 19064	Mitigation
Richard Delaney, Jr.	275 Pioneer Road Franklin, PA 16323	Testing
Tony Domingues	582 North Krocks Road Allentown, PA 18106	Testing
Harlan Glebe	1370 Horseshoe Drive Blue Bell, 19422	Testing
Joseph Hancaviz	406 Cherry Hill Road Nazareth, PA 18064	Testing
Ross Hartley	115 Hospital Road Gettysburg, PA 17325	Testing

<i>Name</i>	<i>Address</i>	<i>Type of Certification</i>
Brian Kampi	2175 Ridge Drive Mars, PA 16046	Testing
Anthony LaMastra A.B.E. Radiation Measurements Labs, Inc.	1005 Old 22 Lenhartsville, PA 19534	Testing and Laboratory
Stephen Maurer	3633 Buttonwood Drive Doylestown, PA 18902	Testing
Robert Meyer, Jr.	247 Mine Bank Road Wellsville, PA 17365	Testing
Lawrence Nies	11021 May Road Wattsburg, PA 16442	Testing
Rachelle Painter	780 Pierson Run Road Pittsburgh, PA 15239	Testing
Dominick Peda	40 North Feathering Road Media, PA 19063	Testing
Lynne Russell	6 Woodledge Village Hawley, PA 18428	Testing
Martin Smith U.S. Inspect, Inc.	3650 Concorde Parkway Suite 100 Chantilly, VA 20151	Laboratory
Frederick Steidl, III	202 Ohio Avenue Wadsworth, OH 44281	Mitigation
Deborah Urenovitch	75 South Hunter Highway Drums, PA 18222	Testing

**Notice of Public Hearing for NPDES Permit Application No. PAI023907010**

Notice is hereby provided that the Department of Environmental Protection (Department) will hold a public hearing to accept comment on Individual National Pollutant Discharge Elimination System (NPDES) Permit Application No. PAI023907010 for the discharge of stormwater from construction activities at the proposed Stone Ridge Estates project, in Upper Milford Township, Lehigh County.

The public hearing will be conducted on October 17, 2007, at 7 p.m. in the Upper Milford Township Municipal Building at 5831 Kings Highway South, Old Zionsville, PA 18068-0210, by the Department, 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 Dino Daddona Sr., Double D. Lehigh, LP. The NPDES permit application proposes the discharge of stormwater from construction activities associated with the proposed Stone Ridge Estates project to the Saucon Creek (CWF) and a tributary to Saucon Creek (CWF with EVW) watersheds.

Individuals wishing to testify at the hearing should submit a written notice of such intent to: PAI023907010 NPDES Public Hearing, Department of Environmental Protection, Watershed 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 the NPDES Permit Application No. PAI023907010. Written copies of oral testimony are requested. Relinquishing time to others will not be allowed. All 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 of the Department 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 Lehigh County Conservation District office located at the Lehigh County Agricultural Center, Suite 102, 4184 Dorney Park Road, Allentown, PA (610) 391-9583.

For further information, contact Mark Carmon of the Department's Northeast Regional Office at (570) 826-2511.

[Pa.B. Doc. No. 07-1710. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Availability of Great Lakes Mercury in Products Phase-Down Strategy for Comment

The Commonwealth, in cooperation with the Great Lakes Regional Collaboration and neighboring Great Lakes states, announces the availability of the Draft *Great Lakes Mercury in Products Phase-Down Strategy* for public comment. The strategy, designed to significantly decrease the use of mercury in consumer products, calls for action in five product areas and five economic sectors through which consumers come into contact with mercury. These proposed actions include the following:

#### *Actions in the consumer products areas:*

- Working with dental facilities to use best management practices for handling mercury waste and work to reduce or eliminate the use of mercury in fillings;
- Banning the sale and installation of mercury-containing thermostats;
- Banning the sale of mercury-containing thermometers to the public, including to public schools;
- Banning the sale of mercury-containing switches, relays and measurement devices, establishing collection programs for existing products and banning the use of mercury-added products in classrooms for K-12 students; and
- Working for labeling and recycling of mercury-containing lamps, including car headlights and outdoor lighting.

#### *Actions in the industry sectors:*

- Banning the purchase and use of mercury-containing devices in school classrooms and health care areas;
- Working to increase the removal of mercury-containing devices from scrap metal and vehicles prior to crushing or melting operations, including increasing participation in the National Vehicle Mercury Switch Removal Program, in which the Commonwealth already takes part;
- Conducting outreach to heavy industry to promote mercury reduction projects;
- Working with the health care industry to reduce mercury use; and
- Working to expand household hazardous waste and electronics collections to make this service available to more households.

In an effort to reach all product lines and economic sectors, the proposed strategy calls for labeling all products containing mercury. Once the strategy is finalized, the Commonwealth and other states may adopt the overall proposal without agreeing to implement every recommendation included in the strategy.

The Great Lakes Regional Collaboration is a cooperative effort to implement strategies for the restoration, protection and sustainable use of the Great Lakes. Key partners of the Collaboration, in addition to the Commonwealth, include the Council of Great Lakes Governors, the Great Lakes and St Lawrence Cities Initiative, the Great Lakes Congressional Task Force, the Great Lakes Indian Fish and Wildlife Commission and the United States Environmental Protection Agency, Great Lakes National Program Office.

The strategy is available at [glrc.us/initiatives/toxics/draftthghasedownstrategy.html](http://glrc.us/initiatives/toxics/draftthghasedownstrategy.html). Comments should be submitted by October 27, 2007, to Debra Jacobson, Illinois Waste Management and Research Center/Illinois

Department of Natural Resources, 1010 Jorie Boulevard, Suite 12, Oakbrook, IL 60523 or [djacobso@wmrc.uiuc.edu](mailto:djacobso@wmrc.uiuc.edu).

Questions on the draft strategy may be directed to Debra Jacobson at (630) 472-5019 or fax (630) 472-5023. Questions may also be directed to Sharon Trostle at (717) 783-1653; [shtrostle@state.pa.us](mailto:shtrostle@state.pa.us) or Glenn Mitzel (717) 783-9448; [gmitzel@state.pa.us](mailto:gmitzel@state.pa.us), who represent the Commonwealth on the strategy team.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 07-1711. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Bid Opportunities

**GFCC59-08-01, Rattler Daylighting Reclamation Project, Morris Township, Tioga County.** The principal items of work include day lighting a portion of the deep mine complex, recovering coal reserves including 1-foot and Bloss coal reserves, and the application of 2,500 tons per acre of lime or waste lime, replacement of spoil, regrading to AOC, construction of subsurface drains, construction of E & S controls, reforestation, construction of fencing and restoration of wildlife habitat. This project issues on September 14, 2007, and bids will be opened on October 23, 2007, at 2 p.m. Bid documents cost \$10 per set and will not be mailed until payment has been received. A mandatory prebid conference will be held on October 5, 2007, at 10:30 a.m. at the Morris Fire Hall. Contact Tom Koptchak at (814) 342-8140 for directions. The Department will proceed from the fire hall to the project site. Contact the Construction Contracts Section at (717) 787-7820 or [joelmiller@state.pa.us](mailto:joelmiller@state.pa.us) for more information on this bid.

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 07-1712. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Oil and Gas Technical Advisory Board Meeting Cancellation

The Oil and Gas Technical Advisory Board (Board) meeting scheduled for Wednesday, October 3, 2007, has been cancelled. Notice will be published in the *Pennsylvania Bulletin* when a new meeting date is established.

Questions concerning the Board or its next meeting may be directed to Carol Daniels, Bureau of Oil and Gas Management, at (717) 772-2199 or [cardaniels@state.pa.us](mailto:cardaniels@state.pa.us).

KATHLEEN A. MCGINTY,  
*Secretary*

[Pa.B. Doc. No. 07-1713. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Proposed Revisions to Pennsylvania's State Implementation Plan

Section 110 of the Federal Clean Air Act (CAA) requires states to develop State Implementation Plans (SIP) and programs to meet the National Ambient Air Quality

Standards (NAAQS) established by the United States Environmental Protection Agency (EPA) to protect public health and welfare. Section 110 of the CAA sets forth general elements for the implementation of SIPs. Section 110(a)(2) of the CAA requires states to submit SIP revisions to the Environmental Protection Agency (EPA) Administrator that provide for implementation, maintenance and enforcement of the NAAQS.

The Department of Environmental Protection (Department) is seeking comment on the following: (1) a SIP revision that confirms the Commonwealth's compliance with section 110(a)(2)(A)—(M) of the CAA (42 U.S.C.A. §§ 7410(a)(2)(A)—(M)) pertaining to general responsibilities; and (2) a SIP revision meeting the interstate transport requirements of section 110(a)(2)(D)(i) of the CAA (42 U.S.C.A. §§ 7410(a)(2)(D)(i)).

The first SIP revision for which the Department of Environmental Protection (Department) is seeking public comment addresses the requirements of section 110(a)(2)(A)—(M) of the CAA, the "Infrastructure SIP," which is a compilation of elements that demonstrate how the Commonwealth will demonstrate how the 8-hour ozone and fine particulate (PM<sub>2.5</sub>) NAAQS are being implemented, maintained and enforced. The elements of the "Infrastructure SIP" revision, once approved by EPA, will provide a Federally enforceable written confirmation of how the Commonwealth will continue to comply with the section 110(a)(2) requirements of the CAA.

In July 1997, the EPA promulgated 8-hour ozone and PM<sub>2.5</sub> NAAQS. Section 110(a)(1) of the CAA requires states to submit to the EPA Administrator a plan within 3 years after the promulgation of NAAQS a SIP revision, which provides for the implementation, maintenance and enforcement of the NAAQS. Implementation of the standards was delayed, however, due to subsequent litigation. On March 10, 2005, the EPA entered into a Consent Decree with the Environmental Defense Fund and the American Lung Association to address Section 110 SIP requirements. Subsequently, the EPA published a "Finding of Failure To Submit Section 110 State Implementation Plans for Interstate Transport for the National Ambient Air Quality Standards for 8-Hour Ozone and PM<sub>2.5</sub>" at 70 FR 21147 (April 25, 2005). The EPA's finding effectively started a 24-month clock for the EPA to either issue a final Federal Implementation Plan to address the requirements of section 110(a)(2)(D)(i), (42 U.S.C.A. § 7410(a)(2)(D)(i)), or to approve a SIP revision addressing the interstate transport requirements.

The second SIP revision for which the Department is seeking comment addresses the interstate transport requirements of section 110(a)(2)(D)(i) of the CAA. This provision requires that States' SIPs contain adequate provisions prohibiting any source or any other type of emissions activity within the State from emitting any air pollutant in amounts that will contribute significantly to nonattainment in another State. Each SIP must also contain adequate provisions to prohibit air pollutant emissions within the State from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another State.

The proposed section 110(a)(2) SIP revisions are 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 Tuesday, October 16, 2007, at 1 p.m. at the Department of Environmental Protection Southcentral Regional Office, 909 Elmerton Avenue, Susquehanna Room A, Harrisburg, PA 17110.

Persons wishing to present testimony at the hearing on the proposed SIP revisions 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 limit testimony to 10 minutes and provide the Department with 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 [yhouse@state.pa.us](mailto:yhouse@state.pa.us) or (717) 787-9495. 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 October 16, 2007. Written comments should be sent to the attention of Arleen Shulman, Division of Air Resource Management, Bureau of Air Quality, P. O. Box 8468, Harrisburg, PA 17105-8468, or [ashulman@state.pa.us](mailto:ashulman@state.pa.us).

KATHLEEN A. MCGINTY,  
Secretary

[Pa.B. Doc. No. 07-1714. Filed for public inspection September 14, 2007, 9:00 a.m.]

## DEPARTMENT OF HEALTH

### Application of Apple Hill Surgical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Apple Hill Surgical Center has requested an exception to the requirements of 28 Pa. Code § 551.21(d) (relating to criteria for ambulatory surgery).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, [paexcept@health.state.pa.us](mailto:paexcept@health.state.pa.us).

Those persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,  
Secretary

[Pa.B. Doc. No. 07-1715. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Application of Millcreek Community Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Millcreek Community Hospital has requested an exception to the requirements of 28 Pa. Code § 107.25(8) (relating to medical staff executive committee).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Those persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 07-1716. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Application of The PMA Gastroenterology Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that The PMA Gastroenterology Center has requested an exception to the requirements of 28 Pa. Code § 555.31 (relating to principle).

These requests are on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Those persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or

hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 07-1717. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Application of Surgery Center at Limerick for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Surgery Center at Limerick has requested an exception to the requirements of 28 Pa. Code §§ 553.1, 555.1, 557.4 and 567.2.

These requests are on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Those persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 07-1718. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Application of 20/20 Surgery Center, LLC for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that 20/20 Surgery Center, LLC has requested an exception to the requirements of 28 Pa. Code § 551.3 (relating to definitions).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Those persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 07-1719. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Application of West Chester Endoscopy, LLC for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that West Chester Endoscopy, LLC has requested an exception to the requirements of 28 Pa. Code § 551.3 (relating to definitions).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, paexcept@health.state.pa.us.

Those persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of a request and/or provide comments to the Department and require an auxiliary aid, service or other accommodation to do so should contact the Division at the previously listed address or phone numbers or for speech and/or hearing impaired persons V/TT (717) 783-6154 or the Pennsylvania AT&T Relay Services at (800) 654-5984.

CALVIN B. JOHNSON, M. D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 07-1720. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Application of Westmoreland Hospital for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that Westmoreland Hospital has requested an exception to the requirements of 28 Pa. Code § 153.1 (relating to minimum standards), which requires compliance with minimum standards contained in the following

publication: *Guidelines for Design and Construction of Hospital and Healthcare Facilities*. The facility specifically requests exemption from the following standards contained in this publication: 8.1.2.1 (relating to IBC Code for handicapped accessible patient toilets).

The request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, dditlow@state.pa.us.

Those persons who wish to comment on an exception request may do so by sending a letter by mail, e-mail or facsimile to the Division and address listed previously.

Comments received by the Department within 10 days after the date of publication of this notice will be reviewed by the Department before it decides whether to approve or disapprove the request for exception.

Persons with a disability who wish to obtain a copy of the request and require an auxiliary aid, service or other accommodation to do so should contact the Director, Division of Acute and Ambulatory Care at (717) 783-8980, V/TT (717) 783-6154 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M. D., M.P.H.,  
*Secretary*

[Pa.B. Doc. No. 07-1721. Filed for public inspection September 14, 2007, 9:00 a.m.]

## DEPARTMENT OF LABOR AND INDUSTRY

### Current Prevailing Wage Act Debarments

The following contractors have been determined to have intentionally violated the Pennsylvania Prevailing Wage Act (act) (43 P. S. §§ 165-1—165-17). This notice is published for the information and convenience of public bodies subject to the act. Under section 11(e) of the act (43 P. S. § 165-11(e)), these contractors, or either one of them, or any firms, corporations or partnerships in which either one of these contractors has an interest, shall be awarded no contract for 3 years after the date listed.

<i>Contractor</i>	<i>Address</i>	<i>Date of Debarment</i>
21st Century Framing, LLC and Tiffany M. Lynn, Individually	5740 Wilkes Road Atwater, OH 44201	8/23/2007

STEPHEN M. SCHMERIN,  
*Secretary*

[Pa.B. Doc. No. 07-1722. Filed for public inspection September 14, 2007, 9:00 a.m.]



## DEPARTMENT OF PUBLIC WELFARE

### Medical Assistance Program Fee Schedule Revisions; 2007 Power Mobility HCPCS Updates; Prior Authorization Requirements

The Department of Public Welfare (Department) announces changes to the Medical Assistance (MA) Program Fee Schedule and accompanying prior authorization requirements.

#### *Fee Schedule Revisions*

The Department is adding and end-dating procedure codes as a result of implementing the 2007 power mobility device procedure code updates made by the Centers for Medicare and Medicaid Services (CMS) to the Healthcare Common Procedure Coding System (HCPCS). The 2007 power mobility device HCPCS procedure codes are effective for dates of service on and after September 24, 2007.

Fees for the new power mobility device procedure codes will be published in an MA bulletin that will be issued to providers who prescribe and supply power mobility devices.

The 2007 power mobility device HCPCS procedure codes being added to the MA Program Outpatient Fee Schedule are as follows:

<i>Procedure Codes</i>			
<i>E2373 (NU)</i>	<i>E2374 (NU)</i>	<i>E2375 (NU)</i>	<i>E2376 (NU)</i>
E2377 (NU)	E2381 (NU)	E2382 (NU)	E2383 (NU)
E2384 (NU)	E2385 (NU)	E2386 (NU)	E2387 (NU)
E2388 (NU)	E2389 (NU)	E2390 (NU)	E2391 (NU)
E2392 (NU)	E2393 (NU)	E2394 (NU)	E2395 (NU)
E2396 (NU)	K0733 (NU)	K0734 (NU)	K0735 (NU)
K0736 (NU)	K0737 (NU)	K0800 (NU)	K0800 (RR)
K0801 (NU)	K0801 (RR)	K0802 (NU)	K0802 (RR)
K0806 (NU)	K0806 (RR)	K0807 (NU)	K0807 (RR)
K0808 (NU)	K0808 (RR)	K0813 (NU)	K0813 (RR)
K0814 (NU)	K0814 (RR)	K0815 (NU)	K0815 (RR)
K0816 (NU)	K0816 (RR)	K0820 (NU)	K0820 (RR)
K0821 (NU)	K0821 (RR)	K0822 (NU)	K0822 (RR)
K0823 (NU)	K0823 (RR)	K0824 (NU)	K0824 (RR)
K0825 (NU)	K0825 (RR)	K0826 (NU)	K0826 (RR)
K0827 (NU)	K0827 (RR)	K0828 (NU)	K0828 (RR)
K0829 (NU)	K0829 (RR)	K0830 (NU)	K0830 (RR)
K0831 (NU)	K0831 (RR)	K0835 (NU)	K0835 (RR)
K0836 (NU)	K0836 (RR)	K0837 (NU)	K0837 (RR)
K0838 (NU)	K0838 (RR)	K0839 (NU)	K0839 (RR)
K0840 (NU)	K0840 (RR)	K0841 (NU)	K0841 (RR)
K0842 (NU)	K0842 (RR)	K0843 (NU)	K0843 (RR)
K0848 (NU)	K0848 (RR)	K0849 (NU)	K0849 (RR)
K0850 (NU)	K0850 (RR)	K0851 (NU)	K0851 (RR)
K0852 (NU)	K0852 (RR)	K0853 (NU)	K0853 (RR)
K0854 (NU)	K0854 (RR)	K0855 (NU)	K0855 (RR)
K0856 (NU)	K0856 (RR)	K0857 (NU)	K0857 (RR)
K0858 (NU)	K0858 (RR)	K0859 (NU)	K0859 (RR)
K0860 (NU)	K0860 (RR)	K0861 (NU)	K0861 (RR)
K0862 (NU)	K0862 (RR)	K0863 (NU)	K0863 (RR)
K0864 (NU)	K0864 (RR)		

The power mobility device HCPCS procedure codes being end-dated from the MA Program Outpatient Fee Schedule, which will no longer be compensable under the MA Program for services provided after September 23, 2007, are as follows:

<i>Procedure Codes</i>			
E0997	E0998	E0999	E2320
K0090	K0091	K0092	K0093
K0094	K0095	K0096	K0097
K0099			

*Prior Authorization Requirements*

The following new 2007 power mobility device HCPCS procedure codes are for purchases of appliances or equipment that cost more than \$600 and therefore require prior authorization under section 443.6(b)(2) of the Public Welfare Code (code) (62 P. S. § 443.6(b)(2)), as amended by the act of July 7, 2005 (P. L. 177, No. 42):

<i>Procedure Code</i>	<i>Procedure Description</i>	<i>Pricing Modifier</i>
E2373	Power wheelchair accessory, hand or chin control interface, miniproportional, compact, or short throw remote joystick or touchpad, proportional, including all related electronics and fixed mounting hardware	NU
E2375	Power wheelchair accessory, nonexpandable controller, including all related electronics and mounting hardware, replacement only	NU
E2376	Power wheelchair accessory, expandable controller, including all related electronics and mounting hardware, replacement only	NU
K0800	Power operated vehicle, group 1 standard duty, patient weight capacity up to including 300 pounds	NU
K0801	Power operated vehicle, group 1 heavy duty, patient weight capacity 301 to 450 pounds	NU
K0802	Power operated vehicle, group 1 very heavy duty, patient weight capacity 451 to 600 pounds	NU
K0806	Power operated vehicle, group 2 standard duty, patient weight capacity up to and including 300 pounds	NU
K0807	Power operated vehicle, group 2 heavy duty, patient weight capacity 301 to 450 pounds	NU
K0808	Power operated vehicle, group 2 very heavy duty, patient weight capacity 451 to 600 pounds	NU
K0813	Power wheelchair, group 1 standard, portable, sling/solid seat and back, patient weight capacity up to and including 300 pounds	NU
K0814	Power wheelchair, group 1 standard, portable, captain's chair, patient weight capacity up to and including 300 pounds	NU
K0815	Power wheelchair, group 1 standard, sling/solid seat and back, patient weight capacity up to and including 300 pounds	NU
K0816	Power wheelchair, group 1 standard, captain's chair, patient weight capacity up to and including 300 pounds	NU
K0820	Power wheelchair, group 2 standard, portable, sling/solid seat/back, patient weight capacity up to and including 300 pounds	NU
K0821	Power wheelchair, group 2 standard, portable, captain's chair, patient weight capacity up to and including 300 pounds	NU
K0822	Power wheelchair, group 2 standard, sling/solid seat/back, patient weight capacity up to and including 300 pounds	NU
K0823	Power wheelchair, group 2 standard, captain's chair, patient weight capacity up to and including 300 pounds	NU
K0824	Power wheelchair, group 2 heavy duty, sling/solid seat/back, patient weight capacity 301 to 450 pounds	NU
K0825	Power wheelchair, group 2 heavy duty, captain's chair, patient weight capacity 301 to 450 pounds	NU
K0826	Power wheelchair, group 2 very heavy duty, sling/solid seat/back, patient weight capacity 451 to 600 pounds	NU
K0827	Power wheelchair, group 2 very heavy duty, captain's chair, patient weight capacity 451 to 600 pounds	NU
K0828	Power wheelchair, group 2 extra heavy duty, sling/solid seat/back, patient weight capacity 601 pounds or more	NU
K0829	Power wheelchair, group 2 extra heavy duty, captain's chair, patient weight capacity 601 pounds or more	NU

## NOTICES

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<i>Procedure Code</i>	<i>Procedure Description</i>	<i>Pricing Modifier</i>
K0830	Power wheelchair, group 2 standard, seat elevator, sling/solid seat/back, patient weight capacity up to and including 300 pounds	NU
K0831	Power wheelchair, group 2 standard, seat elevator, captain's chair, patient weight capacity up to and including 300 pounds	NU
K0835	Power wheelchair, group 2 standard, single power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds	NU
K0836	Power wheelchair, group 2 standard, single power option, captain's chair, patient weight capacity up to and including 300 pounds	NU
K0837	Power wheelchair, group 2 heavy duty, single power option, sling/solid seat/back, patient weight capacity 301 to 450 pounds	NU
K0838	Power wheelchair, group 2 heavy duty, single power option, captain's chair, patient weight capacity 301 to 450 pounds	NU
K0839	Power wheelchair, group 2 very heavy duty, single power option, sling/solid seat/back, patient weight capacity 451 to 600 pounds	NU
K0840	Power wheelchair, group 2 extra heavy duty, single power option, sling/solid seat/back, patient weight capacity 601 pounds or more	NU
K0841	Power wheelchair, group 2 standard, multiple power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds	NU
K0842	Power wheelchair, group 2 standard, multiple power option, captain's chair, patient weight capacity up to and including 300 pounds	NU
K0843	Power wheelchair, group 2 heavy duty, multiple power option, sling/solid seat/back, patient weight capacity 301 to 450 pounds	NU
K0848	Power wheelchair, group 3 standard, sling/solid seat/back, patient weight capacity up to and including 300 pounds	NU
K0849	Power wheelchair, group 3 standard, captain's chair, patient weight capacity up to and including 300 pounds	NU
K0850	Power wheelchair, group 3 heavy duty, sling/solid seat/back, patient weight capacity 301 to 450 pounds	NU
K0851	Power wheelchair, group 3 heavy duty, captain's chair, patient weight capacity 301 to 450 pounds	NU
K0852	Power wheelchair, group 3 very heavy duty, sling/solid seat/back, patient weight capacity 451 to 600 pounds	NU
K0853	Power wheelchair, group 3 very heavy duty, captain's chair, patient weight capacity, 451 to 600 pounds	NU
K0854	Power wheelchair, group 3 extra heavy duty, sling/solid seat/back, patient weight capacity 601 pounds or more	NU
K0855	Power wheelchair, group 3 extra heavy duty, captain's chair, patient weight 601 pounds or more	NU
K0856	Power wheelchair, group 3 standard, single power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds	NU
K0857	Power wheelchair, group 3 standard, single power option, captain's chair, patient weight capacity up to and including 300 pounds	NU
K0858	Power wheelchair, group 3 heavy duty, single power option, sling/solid seat/back, patient weight capacity 301 to 450 pounds	NU
K0859	Power wheelchair, group 3 heavy duty, single power option, captain's chair, patient weight capacity 301 to 450 pounds	NU
K0860	Power wheelchair, group 3 very heavy duty, single power option, sling/solid seat/back, patient weight capacity 451 to 600 pounds	NU
K0861	Power wheelchair, group 3 standard, multiple power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds	NU
K0862	Power wheelchair, group 3 heavy duty, multiple power option, sling/solid seat/back, patient weight capacity 301 to 450 pounds	NU
K0863	Power wheelchair, group 3 very heavy duty, multiple power option, sling/solid seat/back, patient weight capacity 451 to 600 pounds	NU

<i>Procedure Code</i>	<i>Procedure Description</i>	<i>Pricing Modifier</i>
K0864	Power wheelchair, group 3 extra heavy duty, multiple power option, sling/solid seat/back, patient weight capacity 601 pounds or more	NU

The following new 2007 power mobility device HCPCS procedure codes will require prior authorization after 3 months of rental as provided for in section 443.6(b)(3) of the code, as amended by the act of July 7, 2005 (P. L. 177, No. 42):

<i>Procedure Code</i>	<i>Procedure Description</i>	<i>Pricing Modifier</i>
K0800	Power operated vehicle, group 1 standard duty, patient weight capacity up to including 300 lbs	RR
K0801	Power operated vehicle, group 1 heavy duty, patient weight capacity 301 to 450 pounds	RR
K0802	Power operated vehicle, group 1 very heavy duty, patient weight capacity 451 to 600 pounds	RR
K0806	Power operated vehicle, group 2 standard duty, patient weight capacity up to and including 300 pounds	RR
K0807	Power operated vehicle, group 2 heavy duty, patient weight capacity 301 to 450 pounds	RR
K0808	Power operated vehicle, group 2 very heavy duty, patient weight capacity 451 to 600 pounds	RR
K0813	Power wheelchair, group 1 standard, portable, sling/solid seat and back, patient weight capacity up to and including 300 pounds	RR
K0814	Power wheelchair, group 1 standard, portable, captain's chair, patient weight capacity up to and including 300 pounds	RR
K0815	Power wheelchair, group 1 standard, sling/solid seat and back, patient weight capacity up to and including 300 pounds	RR
K0816	Power wheelchair, group 1 standard, captain's chair, patient weight capacity up to and including 300 pounds	RR
K0820	Power wheelchair, group 2 standard, portable, sling/solid seat/back, patient weight capacity up to and including 300 pounds	RR
K0821	Power wheelchair, group 2 standard, portable, captain's chair, patient weight capacity up to and including 300 pounds	RR
K0822	Power wheelchair, group 2 standard, sling/solid seat/back, patient weight capacity up to and including 300 pounds	RR
K0823	Power wheelchair, group 2 standard, captain's chair, patient weight capacity up to and including 300 pounds	RR
K0824	Power wheelchair, group 2 heavy duty, sling/solid seat/back, patient weight capacity 301 to 450 pounds	RR
K0825	Power wheelchair, group 2 heavy duty, captain's chair, patient weight capacity 301 to 450 pounds	RR
K0826	Power wheelchair, group 2 very heavy duty, sling/solid seat/back, patient weight capacity 451 to 600 pounds	RR
K0827	Power wheelchair, group 2 very heavy duty, captain's chair, patient weight capacity 451 to 600 pounds	RR
K0828	Power wheelchair, group 2 extra heavy duty, sling/solid seat/back, patient weight capacity 601 pounds or more	RR
K0829	Power wheelchair, group 2 extra heavy duty, captain's chair, patient weight capacity 601 pounds or more	RR
K0830	Power wheelchair, group 2 standard, seat elevator, sling/solid seat/back, patient weight capacity up to and including 300 pounds	RR
K0831	Power wheelchair, group 2 standard, seat elevator, captain's chair, patient weight capacity up to and including 300 pounds	RR
K0835	Power wheelchair, group 2 standard, single power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds	RR
K0836	Power wheelchair, group 2 standard, single power option, captain's chair, patient weight capacity up to and including 300 pounds	RR
K0837	Power wheelchair, group 2 heavy duty, single power option, sling/solid seat/back, patient weight capacity 301 to 450 pounds	RR

<i>Procedure Code</i>	<i>Procedure Description</i>	<i>Pricing Modifier</i>
K0838	Power wheelchair, group 2 heavy duty, single power option, captain's chair, patient weight capacity 301 to 450 pounds	RR
K0839	Power wheelchair, group 2 very heavy duty, single power option, sling/solid seat/back, patient weight capacity 451 to 600 pounds	RR
K0840	Power wheelchair, group 2 extra heavy duty, single power option, sling/solid seat/back, patient weight capacity 601 pounds or more	RR
K0841	Power wheelchair, group 2 standard, multiple power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds	RR
K0842	Power wheelchair, group 2 standard, multiple power option, captain's chair, patient weight capacity up to and including 300 pounds	RR
K0843	Power wheelchair, group 2 heavy duty, multiple power option, sling/solid seat/back, patient weight capacity 301 to 450 pounds	RR
K0848	Power wheelchair, group 3 standard, sling/solid seat/back, patient weight capacity up to and including 300 pounds	RR
K0849	Power wheelchair, group 3 standard, captain's chair, patient weight capacity up to and including 300 pounds	RR
K0850	Power wheelchair, group 3 heavy duty, sling/solid seat/back, patient weight capacity 301 to 450 pounds	RR
K0851	Power wheelchair, group 3 heavy duty, captain's chair, patient weight capacity 301 to 450 pounds	RR
K0852	Power wheelchair, group 3 very heavy duty, sling/solid seat/back, patient weight capacity 451 to 600 pounds	RR
K0853	Power wheelchair, group 3 very heavy duty, captain's chair, patient weight capacity, 451 to 600 pounds	RR
K0854	Power wheelchair, group 3 extra heavy duty, sling/solid seat/back, patient weight capacity 601 pounds or more	RR
K0855	Power wheelchair, group 3 extra heavy duty, captain's chair, patient weight 601 pounds or more	RR
K0856	Power wheelchair, group 3 standard, single power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds	RR
K0857	Power wheelchair, group 3 standard, single power option, captain's chair, patient weight capacity up to and including 300 pounds	RR
K0858	Power wheelchair, group 3 heavy duty, single power option, sling/solid seat/back, patient weight capacity 301 to 450 pounds	RR
K0859	Power wheelchair, group 3 heavy duty, single power option, captain's chair, patient weight capacity 301 to 450 pounds	RR
K0860	Power wheelchair, group 3 very heavy duty, single power option, sling/solid seat/back, patient weight capacity 451 to 600 pounds	RR
K0861	Power wheelchair, group 3 standard, multiple power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds	RR
K0862	Power wheelchair, group 3 heavy duty, multiple power option, sling/solid seat/back, patient weight capacity 301 to 450 pounds	RR
K0863	Power wheelchair, group 3 very heavy duty, multiple power option, sling/solid seat/back, patient weight capacity 451 to 600 pounds	RR
K0864	Power wheelchair, group 3 extra heavy duty, multiple power option, sling/solid seat/back, patient weight capacity 601 pounds or more	RR

#### *Fiscal Impact*

It is anticipated that these revisions will result in costs of \$0.138 million (\$0.064 million in State funds) in the MA Outpatient Program in Fiscal Year 2007-2008 and annualized costs of \$0.237 million (\$0.109 million in State funds) in Fiscal Year 2008-2009.

#### *Public Comment*

Interested persons are invited to submit written comments regarding this notice to the Department at the following address: Department of Public Welfare, Office of Medical Assistance Programs, c/o Deputy Secretary's Office, Attention: Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received will be reviewed and considered for any subsequent revisions to the MA Program Fee Schedule.

Persons with a disability who require an auxiliary aid or service may submit comments using the AT&T Relay Service (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-NOT-520. (1) General Fund:

	MA-Outpatient
(2) Implementing Year 2007-08 is	\$64,000
(3) 1st succeeding Year 2008-09 is	\$109,000
2nd succeeding Year 2009-10 is	\$109,000
3rd succeeding Year 2010-11 is	\$109,000
4th succeeding Year 2011-12 is	\$109,000
5th succeeding Year 2012-13 is	\$109,000
(4) 2006-07 Program—	\$671,472,000
2005-06 Program—	\$945,950,000
2004-05 Program—	\$842,991,000
(7) Medical Assistance Outpatient; (8) recommends adoption. Funds have been included in the budget to cover these increases.	

[Pa.B. Doc. No. 07-1723. Filed for public inspection September 14, 2007, 9:00 a.m.]

## DEPARTMENT OF TRANSPORTATION

### Finding Elk County

Under section 2002(b) of The Administrative Code of 1929 (71 P. S. § 512(b)), the Acting Director of the Bureau of Design makes the following written finding:

The Federal Highway Administration and the Department of Transportation are planning the construction of a new bridge to replace the existing Irwin Run Bridge carrying SR 3002 over Irwin Run in Spring Township, Elk County, PA.

Information describing the project together with the associated environmental analysis is contained in the Categorical Exclusion Evaluation/Section 2002 Evaluation (CEE/Section 2002) that was prepared for this project. The document is available in the CEE/EA Expert System.

The Irwin Run Bridge has been determined eligible for the National Register of Historic Places; therefore, it is a Section 2002/Section 4(f) resource. Impact to this resource will constitute a use of the Section 2002/Section 4(f) resource.

Based upon studies, there is no prudent and feasible alternative to the proposed action.

The environmental, economic, social and other effects of the proposed project, as enumerated in section 2002 of The Administrative Code of 1929 have been considered. It has been concluded that there is no feasible and prudent alternative to the project as designed, and all reasonable steps have been taken to minimize the effects.

BRIAN G. THOMPSON, P. E.,  
*Acting Director, Bureau of Design*

[Pa.B. Doc. No. 07-1724. Filed for public inspection September 14, 2007, 9:00 a.m.]

## ENVIRONMENTAL QUALITY BOARD

### Meeting Cancellation

The September 18, 2007, meeting of the Environmental Quality Board (Board) is cancelled. The next meeting of the Board is scheduled for October 16, 2007, at 9 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. An agenda and meeting materials for the October 16, 2007, meeting 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: EQB).

Questions concerning the Board's next scheduled meeting may be directed to Michele Tate at (717) 783-8727 or [mtate@state.pa.us](mailto:mtate@state.pa.us).

KATHLEEN A. MCGINTY,  
*Chairperson*

[Pa.B. Doc. No. 07-1725. Filed for public inspection September 14, 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 Regulatory Review Act (71 P. S. § 745.5b).

The Commission has issued comments on the following proposed regulation. 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>
6-305	State Board of Education Special Education Services and Programs 37 Pa.B. 2961 (June 30, 2007)	6/30/07	8/29/07

—————  
**State Board of Education**  
**Regulation #6-306 (IRRC #2618)**

**Special Education Services and Programs**

**August 29, 2007**

We submit for your consideration the following comments on the proposed rulemaking published in the June 30, 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 State Board of Education (Board) to respond to all comments received from us or any other source.

**1. Section 14.101. Definitions.—Consistency with statute; Clarity.**

*Early intervention services*

The existing definition correctly states that this term is “as defined in the Act.” The Board is proposing to add language to this definition. However, the additional language does not fully reflect all of the language in the Act’s definition (Early Intervention Services System Act (Act) (11 P. S. §§ 875-101—875-503)). Therefore, we recommend either retaining the current definition, or alternatively reiterating all of the Act’s definition in the regulation.

*Certificated staff member*

This term is not defined, but is used in Section 14.105(a). The Board should add a definition for this term.

*Definitions in other sections*

Sections 14.105, 14.131 and 14.133 contain definitions that relate to those sections. Why weren’t these definitions included in Section 14.101?

**2. Section 14.104. Special education plans.—Need; Clarity.**

*Subsection (e)*

Why has the time period for developing an early intervention special education plan been changed from 3 years to every year?

*Subsection (i)*

This subsection mentions that each school entity shall maintain “information concerning students with disabilities.” This term is too vague, and language should be added to specify what information school entities must maintain.

**3. Section 14.105. Personnel.—Need; Reasonableness; Implementation procedure; Economic and fiscal impact; Protection of the public welfare.**

*Instructional paraprofessional*

Subsection (a) adds specific qualifications that must be met by an “instructional paraprofessional.” There are four concerns.

First, the Board states in its Regulatory Analysis Form (Number (14)) that there are several thousand paraprofessionals working with students with disabilities, and there is the possibility that some may need to be reassigned or could lose their jobs. While we recognize the overall intent is to improve the quality of education, the Board has not sufficiently explained the impact of the new qualifications. The Board should explain the anticipated impact of the qualifications on the number of available instructional paraprofessionals and whether there will be enough qualified paraprofessionals to adequately serve the needs of students with disabilities.

Second, several commentators questioned the need for these qualifications. The Board should further explain why these qualifications are necessary. Additionally, given that this proposed regulation was published in the June 30, 2007 *Pennsylvania Bulletin*, the Board should explain why the implementation dates of July 1, 2008, and July 1, 2010, are reasonable.

Third, in the Preamble to the regulation, the Board recognizes that: “[t]he most significant potential cost factor is that of establishing minimum requirements on the qualifications of instructional paraprofessionals who provide support to a student with disabilities under the direction of a classroom teacher in § 14.105.” The Board should further quantify these costs, both to the individuals who must meet the new qualifications and to the school districts that must hire them and pay their salaries.

Finally, the Board should review the qualifications and deadlines specified in the regulation for instructional paraprofessionals hired before July 1, 2008. The regulation requires them to qualify by meeting the standards of academic assessments specified in Paragraphs (3) or (4) b July 1, 2010. If a person needs additional education to pass the assessment, can he or she reasonably meet the July 1, 2010 deadline? Also, if a person fails the assessment, can he or she take it a second or third time?

*Educational interpreter*

Subsection (c)(1) specifies a passing score of 3.5 on the Educational Interpreter Performance Assessment. How did the Board determine that 3.5 is the appropriate test score for educational interpreters? What effect will this have on the availability of educational interpreters?

*Other interpreting methods*

Also relating to Subsections (c) and (d), several commentators questioned why Computer Aided Realtime Translation (CART) was not included in the proposed rulemaking. Given that the Board set standards for educational interpreters, are standards available for CART and would it be appropriate for the Board to also set standards for CART?

*Formatting of Subsection (e)*

The formatting of Subsection (e) differs between the version submitted by the Board and the version published in the June 30, 2007 *Pennsylvania Bulletin*. The Board’s version shows three definitions, a chart and then other provisions. The *Pennsylvania Bulletin* version reformats and relocates some of these provisions. We note that the following three comments reference the *Pennsylvania*

*Bulletin* version, as best as possible. In the submittal and publication of the final-form regulation, this formatting should be reviewed.

#### *Maximum caseload*

Subsection (e)(ii)(A) is a chart of the maximum caseload allowed on a single teacher's roll for each school district. What will be the fiscal impact to schools of the proposed changes to the caseload chart? How did the Board determine the maximum caseloads, including the Level IV caseload and the Level II caseload?

#### *Supplemental Services*

As printed in the June 30, 2007 *Pennsylvania Bulletin*, this definition is located at the end of Section 14.105. In the final-form regulation, this definition should be included with the other definitions listed at the beginning of Subsection (e).

#### *Itinerant services*

Subsection (e)(D) references "itinerant services." This term is not defined, as the term "itinerant" was removed from § 14.141 in the proposed rulemaking. The final-form regulation should provide a definition for this type of service.

#### **4. Section 14.106. Access to instructional materials.—Reasonableness; Clarity.**

##### *Vague language*

Subsections (a), (b), (c) and (d) use the vague term "timely." The interpretation of this term is subjective and does not give the regulated community guidance regarding how to comply with this standard. This term should be replaced with clear time requirements.

#### **5. Section 14.107. Complaint Procedure.—Clarity.**

##### *Notice*

This section includes the requirement for the Pennsylvania Department of Education (Department) to establish a complaint procedure "consistent with 34 CFR 300.151—300.153" and disseminate notice of the complaint procedure. Since the federal regulation also indicates to whom notice should be disseminated, the final-form regulation should also reflect that requirement.

#### **6. Section 14.122. Screening.—Clarity.**

##### *Appropriate instruction in math*

Paragraph (c)(1) requires "verification that the student was provided with . . . appropriate instruction in math." We note that within Paragraph (1) the verification for reading includes the essential components of reading instruction. However, that same paragraph does not specify any criteria to evaluate appropriate math instruction. The final-form regulation should specify what constitutes "appropriate instruction in math."

##### *Research-based intervention*

Paragraph (c)(4) requires "research-based intervention" to increase the student's rate of learning. This phrase also appears in Sections 14.125(a)(2)(i) and (a)(2)(i)(B). There are two concerns. First, it is not clear what a "research-based" intervention is. Second, if a criterion of "research-based" intervention is used, would it have to be approved or sanctioned by the Board as effective? The regulation should more clearly specify what intervention is acceptable.

#### **7. Section 14.123. Evaluation.—Clarity.**

##### *Professional employee or administrator*

Subsection (c) states: "[i]f a request is made orally to any professional employee or administrator of the school entity, that individual shall provide a copy of the evaluation request form. . . ." Since neither the term "professional employee" nor "administrator" is defined, it is unclear who specifically has this responsibility. The regulation should specifically designate who has this responsibility within the school so that school entities can comply and parents clearly know to whom they must make an oral request.

#### **8. Section 14.125. Criteria for the determination of specific learning disabilities.—Clarity.**

##### *Qualified personnel*

Subsection (a)(4)(i) refers to "qualified personnel." Since there are many different variations for what is "qualified," the term as used is vague and should be defined.

#### **9. Section 14.132. ESY.—Reasonableness; Clarity.**

##### *Parent notification*

Paragraph (d)(1) requires parent notification to ensure their participation, but does not specify how far in advance that notice must be issued. We recommend adding a minimum lead time for notice to provide sufficient opportunity for parent participation.

Also, the regulation requires notice to parents to "ensure" their participation. The term "ensure" means "to guarantee" or "make certain of." Therefore, as written, we question how the school entity could accomplish this standard. We recommend replacing the term "ensure" with another term.

##### *Vague language*

Subsection (e) uses the phrase "timely manner." This phrase should be replaced with clear time requirements.

#### **10. Section 14.133. Behavior support.—Protection of the public health, safety and welfare; Need; Reasonableness; Feasibility; Clarity.**

##### *Restraints in general*

The proposed amendments relating to restraints in Section 14.133 have resulted in substantial public comment and concern. The public concerns include issues related to face down prone restraints, the 30 consecutive second time period and any use of restraints at all. We recognize that the proposed provisions are intended to impose limitations on the use of restraints and require disclosure if they are used. However, there are troubling aspects related to the use of restraints in general. Therefore, the Board needs to provide an overall explanation of restraints and how the use of restraints as described in the regulation meets the criteria of protection of the public health, safety and welfare; need; and reasonableness. We will review this explanation, as well as the Board's response to commentators, to determine whether the final regulation is in the public interest.

##### *Definition of "positive techniques"*

This definition in Subsection (b) lacks clarity because it uses the term being defined in the definition. This definition should be rewritten for clarity.

##### *Definition of "restraints"*

We have three concerns with this definition in Subsection (b). First, while we do not believe this was intended, the inclusion of the phrase "that last longer than 30



consecutive seconds” in the definition technically means a device is only a restraint during its use after 30 consecutive seconds. The definition should identify what specifically is a restraint. Substantive provisions and time specifications should be located in the body of the regulation.

Second, why is a time period of 30 consecutive seconds needed? The Board needs to explain the basis for choosing “30 consecutive seconds” and why it is a safe and appropriate time limit.

Third, this provision appears to be unenforceable and impractical. Commentators observed that repeated use of these devices would be permitted as long as 30 consecutive seconds was never exceeded. Given the circumstances envisioned, such as aggressive behavior, how would the 30 consecutive second time period be measured, documented and enforced?

#### *Parental notification*

Subsection (c)(1) states:

When there is evidence to suggest that the emergency use of restrictive procedures, such as restraints may be necessary to ensure a student’s safety or the safety of others, parental consent **should** be obtained. If a restrictive procedure is needed on an emergency basis, parents **should** be informed and consent for future uses be obtained within 10 school days following the need for the use of a restrictive procedure. The need for restrictive procedures for safety **should** be noted in the student’s IEP. (Emphasis added.)

There are three concerns. First, the term “should” is nonregulatory language which indicates that these provisions are optional. It is inappropriate to include optional provisions in a regulation. Regulations establish binding norms of general applicability and future effect. These provisions need to be rewritten to set clear compliance standards.

Second, this provision requires parental consent for future use of restraints “within 10 school days” of the use of an emergency restraint. However, it is not clear when parents are to be notified of the use of the emergency restraint. Does the 10 school day period apply? The final-form regulation should clarify the time frame for and required form of parental notice.

Finally, related to our first concern, Subsection (c)(1) states that: “[t]he need for restrictive procedures for **safety should be noted** in the student’s IEP.” (Emphasis added.) However, subsection (c)(2) refers to restraints and the “[**explicit provisions** of the existing IEP.” (Emphasis added.) The regulation needs to specify whether it is necessary to detail restraint procedures in the IEP.

#### *Face down prone restraints*

Subsection (e) states:

The use of face down prone restraints is prohibited in educational programs, unless determined necessary by a physician and documented in the student’s current IEP.

We have three concerns. First, the regulation prohibits the use of face down prone restraints, but allows an exception if “determined necessary by a physician and documented in the student’s IEP.” If a physician determined this type of restraint is necessary and it could be documented in the student’s IEP, can a school entity still find this type of restraint to be unacceptable or too hazardous?

Second, the Board should explain how the restrained person’s health, safety and welfare would be adequately protected by the school entity staff.

Third, the regulation allows any physician to make the determination that restraint is necessary. Why doesn’t the regulation require a determination by the student’s personal physician?

#### **11. Section 14.145. LRE Requirements.—Clarity.**

*“To the maximum extent and as provided in the IEP”*

Paragraph (a)(1) provides that each school entity shall ensure that “to the maximum extent and as provided by the IEP, the student with a disability is educated with students who are not disabled.” The Individuals with Disabilities Education Act (IDEA) requires that “to the maximum extent **appropriate**, children with disabilities . . . are educated with children who are not disabled . . .” (20 USC 1412(a)(5)(A)) (Emphasis added.) The associated federal regulation also requires public agencies to ensure that “to the maximum extent **appropriate**, children with disabilities . . . are educated with children who are nondisabled.” (34 CFR. 114(a)(2)(ii)) (Emphasis added.) There were public comments submitted both in favor of the Board’s language and questioning the Board’s language. The Board should explain why it has not included the word “appropriate” in Paragraph (a)(1).

#### *Paragraph (a)(2)*

A commentator noted that words appear to be missing from this paragraph. We agree that this provision is not clear. The Board should review this provision and make corrections as appropriate.

*If the child can . . . make progress in the goals included in the student’s IEP*

Paragraph (a)(3) states:

A student may not be determined to require separate education because the child cannot achieve at the same level as classmates who do not have disabilities if the child can, with supplementary aids and services, make progress in the goals included in the student’s IEP.

A commentator is concerned that this provision could be interpreted to allow minimal progress in an IEP to be used as justification to keep a student in a regular education classroom. The Board should explain who makes the determination that the student “can make progress, with supplementary aids and services” and how that progress will be evaluated.

#### **12. Section 14.155. Range of services.—Clarity.**

##### *Subsection (a)*

Based upon the location of the brackets, it is unclear what provisions the Board intends to delete from this regulation. As published in the *Pennsylvania Bulletin*, the proposed amendment makes the provision repetitive. The final-form regulation should be more specific as to what provisions are intended to remain in this subsection.

#### **13. Miscellaneous Clarity**

The following is a list of vague language in the regulation. The Board should clarify this language in the final-form regulation.

- Section 14.106(c) and (e) use the phrase “reasonable steps.”
- Section 14.108 states that parents will have “reasonable access” to classrooms.

- Section 14.122(c)(3) mentions “systematic observation.”
- Section 14.124(b) mentions “reasonable efforts” to obtain parental consent.
- Section 14.133(a) mentions “demeaning treatment” and “aversive techniques.”

Finally, under Section 14.131(a)(1)(iii), a comma should be added between the words “communication” and “accessing” in the first sentence.

ARTHUR COCCODRILLI,  
*Chairperson*

[Pa.B. Doc. No. 07-1726. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Notice of Filing of Final Rulemaking

The Independent Regulatory Review Commission (Commission) received the following regulation. It is scheduled to be considered on the date noted. The Commission’s public meetings are held at 333 Market Street, 14th Floor, in Harrisburg at 10:30 a.m. To obtain a copy of the regulation, interested parties should first contact the promulgating agency. If a copy cannot be obtained from the promulgating agency, IRRC will provide a copy.

This schedule is tentative. Contact the Commission at (717) 783-5417 or check our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us) for updates.

#### Final-Form

<i>Reg. No.</i>	<i>Agency/Title</i>	<i>Received</i>	<i>Public Meeting</i>
17-73	Municipal Police Officers’ Education and Training Commission Administration of the Training Program	8/31/07	10/4/07

ARTHUR COCCODRILLI,  
*Chairperson*

[Pa.B. Doc. No. 07-1727. Filed for public inspection September 14, 2007, 9:00 a.m.]

## INSURANCE DEPARTMENT

### Application for Approval to Acquire Control

The Medical Protective Company has filed an application for approval to acquire control of Millennium Insurance Company, a Pennsylvania domiciled stock casualty insurance company. The filing was made under the requirements set forth under the Insurance Holding Companies Act (40 P. S. §§ 991.1402—991.1413). Persons wishing to comment on the acquisition are invited to submit a written statement to the Insurance Department (Department) within 7 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Robert Brackbill, Company

Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557 or [rbrackbill@state.pa.us](mailto:rbrackbill@state.pa.us).

JOEL SCOTT ARIO,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 07-1728. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Application for Approval to Acquire Control

VO Acquisition, LLC has filed an application for approval to acquire control of Value Behavioral Health of Pennsylvania, Inc., a Pennsylvania domiciled risk assuming preferred provider organization that is not a licensed insurance company. The filing was made under the requirements set forth under the Insurance Holding Companies Act (40 P. S. §§ 991.1402—991.1413). Persons wishing to comment on the acquisition are invited to submit a written statement to the Insurance Department (Department) within 14 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail and relevant facts to inform the Department of the exact basis of the statement. Written statements should be directed to Robert Brackbill, Company Licensing Division, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557 or [rbrackbill@state.pa.us](mailto:rbrackbill@state.pa.us).

JOEL SCOTT ARIO,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 07-1729. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Application and Request for a Certificate of Authority

Perini Services/Southampton Manor Limited Partnership has applied for a Certificate of Authority to operate a Continuing Care Retirement Community at Shippensburg Health Care Center in Shippensburg, PA. The initial filing was received on August 14, 2007, and was made under the requirements set forth under the Continuing Care Provider Registration and Disclosure Act (40 P. S. §§ 1302—3225). Persons wishing to comment on the grounds of public or private interest to the issuance of a Certificate of Authority are invited to submit a written statement to the Insurance Department (Department) within 30 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include name, address and telephone number of the interested party, identification of the application to which the statement is addressed and a concise statement with sufficient detail to inform the Department of the exact basis of the statement. Written statements should be directed to Steven L. Yerger, Insurance Department, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557 or [syerger@state.pa.us](mailto:syerger@state.pa.us).

JOEL SCOTT ARIO,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 07-1730. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Application for Voluntary Surrender of Certificate

Urban Insurance Company of Pennsylvania, a domestic stock casualty insurance company, has submitted an application for approval to surrender its Insurance Department (Department) Certificate of Authority. Persons wishing to comment on the grounds of public or private interest concerning the surrender, are invited to submit a written statement to the Department within 7 days from the date of this issue of the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone number of the writer, identification of the application to which the comment is addressed and a concise statement with sufficient detail to inform the Department of the exact basis of the comment and the relevant facts upon which it is based. Written statements should be directed to Robert Brackbill, Company Licensing Division, 1345 Strawberry Square, Harrisburg, PA 17120, fax (717) 787-8557 or rbrackbill@state.pa.us.

JOEL SCOTT ARIO,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 07-1731. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Insurance Coverages or Risks Eligible for Export by Insurance Commissioner

Under section 1604(2)(ii) of The Insurance Company Law of 1921 (40 P. S. § 991.1604(2)(ii)), the Acting Insurance Commissioner declares the following insurance coverages to be generally unavailable in the authorized market at the present, and thus exportable, and adopts the following export list. Accordingly, for those insurance coverages which are included on the export list, a diligent search among insurers admitted to do business in this Commonwealth is not required before placement of the coverages in the surplus lines market.

#### Export List

##### *Amusements*

Amusement Parks and their Devices  
Recreational and Sporting Events  
Special Short Term Events  
Theatrical Presentations

##### *Aviation*

Fixed Base Operations  
Chemical Spray and/or Drift  
Day Care Centers Liability, including Sexual Abuse Coverage  
Demolition Contractors Liability  
Firework Sales/Manufacturing  
Flood Insurance not provided under Federal Flood Insurance  
Hunting Clubs  
Kidnapping, Ransom and Extortion Insurance  
Liquor Liability—Monoline  
Medical Malpractice Liability with or without related General Liability Coverages  
Nursing Home Liability with or without other Affiliated Elder Care Services  
Railroad  
Real-Estate Environmental Impairment Coverage  
Security/Detective/Patrol Agencies  
Taxicab Liability  
Vacant Properties

This list becomes effective on the date of its publication in the *Pennsylvania Bulletin* and supersedes the list published at 36 Pa.B. 2346 (May 13, 2006) and shall remain in effect until superseded by a subsequent list as published in the *Pennsylvania Bulletin*.

Questions regarding the Export List may be directed to Cressinda E. Bybee, Office of Corporate and Financial Regulation, 1345 Strawberry Square, Harrisburg, PA 17120, (717) 783-2144, fax (717) 787-8557, e-mail cbybee@state.pa.us.

JOEL SCOTT ARIO,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 07-1732. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Keystone Health Plan Central; Experience Rating Methodology; Filing No. 07-II; Rate Filing

On August 28, 2007, Keystone Health Plan Central submitted to the Insurance Department (Department) for its review and approval a Large Group Rating Methodology for groups with 100 or more contracts.

This filing will impact approximately 37,000 members. An effective date of February 1, 2008, has been requested.

Unless formal administrative action is taken prior to November 29, 2007, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are available for public inspection during normal working hours, by appointment, at the Department's Harrisburg Regional office.

Interested parties are invited to submit written comments, suggestions or objections to Rashmi Mathur, Actuary, Bureau of Accident and Health Insurance, Insurance Department, 1311 Strawberry Square, Harrisburg, PA 17120, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 07-1733. Filed for public inspection September 14, 2007, 9:00 a.m.]

### United Services Automobile Association and USAA Casualty Insurance Company; Homeowners Rate Revision; Rate Filing

On August 28, 2007, the Insurance Department (Department) received from United Services Automobile Association and USAA Casualty Insurance Company a filing for a rate level revision for Homeowners insurance.

United Services Automobile Association requests an overall 14.0% decrease amounting to \$4,476,000 annually, to be effective December 31, 2007.

USAA Casualty Insurance Company requests an overall 0.0% change, to be effective December 31, 2007.

Unless formal administrative action is taken prior to October 27, 2007, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Department's website at [www.ins.state.pa.us](http://www.ins.state.pa.us). Under the Quick Links section, click on the link "Rate Filings Published in the PA Bulletin."

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's Harrisburg office.

Interested parties are invited to submit written comments, suggestions or objections to Xiaofeng Lu, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, [xlu@state.pa.us](mailto:xlu@state.pa.us), within 15 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,  
*Acting Insurance Commissioner*

[Pa.B. Doc. No. 07-1734. Filed for public inspection September 14, 2007, 9:00 a.m.]

## LEGISLATIVE REFERENCE BUREAU

### Documents Filed But Not Published

The Legislative Reference Bureau (Bureau) accepted the following documents during the preceding calendar month for filing without publication under 1 Pa. Code § 3.13(b) (relating to contents of Bulletin). The Bureau will continue to publish on a monthly basis either a summary table identifying the documents accepted during the preceding calendar month under this subsection or a statement that no documents have been received. For questions concerning or copies of documents filed, but not published, call (717) 783-1530.

#### *Executive Board*

Resolution #CB-07-181, Dated July 9, 2007. Authorizes the Memorandum of Agreement between the Commonwealth and the UFCW for the rank and file liquor clerks unit (M1). The Memorandum of Agreement provides for the establishment of rates of pay, hours of work and other conditions of employment for the period July 1, 2007, through June 30, 2011.

Resolution #CB-07-182, Dated July 9, 2007. Authorizes the Memorandum of Intent between the Commonwealth and ISSU for the first-level supervisory unit (M2). The Memorandum of Intent provides for the establishment of rates of pay, hours of work and other conditions of employment for the period July 1, 2007, through June 30, 2011.

Resolution #CB-07-183, Dated July 9, 2007. Authorizes the Memorandum of Understanding between the Commonwealth and the OPEIU Healthcare Pennsylvania for the first-level supervisory unit (P5). The Memorandum of Understanding provides for the establishment of rates of pay, hours of work and other conditions of employment for the period July 1, 2007, through June 30, 2011.

Resolution #CB-07-184, Dated July 9, 2007. Authorizes the Memorandum of Understanding between the Commonwealth and the Pennsylvania Social Services Union,

Local 668 SEIU for the F5 bargaining unit. The Memorandum of Understanding provides for the establishment of rates of pay, hours of work and other conditions of employment for the period July 1, 2007, through June 30, 2011.

Resolution #CB-07-185, Dated July 9, 2007. Authorizes the Memorandum of Understanding between the Commonwealth and AFSCME supervisory units effective July 1, 2007, through June 30, 2011.

Resolution #CB-07-186, Dated July 9, 2007. Authorizes the Memorandum of Agreement between the Commonwealth and the FOP-LCB for the liquor law enforcement officers unit (K4). The Memorandum of Agreement provides for the establishment of rates of pay, hours of work and other conditions of employment for the period July 1, 2007, through June 30, 2011.

Resolution #CB-07-187, Dated July 9, 2007. Authorizes the Memorandum of Agreement between the Commonwealth and the FOSCEP for the rank and file unit (C4). The Memorandum of Agreement provides for the establishment of rates of pay, hours of work and other conditions of employment for the period July 1, 2007, through June 30, 2011.

Resolution #CB-07-188, Dated July 9, 2007. Authorizes the Memorandum of Understanding between the Commonwealth and the FOSCEP for the first-level supervisory unit (C5). The Memorandum of Understanding provides for the establishment of rates of pay, hours of work and other conditions of employment for the period July 1, 2007, through June 30, 2011.

Resolution #CB-07-200, Dated July 25, 2007. Authorizes side letters of agreement with the employee unions representing employees affected by the budget impasse furloughs. The side letters authorize paid time off for the day of July 9, 2007, for all employees who would otherwise have been scheduled to work that day. The paid time off will not count as hours worked for overtime purposes, nor will it replace other paid leaves that were previously approved.

Resolution #CB-07-208, Dated August 16, 2007. Authorizes the implementation of the Collective Bargaining Agreement between the Commonwealth and District 1199P, the Service Employees International Union effective July 1, 2007, through June 30, 2011.

Resolution #CB-07-220, Dated August 16, 2007. Authorizes the Memorandum of Understanding between the Commonwealth and Unemployment Compensation Referrees first-level supervisory unit (15). The Memorandum of Understanding provides for the establishment of rates of pay, hours of work, and other conditions of employment for the period July 1, 2007, through June 30, 2011.

Resolution #CB-07-221, Dated August 16, 2007. Authorizes the Memorandum of Understanding between the Commonwealth and the OPEIU Healthcare Pennsylvania for the first-level supervisory unit (P5). The Memorandum of Understanding provides for the establishment of rates of pay, hours of work and other conditions of employment for the period July 1, 2007, through June 30, 2011.

Resolution #CB-07-222, Dated August 21, 2007. Authorizes the Memorandum of Understanding between the Commonwealth and the Independent State Store Union (ISSU) for the first-level supervisory unit (M2). The Memorandum of Understanding provides for the establishment of rates of pay, hours of work and other conditions of employment for the period July 1, 2007, through June 30, 2011.

Resolution #OR-07-206, Dated August 21, 2007. Authorizes the request to combine the Deputy Commissioner of Administration and the Deputy Commissioner of Professional Responsibility Deputates into one Deputate named the Deputy Commissioner of Administration and Professional Responsibility.

Resolution #OR-07-208, Dated August 21, 2007. Authorizes the Consolidation of the Bureau of Human Resources' five current divisions into four divisions by abolishing the Personnel Administration and Benefits Division; renaming the Employee Relations and Safety Division to the Employee Relations, Services and Safety Division; and renaming the Classification and Staffing Division to the Organization Management and Staffing Services Division.

Resolution #OR-07-209, Dated August 21, 2007. Authorizes the reorganization of the Department of Education, within the Office of Postsecondary/Higher Education, by renaming the Equal Educational Opportunity Office to the Office of Access Initiatives; renaming the Bureau of Teacher Certification and Preparation to the Bureau of School Leadership and Teacher Quality; establishing the Division of Teacher Quality; renaming the Division of Candidate Evaluation Services to the Division of Certification Services; and renaming the Division of Teacher Education to the Division of Professional Education.

*Governor's Office*

Management Directive No. 205.38—Procedures for Safe Assembly of Commonwealth Employees During Emergency Evacuation of Commonwealth Facilities Dated July 5, 2007.

Management Directive No. 210.13—Retention and Disposition of Records Created on Electronic Mail (E-mail) Systems, Amended August 7, 2007.

Management Directive No. 505.33—Working From Home During Emergencies Including a Pandemic Influenza Event, Dated August 7, 2007.

Administrative Circular No. 07-08—Revised Revenue Estimates, 2007-08 Fiscal Year, Dated July 17, 2007.

Administrative Circular No. 07-09—Availability-Commonwealth Telephone Directory, Dated July 18, 2007.

Administrative Circular No. 07-10—Revenue Estimates, 2008-09 Fiscal Year, Dated July 31, 2007.

MARY JANE PHELPS,  
*Director, Pennsylvania Bulletin*

[Pa.B. Doc. No. 07-1735. Filed for public inspection September 14, 2007, 9:00 a.m.]

## MILK MARKETING BOARD

### Hearing and Presubmission Schedule for All Milk Marketing Areas; Container Costs

Under the Milk Marketing Law (31 P.S. § 700j-101—700j-1302), the Milk Marketing Board (Board) will conduct a public hearing for Milk Marketing Area Nos. 1—6

on October 3, 2007, at 1 p.m. in Meeting Rooms 1 and 2 of the Commonwealth Technology Center, 1 Technology Park, Harrisburg, PA.

The purpose of the hearing is to receive testimony and exhibits concerning container costs and their effects on minimum wholesale and retail prices. Evidence will be based on a representative cross section of milk dealers doing business in each of the Milk Marketing Areas. Evidence will be based on July 2007 invoices.

The staff of the Board is deemed to be a party to this hearing, and the attorney representing staff is deemed to have entered his appearance. Other persons who wish to present evidence may be included on the Board's list of parties by: (1) having their attorney file with the Board on or before 4 p.m. on September 20, 2007, a notice of appearance substantially in the form prescribed by 1 Pa. Code § 31.25 (relating to form of notice of appearance); or (2) if unrepresented by counsel, filing with the Board on or before 4 p.m. on September 20, 2007, notification of their desire to be included as a party. Parties may indicate in their notices of appearance if alternate means of service, such as, email or fax, are acceptable. Notices of appearance filed electronically should be directed to [deberly@state.pa.us](mailto:deberly@state.pa.us).

The parties shall observe the following requirements for advance filing of witness information and exhibits. The Board may exclude witnesses or exhibits of a party that fails to comply with these requirements. In addition, the parties shall have available in the hearing room at least 20 additional copies made available for the use of nonparties attending the hearing.

1. By 4 p.m. on September 25, 2007, each party shall file with the Board, in person or by mail, one original and eight copies and ensure receipt by all other parties of one copy of:

a. A list of witnesses who will testify for the party, along with a statement of the subjects concerning which each witness will testify. A witness who will be offered as an expert shall be so identified, along with the witness's area or areas of proposed expertise. For expert witnesses, there shall also be filed a statement of the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

b. Each exhibit to be presented, including testimony to be offered in written form.

2. By 4 p.m. on October 1, 2007, each party shall file and serve as set forth in paragraph 1 information concerning rebuttal witnesses and copies of rebuttal exhibits.

Parties who wish to offer in evidence documents on file with the Board, public documents or records in other proceedings before the Board, or wish the Board to take official notice of facts shall comply with, respectively, 1 Pa. Code § 35.164, § 35.165, § 35.167 or § 35.173. Whenever these rules require production of a document as an exhibit, copies shall be provided to each Board member and to all other parties; in addition, at least 20 copies shall be available for distribution to nonparties attending the hearing.

Requests by parties for Board staff to provide data pertinent to the hearing shall be made in writing and received in the Board office by 2 p.m. on September 28, 2007.

The filing address for the Board is Milk Marketing Board, Room 110, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110.

KEITH BIERLY,  
Secretary

[Pa.B. Doc. No. 07-1736. Filed for public inspection September 14, 2007, 9:00 a.m.]

## PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY

### Enhanced All-Hazard Mitigation Plan; Comment Period

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended by Pub. L. No. 106-390, October 30, 2000, and 44 CFR 201.3(c)(2) (relating to responsibilities), the Pennsylvania Emergency Management Agency (Agency) gives notice that the Commonwealth of Pennsylvania Enhanced All-Hazard Mitigation Plan (Plan) providing for the Statewide hazard mitigation is available for public notice and opportunity to comment.

The Plan is on file with the Agency. Persons may receive a copy of the Plan by requesting a copy from the Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110, (717) 651-2726, fax (717) 651-2040, dbollinger@state.pa.us. The Plan is also available at the Agency's website: www.pema.state.pa.us. Persons who wish to comment may do so by sending a letter by mail, e-mail or facsimile to the address listed previously.

The closing date for comments is September 30, 2007. Comments received by the Agency will be reviewed prior to final adoption of the Plan.

ROBERT P. FRENCH  
Director

[Pa.B. Doc. No. 07-1737. Filed for public inspection September 14, 2007, 9:00 a.m.]

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

### Default Order

Public Meeting held  
August 30, 2007

*Commissioners Present:* Wendell F. Holland, Chairperson; James H. Cawley, Vice-Chairperson; Terrance J. Fitzpatrick; Tyrone J. Christy; Kim Pizzingrilli

*Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Hope Transportation, Inc.; A-00119351; A-00119351C0701*

### Opinion and Order

*By the Commission*

Before us for consideration is the Petition for Reinstatement of Certificate of Public Convenience (Petition) filed

on June 15, 2007, by Hope Transportation, Inc., (Petitioner). No Response to the Petition has been filed.

### History of the Proceeding

On March 6, 2007, the Commission's Bureau of Transportation and Safety (BTS) instituted a Complaint against the Petitioner, alleging that the Petitioner failed to pay outstanding assessments of \$1,408, a violation of section 510(c) of the Public Utility Code (Code), 66 Pa.C.S. § 510(c). The Complaint, with notice appended thereto, was served on the Petitioner on March 27, 2007. The Complaint advised the Petitioner that if an Answer were not filed within twenty days, BTS would request that the Commission impose the proposed penalty. The proposed penalty included cancellation of the Petitioner's Certificate of Public Convenience (Certificate).

Our Order issued herein on June 5, 2007, noted that the Petitioner had failed to file an answer to the Complaint. Accordingly, that Order, *inter alia*, cancelled the Petitioner's Certificate.

On June 15, 2007, the Petitioner filed the instant Petition requesting reinstatement of its Certificate.

### Discussion

It is well settled that decisions such as whether to grant a Petition for Reinstatement are left to the Commission's discretion and will be reversed only if that discretion is abused. *Hoskins Taxi Service v. Pa. PUC*, 486 A.2d 1030 (Pa. Cmwlth. 1985). In ruling upon a petition for reinstatement, it is incumbent upon this Commission to examine all relevant factors in order to reach an equitable result. *Medical Transportation, Inc.*, 57 Pa. P.U.C. 79 (1983).

The Commission has identified five factors which are particularly relevant to the determination of a petition to reinstate: (1) the amount of time which elapsed between the cancellation of the certificate of public convenience and the filing of the petition to reinstate; (2) whether the petitioner has a record of habitually violating the Public Utility Code; (3) the reasonableness of the excuse given for the violation that caused the certificate to be cancelled, *Re: Bishop*, 58 Pa.P.U.C. 519 (1984); (4) whether the petitioner has implemented procedures to prevent a recurrence of the circumstances giving rise to the subject complaint, *Pa.P.U.C. v. Grimm Motors*, Docket No. A-00111048, *et al.* (May 1, 1998); and (5) whether the petitioner is in compliance with the requirement that all assessments must be current prior to reinstatement, *Re: M.S. Carriers, Inc.*, Docket No. A-00110601 (May 4, 1999).

We note that, although the sole reason for the cancellation of the Petitioner's Certificate was the Petitioner's failure to pay its outstanding assessments, we find it necessary to evaluate all five factors in deciding whether to grant or deny the Petition.

The first factor relevant to the determination of a petition for reinstatement is the amount of time a certificate remains dormant. When the period of dormancy is short, reinstatement can be treated solely as a matter between a petitioner and the Commission. *Application of Michael LoRusso, t/d/b/a Elegance Limousine Service*, 1999 Pa.P.U.C. LEXIS 14, \*5 (1999). The longer this period becomes, the more likely it is that another carrier would rely on the cancellation as being permanent and formulate plans to fulfill the dormant service. *Id.*

The Petitioner contends that it filed its Petition within the time frame specified by the Commission. (Petition at ¶ 3). That contention is borne out by a review of the

record. The Petitioner's Certificate was cancelled by Order issued on June 5, 2007, and the Petitioner filed the instant Petition for Reinstatement on June 15, 2007. We note that ten days elapsed between the date of cancellation and the Petitioner's request for reinstatement. This short period of time weighs favorably toward granting reinstatement.

The second reinstatement factor is whether the Petitioner has a record of habitually violating the Code or the Commission's Regulations. The Petitioner contends that it has committed no violations of the Code or the Commission's Regulations since it was issued its authority. (Petition at ¶ 1). The Petitioner was issued its Certificate on July 7, 2003. A review of the Commission's records reveals that, other than the Complaint for which the Petitioner's Certificate was cancelled, the Petitioner has had no other complaints filed against it. On review of the foregoing, we conclude that the Petitioner does not have a history of violations of the Code and our Regulations. Accordingly, we conclude that this factor weighs in favor of reinstatement.

The third and fourth factors will be considered jointly, since they are interrelated. The third reinstatement factor queries the reasonableness of the excuse offered for the violation. The fourth factor is whether the Petitioner has implemented procedures to prevent a recurrence of the circumstances giving rise to the subject Complaint.

The violation for which the Petitioner's Certificate was cancelled was that the Petitioner failed to pay its outstanding assessments. The Petitioner provides the following account of how this violation occurred, and the steps it has taken to prevent a recurrence:

We had employed an accountant to handle our books and payment of bills, payroll and any other expenses which may have arisen. When any mail came in it was given directly to the accountant. It was our understanding that he was paying all bills as they came in. Much to our dismay we have found out that there were several items which were not paid including the assessment due to the State.

We have since replaced that accountant and have taken a more active role in overseeing the financial aspect of the business to ensure that all debts are paid in a timely fashion.

(Petition at ¶¶ 4, 5).

Our consideration of all of the above points leads us to conclude that the Petitioner has offered a reasonable excuse for the violation which led to the cancellation and also has implemented a reasonable procedure to prevent recurrence of the violation. Accordingly, the third and fourth factors weigh in favor of reinstatement.

The fifth factor requires assessments and fines to be current prior to reinstatement. The Petitioner asserts that all outstanding obligations have been paid in full. (Petition at ¶ 2). While the record indicates that the Petitioner has now paid its outstanding assessment, we note that the Petitioner has no evidence of current insurance on file with the Commission. Although payment of all outstanding obligations weighs in favor of reinstatement, the Commission's policy requires a new filing of proof of insurance by carriers whose petitions for reinstatement are granted. Accordingly, reinstatement of the Petitioner's Certificate herein will be made conditional on the receipt of a new filing of proof of insurance by the Petitioner within thirty days of the date of entry of the instant Opinion and Order.

Finally, we note that, although the Petitioner is current on its assessments, it is not current with its assessment reports. The Petitioner is reminded that it must file an annual assessment report, as required by Section 31.10 of our Regulations, 52 Pa. Code § 31.10. Additionally, the Commission recently adopted the policy that a carrier seeking reinstatement of its Certificate must be current in its assessment reports. The reinstatement will be made conditional on the filing of the reports, and the carrier will have sixty days after the date of issuance of the Opinion and Order in which to file the reports. Should the Petitioner have any question about the process of filing the reports, the Petitioner should contact the Financial and Assessment Section of the Commission's Office of Administrative Services. As stated, those reports will be due sixty days from the date of entry of this Opinion and Order. In order that all carriers should have notice of this policy, this Opinion and Order will be published in the *Pennsylvania Bulletin*.

In evaluating the facts and circumstances of this proceeding, we conclude that reinstatement of the Petitioner's Certificate is appropriate. However, we wish to admonish the Petitioner that violation of the Commission's rules and Regulations can result in the further imposition of severe sanctions including the cancellation of its Certificate; *Therefore*,

*It Is Ordered That:*

1. The Petition for Reinstatement filed by Hope Transportation, Inc., on June 15, 2007, will be granted conditional upon Hope Transportation, Inc., filing appropriate proof of liability insurance with the Commission's Bureau of Transportation and Safety within thirty (30) days of the date of entry of this Opinion and Order.

2. The Petition for Reinstatement filed by Hope Transportation, Inc., on June 15, 2007, will be granted conditional, additionally, upon Hope Transportation, Inc., filing its past due assessment reports with the Financial and Assessment Section of the Commission's Office of Administrative Services within sixty (60) days of the date of entry of this Opinion and Order.

3. Hope Transportation, Inc., is prohibited from operating until it has filed with the Commission's Bureau of Transportation and Safety the appropriate proof of liability insurance, as outlined previously.

4. A copy of this Opinion and Order shall be served on the Commission's Bureau of Transportation and Safety and on the Financial and Assessment Section of the Office of Administrative Services.

5. A copy of this Opinion and Order shall be served upon the Pennsylvania Department of Transportation and on the Pennsylvania Department of Revenue.

6. A copy of this Opinion and Order shall be sent for publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 07-1738. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Default Order

Public Meeting held  
August 30, 2007

*Commissioners Present:* Wendell F. Holland, Chairperson;  
James H. Cawley, Vice-Chairperson; Terrance J.  
Fitzpatrick; Tyrone J. Christy; Kim Pizzingrilli

*Pennsylvania Public Utility Commission, Law Bureau  
Prosecutory Staff v. We Connect Communications, Inc.  
(2006.0090.00); C-20066749; A-120693*

### Order

*By the Commission*

On August 24, 2006, the Law Bureau Prosecutory Staff filed a Formal Complaint against We Connect Communications, Inc. (the Respondent), a competitive local exchange carrier certificated at A-120693. In the Complaint, Prosecutory Staff alleged that the Commission sent by certified mail prior written notices to the Respondent that pursuant to 66 Pa.C.S. § 504 its 2004 Telecommunications Relay Service (TRS) Annual Access Line Summary Report and Annual Tracking Report (TRS Reports) were due. The Complaint charged that the Respondent violated 66 Pa.C.S. § 504 by failing to file its 2004 TRS Reports. The Complaint requested that the Commission issue an order cancelling the Respondent's certificate of public convenience for failure to file its 2004 TRS Reports.

According to the U.S. Postal Service return receipt, the Complaint was served on September 2, 2006. To date, more than 30 days later, no answer has been filed to the Complaint and the 2004 TRS Reports have not been filed. In addition, we are not aware that Respondent has any current customers in Pennsylvania, and Respondent was never assigned any NXX codes.

The Commission puts the industry on notice that we will not hesitate to invoke our authority under the Public Utility Code to ensure timely compliance with our regulations and orders including the ordering of such other remedy as the Commission may deem appropriate. 66 Pa.C.S. §§ 504, 505, 506, and 3301. Based on Respondent's failure to file an answer to the Complaint or file its 2004 TRS Reports, we conclude that revocation of We Connect Communications, Inc.'s certificate of public convenience is in the public interest. Furthermore, the Commission may take other appropriate action, including the imposition of penalties under Section 3301, in lieu of cancellation, if Respondent seeks relief from this Default Order; *Therefore,*

*It Is Ordered That:*

1. The allegations in the Law Bureau Prosecutory Staff's Complaint are deemed admitted and the Complaint is thereby sustained.

2. The Secretary serve a copy of this Default Order upon the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, and the Attorney General's Bureau of Consumer Protection, and also cause a copy of this Default Order to be published in the *Pennsylvania Bulletin* with a 20-day comment period.

3. We Connect Communications, Inc. immediately cease providing service to any new customers and, within 10 days of the entry date of this order, provide written notice to any existing customers directing each to select an alternative service provider within 30 days of the date of the notice. Such notice must include a statement of the Commission's intent to cancel the company's certificate of

public convenience absent adverse public comment within the 20-day time constraint established pursuant to Ordering Paragraph No. 2, above.

4. Absent the filing of adverse public comment, 30 days after publication in the *Pennsylvania Bulletin* and without further action by the Commission, the certificate(s) of public convenience held by We Connect Communications, Inc. at A-120693 shall be cancelled, and the company's name stricken from all active-utility lists maintained by the TRS Report Section of the Commission's Bureau of Fixed Utility Services and the Assessment Section of the Bureau of Administrative Services.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 07-1739. Filed for public inspection September 14, 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 October 9, 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.

**Application of the following for approval to *begin operating as common carriers for transportation of persons as described under the application.***

**A-00124057. Clifford Weatherby** (2692 SR 168, Volant, Lawrence County, PA 16156)—persons in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in the County of Lawrence to points in Pennsylvania, and return.

**Application of the following for approval of the *additional right and privilege of operating motor vehicles as common carriers for transportation of persons as described under the application.***

**A-00123351, F4. 903 Rentals, Inc.** (1358 SR 903, Jim Thorpe, PA 18229)—a corporation of the Commonwealth—for the additional right, to transport as common carrier, by motor vehicle, persons in airport transport service, from points in the Borough of Jim Thorpe, Carbon County and within an airline distance of 100 statute miles of the limits thereof, to the following airports: Lehigh Valley International Airport located in the Township of Hanover, Lehigh County; North Philadelphia Airport, located in the City and County of Philadelphia; Warrington Airport located in the Township of Warrington, Bucks County; Reading Municipal Airport located in the Township of Bern, Berks County; Philadelphia International Airport located in the City and County of Philadelphia and the Township of Tinicum, Delaware County and Wilkes-Barre Scranton International Airport, located in the City of Avoca, Lackawanna County.



**Application of the following for approval of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of household goods by transfer of rights as described under the application.**

**A-00124048. ABC Easy Moving & Storage Company, LLC**, a corporation of the Commonwealth of Pennsylvania (113 Livingston Road, West Mifflin, Allegheny County, PA 15122)—household goods, office furnishings and store equipment, in use, between points in the 27th Ward of the City of Pittsburgh and the Boroughs of Bellevue, Avalon, Ben Avon and West View and the Township of Ross, Allegheny County; (2) as a Class D carrier, household goods, office furnishings and store equipment, in use, from points in the 27th Ward of the City of Pittsburgh and the Boroughs of Bellevue, Avalon, Ben Avon and West View and the Township of Ross, Allegheny County, to other points in Pennsylvania within 75 miles by the usually traveled highways of the City-County Building in the City of Pittsburgh; and (3) as a Class D carrier, household goods and office furniture, in use, between points in the county of Allegheny; which is to be a transfer of rights authorized under the certificate issued at A-00108005, F.1. to Roland T. Barry, t/a ABC EZ Moving Co., subject to the same limitations and conditions. *Attorney:* Daniel R. Tobin, Esquire, 103 North Meadows Drive, Suite 230, Wexford, PA 15090.

**Application of the following for approval of the additional right and privilege operating of motor vehicles as common carriers for transportation of household goods as described under the application.**

**A-00111241, F.2. Delivery Today, Inc.** (8016 Perry Highway, Suite 1, Pittsburgh, PA 15237)—a corporation of the Commonwealth—for the additional right, to transport, by motor vehicle, household goods in use, between points in Allegheny County, and from points in Allegheny County, to points in the Counties of Beaver, Butler, Washington and Westmoreland.

*Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Airport Shuttle Service, Inc.; Doc. No. A-00109346C*

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Airport Shuttle Service, Inc. t/a Supershuttle, respondent, maintains its principal place of business at 1227 East 15th Street, Wilmington, DE 19802.

2. That respondent was issued a Certificate of Public Convenience by this Commission on February 7, 1991, at Application Docket No. A-00109346.

3. That, on January 24, 2007, Enforcement Officer Lark of the Philadelphia District Office attempted to contact respondent to schedule an annual inspection and was unable to make contact at the address of record. An interview with the current occupant of the respondent's

address of record indicates that the respondent has not occupied the premises for approximately 10 years. Subsequent investigations at other properties formerly occupied by the respondent, and at the Philadelphia International Airport, provided no indication that service was currently being rendered or that the granted authority was actively being used. At no time prior to the attempted annual inspection did the respondent provide notification to this Commission of a change of address. Additionally, respondent has reported no revenues, nor paid any assessments, in at least the last 3 previous years. Therefore, respondent abandoned or discontinued service without having first filed an application with this Commission for abandonment or discontinuance of service.

4. That respondent, by failing to file an application with this Commission prior to abandoning or discontinuing service, violated 52 Pa. Code § 3.381(a)(1)(v) and 66 Pa.C.S. § 1102(a)(2) and, by failing to maintain adequate, efficient, and safe service and reasonable facilities, violated 66 Pa.C.S. § 1501.

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission revoke respondent's Certificate of Public Convenience at A-00109346.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services & Enforcement Division  
Bureau of Transportation and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, Chief of Enforcement for the Motor Carrier Services and Enforcement Division of the Bureau of Transportation and Safety, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_

Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services and Enforcement  
Division  
Bureau of Transportation and Safety

NOTICE

A. You must file an answer within twenty (20) days of the date of service of this complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code § 1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the outcome. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this complaint. Your answer must be verified and the original and three (3) copies sent to:

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty (20) days, the Bureau of Transportation and Safety will request that the Commission issue an order imposing a penalty, which will include the revocation of your Certificate of Public Convenience.

C. If you file an answer which either admits or fails to deny the allegations of the complaint, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty, which may include the revocation of your Certificate of Public Convenience.

D. If you file an answer which contests the complaint, the matter will be assigned to an administrative law judge for hearing and decision.

E. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.

*Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. Kenneth C. & Diane M. Lapinski; Doc. No. A-00114580C*

#### COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Kenneth C. & Diane M. Lapinski, t/a Falcon Enterprises, respondents, maintain their principal place of business at 101 Orchard Road, New Wilmington, PA 16142.

2. That respondents were issued certificates of public convenience by this Commission on June 10, 1998, for Limousine authority, at Application Docket No. A-00114580, F.1, on May 14, 1998, for paratransit authority, at Application Docket No. A-00114580, F. 2, on March 19, 1999, for limousine authority, at Application Docket No. A-00114580, F.3, and on March 9, 1999, for group and party 16+ authority, at Application Docket No. A-00114580, F.4.

3. Enforcement Officer William D. Wested went to the respondents' place of business at 101 Orchard Road, New Wilmington on October 17, 2006, November 17, 2006 and January 9, 2007, to conduct an annual limousine inspection. The premises were vacated.

4. The Commission's safety office has attempted to conduct respondents' annual safety inspection with no success. A letter was sent to respondents on January 25, 2007, from the Manager of the Pittsburgh District Office outlining the information required for the inspection and asking for a response by February 12, 2007. Respondents failed to contact the district office to schedule their annual inspection. Visits were made to the respondents' address and to post offices, a review of phone directories and a search of internet directories were made, and checks with the local police have been conducted. As of this date, no contact by the carrier has been received by either the Harrisburg or Pittsburgh District Office.

5. Respondents have not notified the Commission of any change of address.

6. Respondents have not filed assessment reports with the Commission since 2003.

7. Respondents abandoned or discontinued limousine and paratransit service without having submitted an application with this Commission to discontinue service,

and abandoned or discontinued G&P 16+ service without having submitted a letter to this Commission.

8. That respondents, by failing to file with this Commission applications to discontinue limousine and paratransit service, and a letter containing a statement that group and party 16+ service is no longer being rendered, and by failing to file assessment reports since 2003, violated 52 Pa. Code § 3.381(a)(1)(v), § 3.381(a)(5), and 66 Pa.C.S. §§ 1102(a)(2) and 510(b).

Wherefore, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission revoke Kenneth C. & Diane M. Lapinski, t/a Falcon Enterprise's certificates of public convenience at A-00114580, Fs. 1, 2, 3 & 4.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Safety & Enforcement Division  
Director, Bureau of Transportation and Safety  
P. O. Box 3265  
Harrisburg, PA 17105-3265

#### VERIFICATION

I, Wendy J. Keezel, Chief of Enforcement for the Motor Carrier Services and Enforcement Division of the Bureau of Transportation and Safety, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_

Wendy J. Keezel, Chief of Enforcement  
Motor Carrier Services and Enforcement  
Division  
Bureau of Transportation and Safety

#### NOTICE

A. You must file an answer within twenty (20) days of the date of service of this complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code § 1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the outcome. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this complaint. Your answer must be verified and the original and three (3) copies sent to:

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

B. If you fail to answer this Complaint within twenty (20) days, the Bureau of Transportation and Safety will request that the Commission issue an Order imposing a penalty. Pursuant to 66 Pa.C.S. § 3301(a), the penalty could include a fine of up to \$1,000 for each violation, the revocation of your Certificate of Public Convenience, or any other remedy as may be appropriate. Each day you continue to violate any regulation, direction, requirement, determination or order of the Commission is a separate and distinct offense, subject to additional penalties.

C. If you file an Answer which admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request that the Commission issue

an Order imposing a penalty, which may include the cancellation of your Certificate of Public Convenience. Should the Commission cancel your Certificate of Public Convenience, it may also impose an additional fine of up to \$1,000.

D. If you file an answer which contests the complaint, the matter will be assigned to an administrative law judge for hearing and decision. The judge is not bound by the optional fine set forth above.

E. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 07-1740. Filed for public inspection September 14, 2007, 9:00 a.m.]

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 Pymatuning Independent Telephone Company and Sprint Communications Company, LP 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. 07-1742. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Telecommunications

**A-311700F7040. Lackawaxen Telecommunications Services, Inc. and Sprint Communications Company, LP.** Joint petition of Lackawaxen Telecommunications Services, Inc. and Sprint Communications Company, LP for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Lackawaxen Telecommunications Services, Inc. and Sprint Communications Company, LP, by its counsel, filed on August 27, 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 Lackawaxen Telecommunications Services, Inc. and Sprint Communications Company, LP 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. 07-1741. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Telecommunications

**A-312800F7040. Pymatuning Independent Telephone Company and Sprint Communications Company, LP.** Joint petition of Pymatuning Independent Telephone Company and Sprint Communications Company, LP for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Pymatuning Independent Telephone Company and Sprint Communications Company, LP, by its counsel, filed on August 27, 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.

### Telecommunications

**A-311394F7003. T-Mobile USA, Inc. and Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company.** Joint petition of T-Mobile USA, Inc. and Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

T-Mobile USA, Inc. and Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company, by its counsel, filed on August 29, 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 T-Mobile USA, Inc. and Commonwealth Telephone Company, d/b/a Frontier Communications Commonwealth Telephone Company 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. 07-1743. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Telecommunications

**A-311419F7001. Verizon North, Inc. and NEP Cellcorp, Inc., d/b/a NEP Wireless.** Joint petition of Verizon North, Inc. and NEP Cellcorp, Inc., d/b/a NEP Wireless for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon North, Inc. and NEP Cellcorp, Inc., d/b/a NEP Wireless, by its counsel, filed on August 24, 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 Verizon North, Inc. and NEP Cellcorp, Inc., d/b/a NEP Wireless 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. 07-1744. Filed for public inspection September 14, 2007, 9:00 a.m.]

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### Telecommunications

**A-311419F7000. Verizon Pennsylvania, Inc. and NEP Cellcorp, Inc., d/b/a NEP Wireless.** Joint petition of Verizon Pennsylvania, Inc. and NEP Cellcorp, Inc., d/b/a NEP Wireless for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Verizon Pennsylvania, Inc. and NEP Cellcorp, Inc., d/b/a NEP Wireless, by its counsel, filed on August 24, 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 Verizon Pennsylvania, Inc. and NEP Cellcorp, Inc., d/b/a NEP Wireless 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. 07-1745. Filed for public inspection September 14, 2007, 9:00 a.m.]

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### Telecommunications

**A-311459F7001. Vista PCS, LLC and Verizon North, Inc.** Joint petition of Vista PCS, LLC and Verizon North, Inc. for approval of an adoption of an interconnection agreement under section 252(i) of the Telecommunications Act of 1996.

Vista PCS, LLC and Verizon North, Inc., by its counsel, filed on August 24, 2007, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an adoption 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 Vista PCS, LLC and Verizon North, 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. 07-1746. Filed for public inspection September 14, 2007, 9:00 a.m.]

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### Telecommunications

**A-311459F7000. Vista PCS, LLC and Verizon Pennsylvania, Inc.** Joint petition of Vista PCS, LLC and Verizon Pennsylvania, Inc. for approval of an adoption of an interconnection agreement under section 252(i) of the Telecommunications Act of 1996.

Vista PCS, LLC and Verizon Pennsylvania, Inc., by its counsel, filed on August 24, 2007, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an adoption 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 Vista PCS, LLC and Verizon Pennsylvania, 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. 07-1747. Filed for public inspection September 14, 2007, 9:00 a.m.]

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### Wastewater Service

**A-230240F0035 and A-230091F2000. Little Washington Wastewater Company d/b/a Suburban Wastewater Company and Pennsylvania Utility Company.** Joint application of Little Washington Wastewater Company d/b/a Suburban Wastewater Company (Little Washington) and Pennsylvania Utility Company (PA Utility) for approval of: 1) the acquisition by Little Washington of the wastewater system assets of PA Utility situated in the 2,823 acre residential development known as Tamiment Resort, Highland Village, Mt. Laurel, The Glen at Tamiment, Eagle Point and Eagle Village, situated in Lehman Township, Pike County, PA (hereinafter referred to as "Tamiment"); 2) the right of Little Washington to begin to

furnish wastewater service to the public in Tamiment, along with the implementation of Little Washington Wastewater Company's Little Washington Division base rates within Tamiment, situated in Lehman Township, Pike County, PA; and 3) the abandonment by PA Utility of public wastewater service in Tamiment.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities), on or before October 1, 2007. Filings must be made with the Secretary of the 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.

*Applicants:* Little Washington Wastewater Company d/b/a Suburban Wastewater Company and Pennsylvania Utility Company

*Through and by Counsel:* Thomas T. Niesen, Esquire, Thomas Thomas Armstrong & Niesen, 212 Locust Street, Suite 500, Harrisburg, PA 17108

James P. Melia, Esquire, K & L Gates, 17 North Second Street, 18th Floor, Harrisburg, PA 17101-1507

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 07-1748. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Water Service

**A-210104F0084 and A-210098F2000. Aqua Pennsylvania, Inc. and Pennsylvania Utility Company.** Joint application of Aqua Pennsylvania, Inc. (Aqua) and Pennsylvania Utility Company (PA Utility) for approval of: 1) the acquisition by Aqua of the water system assets of PA Utility situated in the 2,823 acre residential development known as Tamiment Resort, Highland Village, Mt. Laurel, The Glen at Tamiment, Eagle Point and Eagle Village, situated in Lehman Township, Pike County, PA (hereinafter referred to as "Tamiment"); 2) the right of Aqua to begin to supply water service to the public in Tamiment, along with the implementation of Aqua's Fawn Lake Division base rates within Tamiment, situated in Lehman Township, Pike County, PA; and 3) the abandonment by PA Utility of public water service in Tamiment

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities), on or before October 1, 2007. Filings must be made with the Secretary of the 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.

*Applicants:* Aqua Pennsylvania, Inc. and Pennsylvania Utility Company

*Through and by Counsel:* Thomas T. Niesen, Esquire, Thomas Thomas Armstrong & Niesen, 212 Locust Street, Suite 500, Harrisburg, PA 17108

James P. Melia, Esquire, K & L Gates, 17 North Second Street, 18th Floor, Harrisburg, PA 17101-1507

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 07-1749. Filed for public inspection September 14, 2007, 9:00 a.m.]

### Water Service

**A-213550F0026 and U-00075417. The York Water Company.** Application of The York Water Company for approval of the right to enter into a municipal contract to acquire certain public water facilities from West Manheim Township, and to offer or furnish water service to the public in portions of West Manheim Township, York County and portions of Oxford, Mt. Pleasant and Union Townships, Adams County, PA.

Formal protests and petitions to intervene must be filed in accordance with 52 Pa. Code (relating to public utilities), on or before October 1, 2007. Filings must be made with the Secretary of the 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:* The York Water Company

*Through and by Counsel:* Michael W. Hassell, Esquire, Anthony D. Kanagy, Esquire, Post and Schell, PC, 17 North Second Street, 12th Floor, Harrisburg, PA 17101-1601

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 07-1750. Filed for public inspection September 14, 2007, 9:00 a.m.]

## STATE EMPLOYEES' RETIREMENT BOARD

### Hearings Scheduled

The following hearings have been scheduled, as authorized by 71 Pa.C.S. Part XXV (relating to the State Employees' Retirement Code), in connection with the State Employees' Retirement System's denial of claimants' requests concerning the indicated accounts.

The hearings will be held before a hearing examiner at the State Employees' Retirement System, 30 North Third Street, Fifth Floor, Harrisburg, PA 17101:

October 4, 2007	Clifford J. Parris (Age 50 Retirement Credit)	1 p.m.
October 18, 2007	Catherine N. Komir (Discontinuance of Temporary Disability Retirement Benefits)	1 p.m.

Parties in each respective case may appear with or without counsel and offer relevant testimony or evidence to support their respective positions. The hearings will be held in accordance with the requirements of 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). Under 4 Pa. Code § 250.1 (relating to applicability of general rules), procedural matters will be in conformance with the 1 Pa. Code Part II (relating General Rules of Administrative Practice and Procedure) unless specific exemption is granted.

LEONARD KNEPP,  
*Acting Secretary*

[Pa.B. Doc. No. 07-1751. Filed for public inspection September 14, 2007, 9:00 a.m.]

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# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 130]

### Consumer Products

The Environmental Quality Board (Board) proposes to amend Chapter 130, Subchapter B (relating to consumer products) to read as set forth in Annex A. The proposed rulemaking will amend the Table of Standards to add volatile organic compound (VOC) content limits for an additional 11 categories of consumer products and amend the VOC content limits for one category of consumer products currently regulated. The proposed rulemaking also adds definitions for approximately 30 new terms, including those that relate to the new product categories that will be regulated, and amends definitions for approximately 110 existing terms to provide clarity.

This proposed rulemaking was adopted by the Board at its meeting of June 19, 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 Susan Hoyle, Air Quality Program Specialist, Division of Air Resource Management, P. O. Box 8468, Rachel Carson State Office Building, Harrisburg, PA 17105-8468, (717) 787-9702; or Kristen 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).

#### C. *Statutory Authority*

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

#### D. *Background and Purpose*

When ground-level ozone is present in concentrations in excess of the Federal health-based 8-hour standard, public health and welfare are adversely affected. The United States Environmental Protection Agency (EPA) concluded that there is an association between high levels of ambient ozone and increased hospital admissions for respiratory ailments, such as asthma. While 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 high levels of ambient ozone while engaged in activities that involve physical exertion. Though these symptoms are often temporary, repeated exposure could result in permanent lung damage. High levels of ground-level ozone also cause damage to crops and vegetation,

buildings and synthetic fibers, including nylon, and reduce visibility on roadways and in natural areas.

The purpose of this proposed rulemaking is to reduce VOCs emitted from consumer products. Ozone is not directly emitted by consumer products, but is created as a result of the chemical reaction of oxides of nitrogen and VOCs in the presence of light and heat. The proposed rulemaking is part of the Commonwealth's strategy to achieve and maintain the 8-hour ozone standard throughout this Commonwealth. The proposed rulemaking expands upon the consumer products regulation adopted by the Board at its meeting of July 16, 2002. See 32 Pa.B. 4824 (October 5, 2002).

While there are Federal VOC content limits in 40 CFR Part 59, Subpart C (relating to National volatile organic compound emission standards for consumer and commercial products), for certain consumer products already regulated by Chapter 130, Subchapter B, there are no Federal limits for the additional products that will be regulated by this proposed rulemaking.

This proposed rulemaking is consistent with regulatory initiatives that will be undertaken by other jurisdictions in the Ozone Transport Region to address regional transport of ozone precursor emissions. The Ozone Transport Commission (OTC) Member States and the District of Columbia and OTC staff formed a workgroup to discuss additional control measures for consumer products during a series of conference calls and workshops held from spring 2004 through autumn 2006. Representatives of the major consumer products trade associations, including the Consumer Specialty Products Association, the American Solvents Council and the Cosmetic, Toiletry and Fragrance Association, participated in several of the conference calls or meetings and are generally supportive of the initiative. The OTC workgroup collected and evaluated information regarding emission reduction benefits, cost-effectiveness and implementation issues. Based on the analysis by the workgroup, the OTC Commissioners at the OTC Commissioners' meetings in June and November 2006 made recommendations to the OTC Member Jurisdictions to consider additional emission reductions from consumer products. The resulting 2006 OTC Model Rule for Consumer Products is similar to the California Air Resources Board (CARB) consumer products regulation amended in September 2005. Prior to developing this proposed rulemaking, the Department used the OTC model rule and background material as a starting point and reviewed those documents, including specific emission reductions, for applicability in this Commonwealth.

Because the Commonwealth, in conjunction with other OTC Member Jurisdictions, had discussions with representatives of various National consumer product manufacturers in related industries, and gathered their support for the proposed rulemaking, it is important that the proposed amendments to the consumer product regulations be implemented consistently and uniformly in the Ozone Transport Region.

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) on the proposed rulemaking on March 29, 2007. The AQTAC concurred with the Department's recommendation to seek Board approval of the proposed rulemaking. In addition, the AQTAC encouraged the Department to continue to work with other states to pursue Federal standards for consumer

products. The Department also consulted with the Citizens Advisory Council and the Small Business Compliance Advisory Committee.

#### E. Summary of Regulatory Requirements

This proposed rulemaking amends the following terms defined in § 130.202 (relating to definitions) for clarity, style and format: “ACP emissions,” “ACP limit,” “ACP product,” “ACP VOC standard,” “ASTM,” “adhesive,” “adhesive remover,” “aerosol adhesive,” “aerosol cooking spray,” “aerosol product,” “agricultural use,” “air freshener,” “all other forms,” “antimicrobial hand or body cleaner or soap,” “astringent/toner,” “automotive brake cleaner,” “automotive hard paste wax,” “automotive instant detailer,” “automotive rubbing or polishing compound,” “automotive wax, polish, sealant or glaze,” “automotive windshield washer fluid,” “bathroom and tile cleaner,” “bug and tar remover,” “carburetor or fuel-injection air intake cleaners,” “carpet and upholstery cleaner,” “charcoal lighter material,” “compliance period,” “construction, panel and floor covering adhesive,” “consumer product,” “contact adhesive,” “container/packaging,” “crawling bug insecticide,” “deodorant,” “device,” “disinfectant,” “dry cleaning fluid,” “dusting aid,” “electronic cleaner,” “enforceable sales record,” “engine degreaser,” “fabric protectant,” “facial cleaner or soap,” “flea and tick insecticide,” “floor polish or wax,” “floor seam sealer,” “floor wax stripper,” “flying bug insecticide,” “fragrance,” “furniture coating,” “furniture maintenance product,” “general purpose adhesive,” “general purpose cleaner,” “general purpose degreaser,” “general-use hand or body cleaner or soap,” “glass cleaner,” “hair mousse,” “hair shine,” “hair spray,” “hair styling gel,” “heavy-duty hand cleaner or soap,” “herbicide,” “household product,” “insecticide,” “insecticide fogger,” “institutional product or industrial and institutional (I&I) product,” “LVP content or lower vapor pressure content,” “LVP-VOC or lower vapor pressure-VOC,” “laundry prewash,” “laundry starch product,” “lawn and garden insecticide,” “liquid,” “lubricant,” “medicated astringent/medicated toner,” “metal polish/cleanser,” “multipurpose dry lubricant,” “multipurpose lubricant,” “multipurpose solvent,” “nail polish,” “nail polish remover,” “nonresilient flooring,” “oven cleaner,” “paint,” “paint remover or stripper,” “penetrant,” “Pennsylvania sales,” “pesticide,” “plasticizer,” “pre-ACP VOC content,” “principal display panel or panels,” “product category,” “rubber and vinyl protectant,” “sealant and caulking compound,” “shaving cream,” “shortfall,” “silicone-based multipurpose lubricant,” “solid,” “special purpose spray adhesive,” “spot remover,” “spray buff product,” “structural waterproof adhesive,” “surplus reduction,” “TMHE—total maximum historical emissions,” “tire sealant and inflation,” “type B propellant,” “type C propellant,” “undercoating,” “VOC content,” “wasp and hornet insecticide,” “waterproofing,” “wax” and “wood floor wax.”

This proposed rulemaking adds the following definitions to § 130.202 to improve clarity or explain new product categories: “aerosol coating product,” “antistatic product,” “certified emissions,” “certified use rate,” “contact adhesive—general purpose,” “contact adhesive—special purpose,” “deodorant body spray,” “electrical cleaner,” “energized electrical cleaner,” “existing product,” “fabric refresher,” “floor and wall covering adhesive remover,” “floor coating,” “footwear or leather care product,” “gasket adhesive or thread locking adhesive remover,” “general purpose adhesive remover,” “graffiti remover,” “hair styling product,” “high pressure laminate,” “highest sales,” “highest VOC content,” “personal fragrance product,” “pressurized gas duster,” “product form,” “shaving

gel,” “specialty adhesive remover,” “toilet/urinal care product,” “vinyl/fabric/leather/polycarbonate coating” and “wood cleaner.”

The proposed rulemaking amends § 130.211 (relating to table of standards) by adding VOC content limits for 11 new categories of consumer products and revising the VOC content limits for one category of product currently regulated (contact adhesive). This section sets forth the percentage of VOC by weight that cannot be exceeded for consumer products that are sold, supplied, offered for sale or manufactured for sale in this Commonwealth. The 11 new categories are as follows: adhesive remover (floor and wall covering, gasket or thread locking, general purpose and specialty); antistatic product; electrical cleaner; electronic cleaner; fabric refresher; footwear or leather care product; graffiti remover; hair styling product; shaving gel; toilet/urinal care product; and wood cleaner.

The proposed rulemaking amends §§ 130.213—130.215 (relating to products registered under FIFRA; requirements for charcoal lighter materials; and requirements for aerosol adhesives) for clarity and format. In addition, the proposed rulemaking amends § 130.214 to incorporate future changes in test procedures.

The proposed rulemaking adds § 130.217 (relating to sell-through of products) to allow for sell-through of products manufactured prior to applicable effective dates.

The proposed rulemaking amends §§ 130.331, 130.332, 130.334, 130.335 and 130.338 for clarity and format. In addition, the proposed rulemaking deletes “air fresheners” from § 130.335 (relating to air fresheners) for consistency with the OTC model rule, because these air fresheners would be regulated in the new category “toilet/urinal care product.”

The proposed rulemaking amends § 130.371 (relating to code-dating) by updating the product dating requirements and explaining the format and location for the date code. The proposed rulemaking also requires that a manufacturer must submit an explanation of its modified codes to the Department before products displaying the modified code can be sold.

The proposed rulemaking adds § 130.372(a) and (b) (relating to most restrictive limit). Section 130.372(a) establishes the lowest applicable VOC limit requirements for products manufactured before January 1, 2009, and Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)-registered insecticides manufactured before January 1, 2010. Section 130.372(b) establishes the lowest applicable VOC limit requirements for products manufactured on or after January 1, 2009, and FIFRA-registered insecticides manufactured on or after January 1, 2010.

The proposed rulemaking requires additional information on product containers for products in § 130.373 (relating to additional labeling requirements for aerosol adhesives).

The proposed rulemaking amends §§ 130.411, 130.412 and 130.414 (relating to application for variance; variance orders; and modification of variance) for format.

The proposed rulemaking amends § 130.431 (relating to testing for compliance) to update the reference date for several test protocols and standards and to incorporate future amendments of test protocols and standards.

The proposal amends §§ 130.452—130.455, 130.457, 130.458, 130.460, 130.462 and 130.465 for clarity.

The proposed rulemaking amends § 130.471 (relating to public hearings) to require the applicant for a variance



or alternative control plan to publish the notice for three public hearings in newspapers of general circulation not less than 30 days prior to the hearings. The Department will publish the notice in the *Pennsylvania Bulletin*.

This proposed rulemaking is necessary to achieve and maintain the 8-hour ozone National Ambient Air Quality Standard. The proposed rulemaking, if adopted, will be submitted to the EPA as a revision to the State Implementation Plan.

#### F. *Benefits, Costs and Compliance*

##### *Benefits*

Overall, the citizens of this Commonwealth will benefit from this proposed rulemaking because it will result in improved air quality by reducing ozone precursor emissions and will encourage new technologies and practices, which will reduce emissions. The proposed rulemaking will also result in reduced levels of hazardous air pollutants (HAPs) throughout this Commonwealth. In addition, the proposed rulemaking will reduce citizen exposure to a variety of solvents, including HAPs that are used in a variety of consumer products.

##### *Compliance Costs*

Under this proposed rulemaking it is estimated that the reduction of VOC content of the affected consumer products will cost approximately \$4,000 per ton of VOC emissions reduced based on annual emission reductions of approximately 767 tons or 0.13 pound per resident per year. This equates to an estimated annual cost increase of \$3.1 million annually, or 26¢ per Commonwealth resident per year. Applicants for a variance or alternative compliance plan will incur the costs of publishing notice of the time, place and purpose of the three public hearings in newspapers of general circulation.

##### *Compliance Assistance Plan*

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

##### *Paperwork Requirements*

The proposed rulemaking will not increase the paperwork that is already generated during the normal course of business operations.

#### G. *Pollution Prevention*

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) 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 will assure that the citizens and the environment of this Commonwealth will continue to experience the benefits of reduced emissions of VOCs and HAPs from low-VOC consumer products. Although the requirements are to address ozone air quality by reducing emissions of ozone precursors, the reformulation

of products to meet the VOC content limits will also result in the reduction of HAP emissions. The proposed rulemaking will result in improved indoor and outdoor air quality for citizens of the Commonwealth by reducing ozone precursor emissions and HAP compounds. The reduced levels of HAPs will also benefit water quality through reduced loading on water treatment plants and in reduced quantities of HAP compounds in spillage on the ground.

#### H. *Sunset Review*

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

#### I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 28, 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, 16th 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 November 14, 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 November 14, 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](mailto:RegComments@state.pa.us) and must also be received by the Board by November 14, 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 rulemaking. The hearings will be held as follows:

October 15, 2007	Department of Environmental Protection
1 p.m.	Rachel Carson State Office Building
	Room 105
	400 Market Street
	Harrisburg, PA 17105

October 15, 2007 1 p.m. Department of Environmental Protection  
Southwest Regional Office  
Waterfront A and B Conference Room  
400 Waterfront Drive  
Pittsburgh, PA 15222

October 15, 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, (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,  
*Chairperson*

**Fiscal Note:** 7-416. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**  
**PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Subpart C. PROTECTION OF NATURAL RESOURCES**  
**ARTICLE III. AIR RESOURCES**  
**CHAPTER 130. STANDARDS FOR PRODUCTS**  
**Subchapter B. CONSUMER PRODUCTS**  
**GENERAL PROVISIONS**

**§ 130.201. Applicability.**

Except as provided in §§ 130.331—[ 130.337 ] 130.338 (relating to exemptions), this subchapter applies to a person who sells, supplies, offers for sale[ , ] or manufactures a consumer [ products ] product on or after [ January 1, 2005 ] the applicable effective date in § 130.211 (relating to table of standards), for use in this Commonwealth.

**§ 130.202. Definitions.**

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

\* \* \* \* \*

*ACP emissions*—

[ (i) ] The sum of the VOC emissions from every ACP product subject to an ACP [ Agreement approving an ACP ] agreement, during the compliance period speci-

fied in the ACP agreement, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Emissions = (Emissions)_1 + (Emissions)_2 + \dots + (Emissions)_N$$

where,

$$(i)\ Emissions = \frac{(VOC\ [Content]\ content) \times (Enforceable\ [Sales]\ sales)}{100}$$

[ where,

(ii) For all products except charcoal lighter material products:

$$VOC\ Content\ (Percent) = \frac{((B-C) \times 100)}{A}$$

A = net weight of unit (excluding container and packaging)

B = total weight of all VOCs per unit, as defined in this section

C = total weight of all exempted VOCs per unit, as specified in this section

(iii) For charcoal lighter material products only:

$$VOC\ Content = \frac{(Certified\ Emissions \times 100)}{Certified\ Use\ Rate}$$

**Certified Emissions** = the emissions level for products approved by the Department under § 130.214 (relating to requirements for charcoal lighter materials), as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound CH<sub>2</sub> per start.

**Certified Use Rate** = the usage level for products approved by the Department under § 130.214, as determined under “South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991),” expressed to the nearest 0.001 pound certified product used per start. ]

(ii) 1, 2, . . . N = each product in an ACP up to the maximum N.

*ACP limit*—The maximum allowable ACP [ Emissions ] emissions during the compliance period specified in an ACP [ Agreement approving an ACP ] agreement, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ [Limit]\ limit = (Limit)_1 + (Limit)_2 + \dots + (Limit)_N$$

where,

$$(i)\ Limit = \frac{(ACP\ [Standard]\ standard) \times (Enforceable\ [Sales]\ sales)}{100}$$

[ Enforceable Sales = the total amount of an ACP product sold for use in this Commonwealth, during the applicable compliance period specified in the ACP Agreement approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding container and packaging).

**ACP Standard = either the ACP product's Pre-ACP VOC Content, or the applicable VOC standard specified in § 130.211 (relating to table of standards), whichever is less.**

**Pre-ACP VOC Content = the lowest VOC content which the ACP product had between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the Commonwealth, based on either the data on the product obtained from the March 12, 1991, CARB Consumer Products Survey, or other accurate records available to the Department, whichever yields the lowest VOC content for the product (expressed as a percentage). ]**

**(ii) 1,2,...N = each product in an ACP up to the maximum N.**

*ACP product*—A consumer product subject to the VOC standards specified in § 130.211 (**relating to table of standards**), except those products that have been exempted under §§ 130.331—[ **130.337** ] **130.338** (relating to exemptions), or exempted as innovative products under §§ 130.351 and 130.352 (relating to innovative products).

\* \* \* \* \*

*ACP VOC standard*—The maximum allowable VOC content for an ACP product, determined as follows:

(i) The applicable VOC [ **Standard** ] **standard** specified in § 130.211[ , ] for all ACP products except [ **for** ] charcoal lighter material **products**.

(ii) For charcoal lighter material products only, the VOC [ **Standard** ] **standard** for the purposes of this [ **section** ] **subchapter** shall be calculated according to the following equation:

$$VOC [ \textit{Standard} ] \textit{standard} = \frac{(0.020 \textit{ pound } CH_2 \textit{ per start } \times 100)}{\textit{Certified [ Use Rate ] use rate}}$$

where,

0.020 = the certification emissions level for the Department-approved product, as specified in § 130.214.

**[ Certified Use Rate = the usage level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound certified product used per start. ]**

*ASTM*—[ **The** ] **ASTM International**, formerly the American Society for Testing and Materials.

*Adhesive*—A product that is **formulated or labeled** to be used to bond one surface to another by attachment.

(i) **The term includes caulks, sealants, glues and similar substances used for the purpose of forming a bond.**

(ii) The term does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners[ , ] or other products with an adhesive incorporated onto or in an inert substrate.

**[ (ii) For contact adhesives, the term does not include aerosol adhesives or units of product, less packaging, which consist of more than 1 gallon.**

**(iii) For construction, panel and floor covering adhesive and general purpose adhesive, the term does not include aerosol adhesives or units of product which consist of more than 1 pound or 16 fluid ounces, less packaging. ]**

*Adhesive remover*—

(i) A product [ **designed exclusively for the removal of adhesives, caulk and other bonding materials** ] **formulated or labeled to remove adhesive** from either a specific substrate or a variety of substrates.

(ii) **The term does not include products that remove adhesives intended exclusively for use on humans or animals.**

*Aerosol adhesive*—An aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment. **The term includes the following:**

- (i) **Special purpose spray adhesive.**
- (ii) **Mist spray adhesive.**
- (iii) **Web spray adhesive.**

*Aerosol coating product*—A pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant and is packaged in a disposable can designed for hand-held application or for use in specialized equipment for ground traffic marking applications.

*Aerosol cooking spray*—An aerosol product [ **designed** ] **formulated or labeled** either to reduce sticking on cooking and baking surfaces or to be applied on food, or both.

*Aerosol product*—A pressurized spray system that dispenses product ingredients by means of a propellant contained in the product or the product's container or by means of a mechanically induced force. The term does not include pump sprays.

*Agricultural use*—The use of a pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of an animal or plant crop. The term does not include the sale or use of pesticides in properly labeled packages or containers which are intended for the following uses:

\* \* \* \* \*

(iii) *Industrial use*. Use **for or** in a manufacturing, mining or chemical process or use in the operation of factories, processing plants and similar sites.

\* \* \* \* \*

*Air freshener*—A consumer product, including sprays, wicks, powders and crystals, [ **designed** ] **formulated**

or labeled for the purpose of masking odors, or freshening, cleaning, scenting or deodorizing the air.

(i) The term does not include **the following**:

\* \* \* \* \*

(B) Products that function primarily as cleaning products, **as indicated on a product label**.

\* \* \* \* \*

(E) **Toilet/urinal care products.**

\* \* \* \* \*

*All other forms*—Consumer product forms for which no form-specific VOC standard is specified in §§ 130.211—[ 130.216 ] 130.217 (relating to standards). Unless specified otherwise by the applicable VOC standard, the term includes solids, liquids, wicks, powders, crystals and cloth or paper wipes (towelettes).

*Antimicrobial hand or body cleaner or soap*—

(i) A cleaner or soap which is [ **designed** ] **formulated or labeled** to reduce the level of microorganisms on the skin through germicidal activity. The term includes the following:

\* \* \* \* \*

*Antistatic product*—A product that is formulated or labeled to eliminate, prevent or inhibit the accumulation of static electricity. The term does not include the following:

(i) **Electronic cleaner.**

(ii) **Floor polish or wax.**

(iii) **Floor coating.**

(iv) **Aerosol coating product.**

(v) **Architectural coating.**

\* \* \* \* \*

*Astringent/toner*—A product not regulated as a drug by the United States Food and Drug Administration (FDA) that is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include **the following**:

\* \* \* \* \*

*Automotive brake cleaner*—A cleaning product [ **designed** ] **formulated or labeled** to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms.

*Automotive hard paste wax*—An automotive wax or polish which is:

(i) [ **Designed** ] **Formulated or labeled** to protect and improve the appearance of automotive paint surfaces.

\* \* \* \* \*

*Automotive instant detailer*—A product [ **designed** ] **formulated or labeled** for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

*Automotive rubbing or polishing compound*—A product [ **designed** ] **formulated or labeled** primarily to remove oxidation, old paint, scratches or swirl marks, and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

*Automotive wax, polish, sealant or glaze*—A product [ **designed** ] **formulated or labeled** to seal out moisture, increase gloss or otherwise enhance a motor vehicle's painted surfaces.

(i) The term includes products [ **designed** ] **formulated or labeled** for:

\* \* \* \* \*

(ii) The term does not include **the following**:

\* \* \* \* \*

(D) Products [ **designed** ] **formulated or labeled** for use on unpainted surfaces such as bare metal, chrome, glass or plastic.

*Automotive windshield washer fluid*—A liquid [ **designed** ] **formulated or labeled** for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing or wetting the windshield. The term does not include fluids placed by the manufacturer in a new vehicle.

*Bathroom and tile cleaner*—A product [ **designed** ] **formulated or labeled** to clean tile or surfaces in bathrooms. The term does not include products [ **specifically designed** ] **formulated or labeled** to clean toilet bowls [ **or** ], toilet tanks **or urinals**.

*Bug and tar remover*—A product [ **designed** ] **formulated or labeled** to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

\* \* \* \* \*

*Carburetor or fuel-injection air intake cleaners*—

(i) A product [ **designed** ] **formulated or labeled** to remove fuel deposits, dirt or other contaminants from a carburetor, choke, throttle body of a fuel-injection system or associated linkages.

(ii) The term does not include products [ **designed** ] **formulated or labeled** exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

*Carpet and upholstery cleaner*—A cleaning product [ **designed** ] **formulated or labeled** for the purpose of eliminating dirt and stains on rugs, carpeting and the interior of motor vehicles or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon or other synthetic fabrics.

(i) The term includes [ **, but is not limited to,** ] products that make fabric protectant claims.

(ii) The term does not include **the following**:

(A) General purpose [ **cleaners, spot removers, vinyl** ] **cleaner.**

(B) **Spot remover.**

(C) **Vinyl or leather [ cleaners or dry ] cleaner.**

(D) **Dry cleaning fluids.**

[ (B) ] (E) Products [ **designed** ] **formulated or labeled** exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

*Certified emissions*—The emissions level for products approved by the Department under § 130.214 (relating to requirements for charcoal lighter mate-

rial products), as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), including subsequent amendments, expressed to the nearest 0.001 pound CH<sub>2</sub> per start.

**Certified use rate**—The usage level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), including subsequent amendments, expressed to the nearest 0.001 pound certified product used per start.

**Charcoal lighter material**—A combustible material [ **designed** ] formulated or labeled to be applied on, incorporated in, added to or used with charcoal to enhance ignition. The term does not include the following:

\* \* \* \* \*

**Compliance period**—The period of time, not to exceed 1 year, for which the ACP [ **Limit** ] limit and ACP [ **Emissions** ] emissions are calculated and for which compliance with the ACP [ **Limit** ] limit is determined, as specified in the ACP agreement [ **approving an ACP** ].

**Construction, panel and floor covering adhesive**—

(i) A one-component adhesive that is [ **designed** ] formulated or labeled exclusively for the installation, remodeling, maintenance or repair of:

(A) Structural and building components that include [ , but are not limited to, ] the following:

\* \* \* \* \*

(B) Floor or wall coverings that include [ , but are not limited to, ] the following:

\* \* \* \* \*

(ii) The term does not include [ **floor seam sealer.** ] the following:

(A) **Floor seam sealer.**

(B) **Units of product that weigh more than 1 pound and consist of more than 16 fluid ounces, less packaging.**

\* \* \* \* \*

**Consumer product**—

(i) A chemically formulated product used by household and institutional consumers including the following:

\* \* \* \* \*

(L) **Aerosol adhesives, including aerosol adhesives used for consumer, industrial or commercial uses.**

\* \* \* \* \*

**Contact adhesive**—

(i) An adhesive that:

(A) Is [ **designed** ] formulated or labeled for application to both surfaces to be bonded together.

\* \* \* \* \*

(ii) The term does not include [ **rubber** ] the following:

(A) **Rubber** cements that are primarily intended for use on paper substrates.

(B) **Vulcanizing fluids** that are formulated or labeled for tire repair only.

(C) **Units of product, less packaging,** that consist of more than 1 gallon.

**Contact adhesive-general purpose**—A contact adhesive that is not a “contact adhesive—special purpose.”

**Contact adhesive-special purpose**—A contact adhesive that is formulated or labeled to be used for either of the following:

(i) To bond melamine-covered board, unprimed metal, unsupported vinyl, Teflon, ultra-high molecular weight polyethylene, rubber, high pressure laminate or wood veneer 1/16 inch or less in thickness to a porous or nonporous surface, and is sold in units of product, less packaging, that contain more than 8 fluid ounces.

(ii) **In automotive applications** that are either of the following:

(A) **Automotive under-the-hood applications** requiring heat, oil or gasoline resistance.

(B) **Attachment of body-side molding, automotive weatherstrip or decorative trim.**

**Container/packaging**—The parts of the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was [ **designed** ] formulated or intended. The term includes an article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached.

\* \* \* \* \*

**Crawling bug insecticide**—An insecticide product that is [ **designed** ] formulated or labeled for use against ants, cockroaches or other household crawling arthropods, including mites, silverfish or spiders. The term does not include products [ **designed** ] formulated or labeled to be used exclusively on humans or animals, or house dust mite product. For the purposes of this definition only:

\* \* \* \* \*

**Deodorant**—[ **A** ] For products manufactured as follows:

(i) **Before January 1, 2009,** a product, including aerosols, roll-ons, sticks, pumps, pads, creams and squeeze-bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

(ii) **On or after January 1, 2009,** a product, including aerosols, roll-ons, sticks, pumps, pads, creams and squeeze-bottles, that indicates or depicts on the container or packaging, or on a sticker or label affixed to the container or packaging, that the product can be used on or applied to the human axilla to provide a scent or minimize odor. The term includes a deodorant body spray product that indicates or depicts on the container or packaging, or on a sticker or label affixed to the container or packaging, that it can be used on or applied to the human axilla.

**Deodorant body spray**—For products manufactured as follows:

(i) Before January 1, 2009, a personal fragrance product with 20% or less fragrance.

(ii) On or after January 1, 2009, a personal fragrance product with 20% or less fragrance, that is formulated or labeled for application all over the human body to provide a scent. The term includes a deodorant product that indicates or depicts on the container or packaging, or on a sticker or label affixed to the container or packaging, that it can be used on or applied to the human axilla.

*Device*—

(i) An instrument or contrivance (other than a firearm) which is designed for trapping, destroying, repelling or mitigating a pest or other form of plant or animal life (other than [man] humans and other than bacteria, [virus] viruses or other [microorganism] microorganisms on or in living [man] humans or [other] living animals).

(ii) The term does not include equipment used for the application of pesticides when sold separately.

*Disinfectant*—

\* \* \* \* \*

(ii) The term does not include the following:

(A) Products [designed] formulated or labeled solely for use on humans or animals.

(B) Products [designed] formulated or labeled for agricultural use.

(C) Products [designed] formulated or labeled solely for use in swimming pools, therapeutic tubs or hot tubs.

(D) Products which, as indicated on the principal display panel or label, are [designed] formulated or labeled primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners or metal polishes.

\* \* \* \* \*

*Dry cleaning fluid*—

(i) A nonaqueous liquid product [designed and] formulated or labeled exclusively for use on:

\* \* \* \* \*

(ii) The term includes[, but is not limited to,] those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place.

\* \* \* \* \*

**Dusting aid**—A product [designed] formulated or labeled to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. The term does not include [products that consist entirely of compressed gases for use in electronic or other specialty areas] pressurized gas dusters.

**Electrical cleaner**—A product formulated or labeled to remove heavy soils like grease, grime or oil from electrical equipment, including electric motors, armatures, relays, electric panels and generators. The term does not include the following:

- (i) General purpose cleaner.
- (ii) General purpose degreaser.
- (iii) Dusting aid.
- (iv) Electronic cleaner.
- (v) Energized electrical cleaner.
- (vi) Pressurized gas duster.
- (vii) Engine degreaser.
- (viii) Antistatic product.
- (ix) Products designed to clean the casings or housings of electrical equipment.

*Electronic cleaner*—

(i) A product [designed specifically] formulated or labeled for the removal of dirt, [grease or grime] moisture, dust, flux or oxides from [electrical] the internal components of electronic or precision equipment [such as electric motors], including circuit boards[, electricity panels and generators.] and the internal components of electronic devices, including the following:

- (A) Radios.
- (B) Compact disc (CD) players.
- (C) Digital video disc (DVD) players.
- (D) Computers.

(ii) The term does not include the following:

- (A) General purpose cleaner.
- (B) General purpose degreaser.
- (C) Dusting aid.
- (D) Pressurized gas duster.
- (E) Engine degreaser.
- (F) Electrical cleaner.
- (G) Energized electrical cleaner.
- (H) Antistatic product.

(I) Products designed to clean the casings or housings of electronic equipment.

*Energized electrical cleaner*—

(i) A product that meets both of the following:

(A) The product is formulated or labeled to clean or degrease electrical equipment, where cleaning or degreasing is accomplished when electrical current exists, or when there is a residual electrical potential from a component, such as a capacitor.

(B) The product label clearly states that the product is for energized equipment use only and is not to be used for motorized vehicle maintenance or maintenance of motorized vehicle parts.

(ii) The term does not include electronic cleaners.

\* \* \* \* \*

*Enforceable sales record*—A written, point-of-sale record or other Department-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in this Commonwealth during the applicable compliance period can be accurately documented. For the purposes of this subchapter, the term includes[, but is not limited to,] the following types of records:

\* \* \* \* \*

*Engine degreaser*—A cleaning product [ **designed** ] formulated or labeled to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

*Existing product*—A formulation of the same product category and form sold, supplied, manufactured or offered for sale in this Commonwealth prior to January 1, 2005, or a subsequently introduced identical formulation.

*Fabric protectant*—A product [ **designed** ] formulated or labeled to be applied to fabric substrates to protect the surface from soiling by dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. The term does not include [ **waterproofers, products** ] the following:

- (i) **Waterproofers.**
- (ii) **Products** designed for use solely on leather [ **or products** ].
- (iii) **Products** designed for use solely on fabrics which are labeled "dry clean only" and sold in containers of 10 fluid ounces or less.

*Fabric refresher*—

(i) A product formulated or labeled to neutralize or eliminate odors on nonlaundered fabric, including the following fabrics:

- (A) Soft household surfaces.
- (B) Rugs.
- (C) Carpeting.
- (D) Draperies.
- (E) Bedding.
- (F) Automotive interiors.
- (G) Footwear.
- (H) Athletic equipment.
- (I) Clothing.
- (J) Household furniture or objects upholstered or covered with fabrics including wool, cotton or nylon.

(ii) The term does not include the following:

- (A) Antistatic product.
- (B) Carpet and upholstery cleaner.
- (C) Soft household surface sanitizer.
- (D) Footwear or leather care product.
- (E) Spot remover.
- (F) Disinfectant.
- (G) Products labeled for application to both fabric and human skin.

(iii) For the purposes of this definition, "soft household surface sanitizer" means a product formulated or labeled to neutralize or eliminate odors on surfaces listed in subparagraph (i) and the label for which is registered as a sanitizer under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136—136y).

*Facial cleaner or soap*—A cleaner or soap [ **designed** ] formulated or labeled primarily to clean the face.

(i) The term includes [ , but is not limited to, facial ] the following:

- (A) Facial cleansing [ **creams, gels, liquids, lotions and substrate-impregnated** ] cream.
- (B) Semisolid.
- (C) Liquid.
- (D) Lotion.
- (E) Substrate-impregnated forms.

(ii) The term does not include the following:

- [ (i) ] (A) Prescription drug products.
- [ (ii) ] (B) Antimicrobial hand or body cleaner or soap.
- [ (iii) ] (C) Astringent/toner.
- [ (iv) ] (D) General-use hand or body cleaner or soap.
- [ (v) ] (E) Medicated astringent/medicated toner.
- [ (vi) ] (F) Rubbing alcohol.

\* \* \* \* \*

*Flea and tick insecticide*—An insecticide product that is [ **designed** ] formulated or labeled for use against fleas, ticks, their larvae or their eggs. The term does not include products that are [ **designed** ] formulated or labeled to be used exclusively on humans or animals and their bedding.

\* \* \* \* \*

*Floor and wall covering adhesive remover*—A product formulated or labeled to remove floor or wall covering and associated adhesive from the underlying substrate.

*Floor coating*—An opaque coating that is formulated or labeled for application to flooring, including the following:

- (i) Decks.
- (ii) Porches.
- (iii) Steps.
- (iv) Other horizontal surfaces which may be subject to foot traffic.

*Floor polish or wax*—A wax, polish or other product [ **designed** ] formulated or labeled to polish, protect or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. The term does not include the following:

\* \* \* \* \*

(ii) Products [ **designed** ] formulated or labeled solely for the purpose of cleaning floors.

\* \* \* \* \*

(iv) Products [ **designed** ] formulated or labeled for unfinished wood floors.

\* \* \* \* \*

*Floor seam sealer*—A product [ **designed and** ] formulated or labeled exclusively for bonding, fusing or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

*Floor wax stripper*—A product [ **designed** ] formulated or labeled to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax

polymers, or by dissolving or emulsifying the polish or wax. The term does not include [ **aerosol** ] the following:

(i) **Aerosol floor wax [ strippers or products designed ] stripper.**

(ii) **Products formulated or labeled** to remove floor wax solely through abrasion.

*Flying bug insecticide*—An insecticide product that is [ **designed** ] formulated or labeled for use against flying insects or other flying arthropods, including mosquitoes, moths or gnats.

(i) The term does not include the following:

[ (i) ] (A) Wasp and hornet insecticide.

[ (ii) ] (B) Products that are [ **designed** ] formulated or labeled to be used exclusively on humans or animals.

[ (iii) ] (C) A moth-proofing product.

(ii) For the purposes of this definition [ **only** ], "moth-proofing product" means a product whose label, packaging or accompanying literature indicates that the product is [ **designed** ] formulated or labeled to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

*Footwear or leather care product*—

(i) **A product formulated or labeled to be applied to footwear or to other leather articles or components, to maintain, enhance, clean, protect or modify the appearance, durability, fit or flexibility of the footwear or leather article or component. Footwear includes both leather and nonleather foot apparel.**

(ii) **The term does not include the following:**

(A) **Fabric protectant.**

(B) **General purpose adhesive.**

(C) **Contact adhesive.**

(D) **Vinyl/fabric/leather/polycarbonate coating.**

(E) **Rubber and vinyl protectant.**

(F) **Fabric refresher.**

(G) **Products formulated or labeled solely for deodorizing.**

(H) **Sealant products with adhesive properties used to create external protective layers greater than 2 millimeters thick.**

*Fragrance*—A substance or complex mixture of aroma chemicals, natural essential oils and other functional components with a combined vapor pressure not in excess of 2 mm of Mercury at 20° C, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

*Furniture coating*—A paint formulated or labeled for application to room furnishings, including cabinets (kitchen, bath and vanity), tables, chairs, beds and sofas.

*Furniture maintenance product*—

(i) A wax, polish, conditioner or other product [ **designed** ] formulated or labeled for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors.

(ii) The term does not include [ **dusting aids, products designed** ] the following:

(A) **Dusting aid.**

(B) **Wood cleaner.**

(C) **Products formulated or labeled solely for the purpose of cleaning [ and products designed ].**

(D) **Products formulated or labeled to leave a permanent finish [ such as ], including stains, sanding sealers and lacquers.**

[ *Furniture coating*—A paint designed for application to room furnishings, including cabinets (kitchen, bath and vanity), tables, chairs, beds and sofas. ]

*Gasket adhesive or thread locking adhesive remover*—

(i) **A product formulated or labeled to remove gasket or thread locking adhesives.**

(ii) **The term includes products formulated or labeled for dual use as a paint stripper and gasket adhesive remover or thread locking adhesive remover.**

\* \* \* \* \*

*General purpose adhesive*—A nonaerosol adhesive [ **designed** ] formulated or labeled for use on a variety of substrates. The term does not include the following:

(i) **Contact [ adhesives ] adhesive.**

(ii) **Construction, panel and floor covering [ adhesives ] adhesive.**

(iii) **Adhesives [ designed ] formulated or labeled exclusively for application on one specific category of substrates (that is, substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers or vinyls).**

(iv) **Adhesives [ designed ] formulated or labeled exclusively for use on one specific category of articles (that is, articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping or carpets).**

(v) **Units of product that weigh more than 1 pound and consist of more than 16 fluid ounces, less packaging.**

*General purpose adhesive remover*—A product formulated or labeled to remove cyanoacrylate adhesives as well as nonreactive adhesives or residue from a variety of substrates.

(i) **The term includes products that are formulated or labeled to remove the following:**

(A) **Thermoplastic adhesives.**

(B) **Pressure sensitive adhesives.**

(C) **Dextrine or starchbased adhesives.**

(D) **Casein glues.**

(E) **Rubber or latex-based adhesives.**

(F) **Stickers, decals, stencils or similar materials.**

(ii) **The term does not include floor and wall covering adhesive remover.**

*General purpose cleaner*—A product [ **designed** ] formulated or labeled for general all-purpose cleaning, in



contrast to cleaning products designed to clean specific substrates in certain situations.

(i) The term includes products [ **designed** ] **formulated or labeled** for general floor cleaning[ , ] or kitchen or countertop cleaning and cleaners designed to be used on a variety of hard surfaces [ **and** ].

(ii) The term does not include general purpose [ **degreasers** ] **degreaser** and electronic [ **cleaners** ] **cleaner**.

*General purpose degreaser—*

[ (i) A product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts.

(ii) The term does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, metal polish/cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are:

(A) Sold exclusively to establishments that manufacture or construct goods or commodities.

(B) Labeled “not for retail sale.”

(iii) Solvent cleaning tanks or related equipment including, but is not limited to:

- (A) Cold cleaners.
- (B) Vapor degreasers.
- (C) Conveyorized degreasers.
- (D) Film cleaning machines.

(E) Products designed to clean miscellaneous metallic parts by immersion in a container. ]

A product formulated or labeled to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts.

(i) The term does not include the following:

- (A) Engine degreaser.
- (B) General purpose cleaner.
- (C) Adhesive remover.
- (D) Electrical cleaner.
- (E) Electronic cleaner.
- (F) Energized electrical cleaner.
- (G) Metal polish/cleanser.

(H) Products used exclusively in solvent cleaning tanks or related equipment.

(I) Products that are labeled “not for retail sale” and are sold exclusively to establishments that manufacture or construct goods or commodities.

(ii) For the purposes of this definition, the term “solvent cleaning tanks or related equipment” includes the following:

- (A) Cold cleaners.
- (B) Vapor degreasers.
- (C) Conveyorized degreasers.
- (D) Film cleaning machines.

(E) Products formulated or labeled to clean miscellaneous metallic parts by immersion in a container.

*General-use hand or body cleaner or soap—*A cleaner or soap [ **designed** ] **formulated or labeled** to be used routinely on the skin to clean or remove typical or common dirt and soils.

(i) The term includes [ , but is not limited to, hand ] the following:

- (A) Hand or body washes [ , dual-purpose ].
- (B) Dual-purpose shampoo-body cleaners [ , shower ].
- (C) Shower or bath gels [ **and moisturizing** ].
- (D) **Moisturizing** cleaners or soaps.

(ii) The term does not include the following:

\* \* \* \* \*

*Glass cleaner—*A cleaning product [ **designed** ] **formulated or labeled** primarily for cleaning surfaces made of glass. The term does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

*Graffiti remover—*A product formulated or labeled to remove spray paint, ink, marker, crayon, lipstick, nail polish or shoe polish from a variety of noncloth or nonfabric substrates.

(i) The term does not include the following:

- (A) Paint remover or stripper.
- (B) Nail polish remover.
- (C) Spot remover.

(ii) Products labeled for dual use as both a paint stripper and graffiti remover are considered “graffiti removers.”

\* \* \* \* \*

*Hair mousse—*A hairstyling foam [ **designed** ] **formulated or labeled** to facilitate styling of a coiffure and provide limited holding power.

*Hair shine—*A product [ **designed** ] **formulated or labeled** for the primary purpose of creating a shine when applied to the hair.

(i) The term includes [ , but is not limited to, ] dual-use products [ **designed** ] **formulated or labeled** primarily to impart a sheen to the hair.

(ii) The term does not include the following:

- [ (i) ] (A) Hair spray.
- [ (ii) ] (B) Hair mousse.
- (C) Hair styling product.
- [ (iii) ] (D) Hair styling gel [ or spray gel ].

[ (iv) ] (E) Products whose primary purpose is to condition or hold the hair.

[ *Hair styling gel—*A high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure. ]

*Hair spray—*[ A ]

(i) For products manufactured before January 1, 2009, a consumer product [ **designed** ] formulated or labeled primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

(ii) For products manufactured on or after January 1, 2009, a consumer product that is applied to styled hair, and is formulated or labeled to provide sufficient rigidity, to hold, retain or finish the style of the hair for a period of time.

(iii) The term includes the following:

- (A) Aerosol hair sprays.
- (B) Pump hair sprays.
- (C) Spray waxes.
- (D) Color, glitter or sparkle hair sprays that make finishing claims.
- (E) Products that are both a styling and finishing product.

(iv) The term does not include spray products that are intended to aid in styling but do not provide finishing of a hairstyle.

(v) For the purposes of this subchapter, the terms:

(A) "Finish" and "finishing" mean the maintaining or holding of previously styled hair for a period of time.

(B) "Style" and "styling" mean the forming, sculpting or manipulating of the hair to temporarily alter the hair's shape.

**Hair styling gel**—A consumer product manufactured before January 1, 2009, that is a high viscosity, often gelatinous, product that contains a resin and is formulated or labeled for the application to hair to aid in styling and sculpting of the hair coiffure.

**Hair styling product**—A consumer product manufactured on or after January 1, 2009, that is formulated or labeled for the application to wet, damp or dry hair to aid in defining, shaping, lifting, styling or sculpting of the hair.

(i) The term includes the following:

- (A) Hair balm.
- (B) Clay.
- (C) Cream.
- (D) Crème.
- (E) Curl straightener.
- (F) Gel.
- (G) Liquid.
- (H) Lotion.
- (I) Paste.
- (J) Pomade.
- (K) Putty.
- (L) Root lifter.
- (M) Serum.
- (N) Spray gel.
- (O) Stick.

(P) Temporary hair straightener.

(Q) Wax.

(R) Spray products that aid in styling but do not provide finishing of a hairstyle.

(S) Leave-in volumizers, detanglers or conditioners that make styling claims.

(ii) The term does not include the following:

- (A) Hair mousse.
- (B) Hair shine.
- (C) Hair spray.

(D) Shampoos or conditioners that are rinsed from the hair prior to styling.

(iii) For the purposes of this subchapter, the terms:

(A) "Finish" and "finishing" mean the maintaining or holding of previously styled hair for a period of time.

(B) "Style" and "styling" mean the forming, sculpting or manipulating of the hair to temporarily alter the hair's shape.

**Heavy-duty hand cleaner or soap**—A product [ **designed** ] formulated or labeled to clean or remove difficult dirt and soils [ **such as** ], including oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt or adhesives from the hand with or without the use of water. The term does not include the following:

\* \* \* \* \*

**Herbicide**—A pesticide product [ **designed** ] formulated or labeled to kill or retard a plant's growth, but excludes products that are:

\* \* \* \* \*

**High pressure laminate**—Sheet materials which consist of paper, fabric or other core material that have been laminated at temperatures exceeding 265° F, and at pressures between 1,000 and 1,400 psi.

**Highest sales**—The maximum 1-year gross Pennsylvania sales of the ACP product in the previous 5 years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for a portion of the compliance period), as specified in the ACP agreement, or the current actual 1-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement.

**Highest VOC content**—The maximum VOC content which the ACP product has contained in the previous 5 years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for a portion of the compliance period), as specified in the ACP agreement, or the current actual VOC content, if the responsible ACP party has provided all required VOC content data (for the entire compliance period), as specified in the ACP agreement, expressed as a percentage by weight.

**Household product**—A consumer product that is formulated or labeled primarily [ **designed** ] to be used inside or outside of living quarters or residences that are

occupied or intended for occupation by individuals, including the immediate surroundings.

*Insecticide*—A pesticide product that is [ **designed** ] **formulated or labeled** for use against insects or other arthropods, but excluding products that are:

\* \* \* \* \*

*Insecticide fogger*—An insecticide product [ **designed** ] **formulated or labeled** to release all or most of its content, as a fog or mist, into indoor areas during a single application.

*Institutional product or industrial and institutional (I&I) product*—

(i) A consumer product that is [ **designed** ] **formulated or labeled** for use in the maintenance or operation of an establishment that:

\* \* \* \* \*

(ii) **The term does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.**

(iii) [ **Establishments include, but are not limited to, ] For the purposes of this definition, the term “establishment” includes the following:**

\* \* \* \* \*

[ (iii) **The term does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment. ]**

[ **Lower** ] *LVP content or lower vapor pressure* [ (LVP) ] *content*—The total weight, in pounds, of LVP compounds in an ACP product multiplied by 100 and divided by the product’s total net weight (in pounds, excluding container and packaging), expressed as a percentage to the nearest 0.1.

[ **Lower** ] *LVP-VOC or lower vapor pressure* [ (LVP)- ] *VOC*—

(i) A chemical compound or mixture that contains at least one carbon atom and meets one of the following:

\* \* \* \* \*

(B) Is a chemical compound with more than 12 carbon atoms, or a chemical mixture comprised solely of compounds with more than 12 carbon atoms **as verified by formulation data**, and the vapor pressure [ **is** ] and **boiling point are unknown.**

\* \* \* \* \*

*Laundry prewash*—A product that is [ **designed** ] **formulated or labeled** for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance, or both.

*Laundry starch product*—A product that is [ **designed** ] **formulated or labeled** for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and which may also act to help ease ironing of the fabric. The term includes [ , **but is not limited to, ] fabric finish, sizing and starch.**

*Lawn and garden insecticide*—An insecticide product [ **designed** ] **formulated or labeled** primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods. **Notwithstanding the requirements of § 130.372 (relating to most restrictive limit), aerosol lawn and garden insecticides may claim to kill insects or other arthropods.**

*Liquid*—A substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM D-4359-90(2000)e1, **including subsequent amendments.** The term does not include powders or other materials that are composed entirely of solid particles.

*Lubricant*—A product [ **designed** ] **formulated or labeled** to reduce friction, heat, noise or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. The term does not include **the following:**

\* \* \* \* \*

(ii) Products **formulated or labeled** for use inside power generating motors, engines and turbines, and their associated power-transfer gearboxes.

(iii) Two cycle oils or other products [ **designed** ] **formulated or labeled** to be added to fuels.

(iv) Products **formulated or labeled** for use on the human body or animals.

\* \* \* \* \*

*Medicated astringent/medicated toner*—A product regulated as a drug by the FDA which is applied to the skin for the purpose of cleaning or tightening pores.

(i) The term includes [ , **but is not limited to, clarifiers and substrate-impregnated** ] **the following:**

(A) **Clarifiers.**

(B) **Substrate-impregnated** products.

(ii) The term does not include **the following:**

[ (i) ] (A) Hand, face or body cleaner or soap products.

[ (ii) ] (B) Astringent/toner.

[ (iii) ] (C) Cold cream.

[ (iv) ] (D) Lotion.

[ (v) ] (E) Antiperspirants.

[ (vi) ] (F) Products that must be purchased with a doctor’s prescription.

*Metal polish/cleanser*—A product [ **designed** ] **formulated or labeled** primarily to improve the appearance of finished metal, metallic or metallized surfaces by physical or chemical action by removing or reducing stains, impurities or oxidation from surfaces or by making surfaces smooth and shiny.

(i) The term includes [ , **but is not limited to, ] metal polishes used on [ **brass, silver, chrome, copper, stainless steel and other ornamental** ]:**

(A) **Brass.**

(B) **Silver.**

(C) **Chrome.**

(D) **Copper.**

(E) **Stainless steel.**

(F) **Ornamental** metals.

(ii) The term does not include **the following**:

[ (i) ] (A) Automotive wax, polish, sealant or glaze.

[ (ii) ] (B) Wheel cleaner.

[ (iii) ] (C) Paint remover or stripper.

[ (iv) ] (D) Products **[ designed and ] formulated or labeled** exclusively for automotive and marine detailing.

[ (v) ] (E) Products **[ designed ] formulated or labeled** for use in degreasing tanks.

\* \* \* \* \*

*Multipurpose dry lubricant*—A lubricant which is:

(i) **[ Designed and ] Formulated or labeled** to provide lubricity by depositing a thin film of graphite, molybdenum disulfide (moly) or polytetrafluoroethylene or closely related fluoropolymer (Teflon) on surfaces.

(ii) **[ Designed ] Formulated or labeled** for general purpose lubrication or for use in a wide variety of applications.

*Multipurpose lubricant*—A lubricant **[ designed ] formulated or labeled** for general purpose lubrication or for use in a wide variety of applications. The term does not include **the following**:

(i) Multipurpose dry **[ lubricants ] lubricant**.

(ii) **[ Penetrants ] Penetrant**.

(iii) Silicone-based multipurpose **[ lubricants ] lubricant**.

*Multipurpose solvent*—An organic liquid **[ designed ] formulated or labeled** to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other organic materials.

(i) The term includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories.

(ii) The term does not include **[ solvents ] the following**:

(A) **Solvents used in**:

[ (i) ] (I) Cold cleaners.

[ (ii) ] (II) Vapor degreasers.

[ (iii) ] (III) ConveyORIZED degreasers.

[ (iv) ] (IV) Film cleaning machines.

[ (v) ] (B) Solvents that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

*Nail polish*—A clear or colored coating **[ designed ] formulated or labeled** for application to the fingernails or toenails and including lacquers, enamels, acrylics, base coats and top coats.

*Nail polish remover*—A product **[ designed ] formulated or labeled** to remove nail polish and coatings from fingernails or toenails.

\* \* \* \* \*

*Nonresilient flooring*—Flooring of a mineral content that is not flexible, including **the following**:

\* \* \* \* \*

*Oven cleaner*—A cleaning product **[ designed ] formulated or labeled** to clean and to remove dried food deposits from oven walls.

*Paint*—A pigmented liquid or liquefiable or mastic composition **[ designed ] formulated or labeled** for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

*Paint remover or stripper*—A product **[ designed ] formulated or labeled** to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. The term does not include **the following**:

(i) Multipurpose **[ solvents ] solvent**.

\* \* \* \* \*

(iii) Products **[ designed and ] formulated or labeled** exclusively **[ to remove ] as graffiti removers**.

\* \* \* \* \*

*Penetrant*—A lubricant **[ designed and ] formulated or labeled** primarily to loosen metal parts that have bonded together due to rusting, oxidation or other causes. The term does not include **[ multi-purpose ] multipurpose** lubricants that claim to have penetrating qualities, but are not **formulated or labeled** primarily to loosen bonded parts.

*Pennsylvania sales*—The sales (net pounds of product, less packaging and container, per year) in this Commonwealth for either the calendar year immediately prior to the year that the registration is due or, if that data is not available, a consecutive 12-month period commencing no earlier than 2 years prior to the due date of the registration. If direct sales data for this Commonwealth are not available, sales may be estimated by prorating National or regional sales data by population.

*Personal fragrance product*—A product which is applied to the human body or clothing for the primary purpose of adding a scent or masking a malodor.

(i) The term includes the following:

(A) Cologne.

(B) Perfume.

(C) Aftershave.

(D) Toilet water.

(ii) The term does not include the following:

(A) Deodorant.

(B) Medicated products formulated or labeled primarily to alleviate fungal or bacterial growth on feet or other areas of the body.

(C) Mouthwashes, breath fresheners or deodorizers.

(D) Lotions, moisturizers, powders or other skin care products used primarily to alleviate skin conditions such as dryness and irritations.

(E) Products formulated or labeled exclusively for use on human genitalia.

(F) Soaps, shampoos and products formulated or labeled primarily to be used to clean the human body.

(G) Fragrance products formulated or labeled to be used exclusively on animals.

*Pesticide*—A substance or mixture of substances formulated or labeled [ , designed or intended ] for use in preventing, destroying, repelling or mitigating a pest, or a substance or mixture of substances formulated or labeled [ , designed or intended ] for use as a defoliant, desiccant or plant regulator. The term does not include a substance, mixture of substances or device which the EPA does not consider to be a pesticide.

[ *Pennsylvania sales*—The sales (net pounds of product, less packaging and container, per year) in this Commonwealth for either the calendar year immediately prior to the year that the registration is due or, if that data is not available, a consecutive 12-month period commencing no earlier than 2 years prior to the due date of the registration. If direct sales data for this Commonwealth is not available, sales may be estimated by prorating National or regional sales data by population. ]

*Plasticizer*—A material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability or distensibility, and may be determined by using ASTM Method E260-91, including subsequent amendments, or from product formulation data.

*Pre-ACP VOC [ Content ] content*—The lowest VOC content of an ACP product between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the Department based on either the data on the product obtained from the March 12, 1991, CARB Consumer Products Survey or other accurate records available to the Department, whichever yields the lowest VOC content for the product, expressed as a percentage.

*Pressurized gas duster*—A pressurized product formulated or labeled to remove dust from a surface solely by means of mass air or gas flow, including surfaces like photographs, photographic film negatives, computer keyboards and other types of surfaces that cannot be cleaned with solvents. The term does not include dusting aids.

*Principal display panel or panels*—The parts of a label that [ is ] are so designed as to most likely be displayed, presented, shown or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all of the principal display panels.

\* \* \* \* \*

*Product category*—The applicable category that best describes the product as listed in this section and in § 130.211.

*Product form*—For the purposes of complying with § 130.391 (relating to required reporting of information to the Department), the applicable form which most accurately describes the product's dispensing form, as follows:

- (i) A = Aerosol product.
- (ii) S = Solid.

- (iii) P = Pump spray.
- (iv) L = Liquid.
- (v) SS = Semisolid.
- (vi) O = Other.

\* \* \* \* \*

*Rubber and vinyl protectant*—

(i) A product [ designed ] formulated or labeled to protect, preserve or renew vinyl, rubber and plastic on vehicles, tires, luggage, furniture and household products such as vinyl covers, clothing and accessories.

(ii) The term does not include products formulated or labeled primarily [ designed ] to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

\* \* \* \* \*

*Sealant and caulking compound*—A product with adhesive properties that is [ designed ] formulated or labeled to fill, seal, waterproof or weatherproof gaps or joints between two surfaces.

(i) The term does not include the following:

\* \* \* \* \*

(E) Floor seam [ sealers ] sealer.

(F) Products [ designed ] formulated or labeled exclusively for automotive uses.

\* \* \* \* \*

[ (ii) The term also does not include units ] (H) Units of product, less packaging, which weigh more than 1 pound and consist of more than 16 fluid ounces.

[ (iii) ] (ii) For the purposes of this definition only:

\* \* \* \* \*

*Shaving cream*—An aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other bodily hair. The term does not include shaving gel.

*Shaving gel*—An aerosol product which dispenses a post-foaming semisolid designed to be used with a blade, cartridge razor or other shaving system in the removal of facial or other bodily hair. The term does not include shaving cream.

*Shortfall*—The ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit during a specified compliance period, expressed to the nearest pound of VOC. The term does not include emissions occurring prior to the date that the ACP agreement [ approving an ACP ] is signed by the Department.

*Silicone-based multipurpose lubricant*—

(i) A lubricant which is:

(A) [ Designed and ] Formulated or labeled to provide lubricity primarily through the use of silicone compounds, including polydimethylsiloxane.

(B) [ Designed and ] Formulated or labeled for general purpose lubrication, or for use in a wide variety of applications.

(ii) The term does not include products [ **designed and** ] **formulated or** labeled exclusively to release manufactured products from molds.

\* \* \* \* \*

*Solid*—A substance or mixture of substances which, either whole or subdivided (such as the particles comprising a powder), is not capable of visually detectable flow as determined under ASTM D-4359-90(2000)e1, **including subsequent amendments.**

*Special purpose spray adhesive*—

(i) An aerosol adhesive that meets one or more of the following definitions:

(A) *Mounting adhesive.* An aerosol adhesive [ **designed** ] **formulated or labeled** to permanently mount photographs, artwork and other drawn or printed media to a backing (paper, board, cloth, and the like) without causing discoloration to the artwork.

(B) *Flexible vinyl adhesive.* An aerosol adhesive [ **designed** ] **formulated or labeled** to bond flexible vinyl to substrates. Flexible vinyl means a nonrigid polyvinyl chloride plastic with at least 5%, by weight, of plasticizer content.

(C) *Polystyrene foam adhesive.* An aerosol adhesive [ **designed** ] **formulated or labeled** to bond polystyrene foam to substrates.

(D) *Automobile headliner adhesive.* An aerosol adhesive [ **designed** ] **formulated or labeled** to bond together layers in motor vehicle headliners.

(E) *Polyolefin adhesive.* An aerosol adhesive [ **designed** ] **formulated or labeled** to bond polyolefins to substrates.

(F) *Laminate repair/edgebanding adhesive.* An aerosol adhesive [ **designed** ] **formulated or labeled** for:

\* \* \* \* \*

(G) [ **High pressure laminate.** Sheet materials which consist of paper, fabric or other core material that have been laminated at temperatures exceeding 265°F, and at pressures between 1,000 and 1,400 psi.

(H) [ **Automotive engine compartment adhesive.** An aerosol adhesive [ **designed** ] **formulated or labeled** for use in motor vehicle under-the-hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200—275°F.

**Specialty adhesive remover**—A product formulated or labeled to remove reactive adhesives from a variety of substrates.

(i) **Reactive adhesives include adhesives that require a hardener or catalyst for the bond to occur. Reactive adhesives include the following:**

(A) **Epoxies.**

(B) **Urethanes.**

(C) **Silicones.**

(ii) **The term does not include gasket adhesive remover or thread locking adhesive remover.**

*Spot remover*—A product [ **designed** ] **formulated or labeled** to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery and clothing, that does not require subsequent laundering to achieve stain removal. The term does not include **the following:**

\* \* \* \* \*

(iii) [ **Carpet and upholstery cleaner.**

(iv) ] **Multipurpose solvent.**

*Spray buff product*—A product [ **designed** ] **formulated or labeled** to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

\* \* \* \* \*

*Structural waterproof adhesive*—An adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water, and that conforms with Federal Specification MMM-A-181D (Type 1, Grade A) [ **and MIL-A-4605 (Type A, Grade A and Grade C).** **This definition is as per the Federal Consumer Products Regulation in 40 CFR 59 Subpart C** ].

*Surplus reduction*—The ACP limit minus the ACP emissions when the ACP [ **Limit** ] **limit** was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in § 130.457 (relating to limited-use surplus reduction credits for early reformulations of ACP products), the term does not include emissions occurring prior to the date that the ACP agreement is signed by the Department.

\* \* \* \* \*

*TMHE—Total maximum historical emissions*—The total VOC emissions from all ACP products for which the responsible ACP party has failed to submit the required VOC content or enforceable sales records. The TMHE shall be calculated for each ACP product during each portion of a compliance period for which the responsible ACP has failed to provide the required VOC content or enforceable sales records. The TMHE shall be expressed to the nearest pound and calculated according to the following calculation:

$$TMHE = (MHE)_1 + (MHE)_2 + \dots + (MHE)_N$$

where,

$$(i) MHE = \frac{(Highest\ VOC\ [Content]\ content \times Highest\ [Sales]\ sales)}{100 \times 365} \times Missing\ [Data\ Days]\ data\ days$$

[ **Highest VOC Content** = the maximum VOC content which the ACP product has contained in the previous 5 years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for a portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual VOC content, if the responsible ACP party has provided all required VOC content data (for the entire compliance period), as specified in the ACP agreement expressed as a percentage.

**Highest Sales**—the maximum 1-year gross Pennsylvania sales of the ACP product in the previous 5 years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for a portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual 1-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement approving the ACP.

**Missing Data** = the number of days in a compliance period for which the responsible ACP party has failed to provide the required enforceable sales or VOC content data as specified in the ACP agreement approving an ACP. ]

(ii) 1, 2, . . . , N = each product in an ACP, up to the maximum N, for which the responsible ACP party has failed to submit the required enforceable sales or VOC content data as specified in the ACP agreement [ **approving an ACP** ].

\* \* \* \* \*

*Tire sealant and inflation*—A pressurized product that is [ **designed** ] formulated or labeled to temporarily inflate and seal a leaking tire.

*Toilet/urinal care product*—A product formulated or labeled to clean or to deodorize toilet bowls, toilet tanks or urinals.

(i) The term “toilet/urinal care product” does not include the following:

- (A) Bathroom and tile cleaner.
- (B) General purpose cleaner.

(ii) For the purposes of this definition, the term “toilet bowls, toilet tanks or urinals” includes toilets or urinals connected to permanent plumbing in buildings and other structures, portable toilets or urinals placed at temporary or remote locations and toilets or urinals in vehicles such as buses, recreational motor homes, boats, ships and aircraft.

\* \* \* \* \*

*Type B propellant*—A halocarbon which is used as a propellant, including the following:

\* \* \* \* \*

*Type C propellant*—A propellant which is not a Type A or Type B propellant, including [ **propane, isobutane, n-butane and dimethyl** ] the following:

- (i) Propane.
- (ii) Isobutane.
- (iii) N-butane.
- (iv) Dimethyl ether (also known as dimethyl oxide).

*Undercoating*—An aerosol product [ **designed** ] formulated or labeled to impart a protective, nonpaint layer to the undercarriage, trunk interior or firewall of motor vehicles to prevent the formation of rust or to deaden sound. The term includes [ , **but is not limited to,** ] rubberized, mastic or asphaltic products.

\* \* \* \* \*

*Vinyl/fabric/leather/polycarbonate coating*—A coating formulated or labeled exclusively to coat vinyl, fabric, leather or polycarbonate substrates.

*VOC content*—

(i) Except for charcoal lighter material products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined under § 130.431 (relating to testing for compliance).

$$\text{VOC [ Content ] content (percent)} = \frac{\text{(Certified [ Emissions ] emissions} \times 100)}{\text{Certified [ Use Rate ] use rate}}$$

[ **Certified Emissions** = the emissions level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound CH<sub>2</sub> per start.

**Certified Use Rate** = the usage level for products approved by the Department under § 130.214, as determined under South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 27, 1991), expressed to the nearest 0.001 pound certified product used per start. ]

*Wasp and hornet insecticide*—An insecticide product that is [ **designed** ] formulated or labeled for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects or their hiding place.

*Waterproofer*—A product [ **designed and** ] formulated or labeled exclusively to repel water from fabric or leather substrates. The term does not include fabric [ **protectants** ] protectant.

*Wax*—A material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high molecular weight polymers (plastics). The term includes the following:

\* \* \* \* \*

(ii) Substances of a mineral origin such as ozocerite and paraffin[ , and synthetic ].

(iii) Synthetic polymers such as polyethylene.

\* \* \* \* \*

**Wood cleaner—**

(i) A product labeled to clean wooden materials including the following:

- (A) Decking.
- (B) Fences.
- (C) Flooring.
- (D) Logs.
- (E) Cabinetry.
- (F) Furniture.

(ii) The term does not include the following:

- (A) Dusting aid.
- (B) General purpose cleaner.
- (C) Furniture maintenance product.
- (D) Floor wax stripper.
- (E) Floor polish or wax.
- (F) Products formulated or labeled exclusively to preserve or color wood.

*Wood floor wax*—Wax-based products formulated or labeled for use solely on wood floors.

\* \* \* \* \*

**STANDARDS**

**§ 130.211. Table of standards.**

Except as provided in §§ 130.331—[ 130.337 ] 130.338, 130.351, 130.352, 130.411—130.414 and 130.451—130.464, a person may not sell, supply, offer for sale or manufacture for sale in this Commonwealth a consumer product manufactured on or after [ January 1, 2005, ] the applicable effective date in the following table of standards which contains VOCs in excess of the limits specified in the following table of standards:

**Table of Standards  
(percent VOC by weight)**

<i>Product Category</i>	<i>Effective Date</i>	<i>Effective Date</i>
	1/1/2005	1/1/2009
<b>[ Adhesives ] Adhesive</b>		
Aerosol:		
Mist Spray	65	
Web Spray	55	
Special Purpose Spray		
<b>[ Adhesives ] Adhesive:</b>		
Mounting, Automotive Engine Compartment[ , ] and Flexible Vinyl	70	
Polystyrene Foam and Automotive Headliner	65	
Polyolefin and Laminate Repair/Edgebanding	60	

<i>Product Category</i>	<i>Effective Date</i>	<i>Effective Date</i>
	1/1/2005	1/1/2009
<b>Construction, Panel and Floor Covering</b>	15	
Contact	80	NA
<b>[ Construction, Panel and Floor Covering Contact Adhesive-General Purpose</b>	15 ]	
<b>Contact Adhesive-Special Purpose</b>		55
General Purpose	10	
Structural Waterproof Adhesive Remover	15	
<b>Floor and Wall Covering Gasket or Thread Locking General Purpose</b>		5
<b>Specialty</b>		50
<b>Aerosol Cooking Spray</b>	18	20
<b>Air [ Fresheners ] Freshener</b>		70
Single-Phase [ Aerosols ] Aerosol	30	
Double-Phase [ Aerosols ] Aerosol	25	
<b>[ Liquids ] Liquid/Pump [ Sprays ] Spray</b>	18	
Solids /Semisolid [ Gels ]	3	
<b>[ Antiperspirants ] Antiperspirant</b>		
Aerosol	40 HVOC	
	10 MVOC	
Nonaerosol	0 HVOC	
	0 MVOC	
<b>Antistatic Product Nonaerosol</b>		11
Automotive Brake [ Cleaners ] Cleaner	45	
Automotive Rubbing or Polishing Compound	17	
Automotive Wax, Polish, Sealant or Glaze		
Hard Paste [ Waxes ] Wax	45	
Instant [ Detailers ] Detailer	3	
All Other Forms	15	
Automotive Windshield Washer Fluids	35	
<b>Bathroom and Tile [ Cleaners ] Cleaner</b>		
<b>[ Aerosols ] Aerosol</b>	7	
All Other Forms	5	
Bug and Tar Remover	40	
Carburetor or Fuel-Injection Air Intake [ Cleaners ] Cleaner	45	
Carpet and Upholstery [ Cleaners ] Cleaner		
<b>[ Aerosols ] Aerosol</b>	7	
<b>[ Nonaerosols ] Nonaerosol (Dilutables)</b>		0.1
<b>[ Nonaerosols ] Nonaerosol (Ready-to-Use)</b>	3.0	
Charcoal Lighter Material	See § 130.214	
<b>[ Cooking Spray Aerosols</b>	18 ]	



<i>Product Category</i>	<i>Effective Date</i> 1/1/2005	<i>Effective Date</i> 1/1/2009	<i>Product Category</i>	<i>Effective Date</i> 1/1/2005	<i>Effective Date</i> 1/1/2009
<b>[ Deodorants ] Deodorant Aerosol</b>	0 HVOC 10 MVOC		Heavy-Duty Hand Cleaner or Soap	8	
Nonaerosol	0 HVOC 0 MVOC		<b>[ Insecticides ] Insecticide Crawling Bug (Aerosol)</b>	15	
Dusting <b>[ Aids ] Aid [ Aerosols ] Aerosol</b>	25		Crawling Bug ( <b>[ all other forms ] All Other Forms</b> )	20	
All Other Forms	7		Flea and Tick	25	
<b>Electrical Cleaner</b>		<b>45</b>	Flying Bug (Aerosol)	25	
<b>Electronic Cleaner</b>		<b>75</b>	Flying Bug ( <b>[ all other forms ] All Other Forms</b> )	35	
Engine <b>[ Degreasers ] Degreaser</b>			<b>[ Foggers ] Fogger</b>	45	
Aerosol	35		Lawn and Garden ( <b>[ all other forms ] All Other Forms</b> )	20	
Nonaerosol	4		Lawn and Garden (Nonaerosol)	3	
Fabric <b>[ Protectants ] Protectant</b>	60		Wasp and Hornet	40	
<b>Fabric Refresher Aerosol</b>		<b>15</b>	Laundry Prewash		
Nonaerosol		<b>6</b>	<b>[ Aerosols/Solids ] Aerosol/Solid</b>	22	
Floor <b>[ Polishes/Waxes ] Polish or Wax</b>			All Other Forms	5	
Products for Flexible Flooring <b>[ Materials ] Material</b>	7		Laundry Starch <b>[ Products ] Product</b>	5	
Products for Nonresilient Flooring	10		Metal <b>[ Polishes/Cleaners ] Polish/Cleanser</b>	30	
Wood Floor Wax	90		Multipurpose Lubricant (Excluding Solid or Semisolid Products)	50	
Floor Wax <b>[ Strippers ] Stripper</b>			Nail Polish Remover	75	
Nonaerosol	See § 130.216		Nonselective Terrestrial Herbicide		
<b>Footwear or Leather Care Product Aerosol</b>		<b>75</b>	<b>[ Nonaerosols ] Nonaerosol</b>	3	
All Other Forms		<b>15</b>	Oven <b>[ Cleaners ] Cleaner [ Aerosols ] Aerosol/Pump [ Sprays ] Spray</b>	8	
Solid		<b>55</b>	<b>[ Liquids ] Liquid</b>	5	
Furniture Maintenance <b>[ Products ] Product [ Aerosols ] Aerosol</b>	17		Paint Remover or <b>[ Strippers ] Stripper</b>	50	
All Other Forms Except Solid or Paste	7		<b>[ Penetrants ] Penetrant</b>	50	
General Purpose <b>[ Cleaners ] Cleaner [ Aerosols ] Aerosol</b>	10		Rubber and Vinyl <b>[ Protectants ] Protectant Aerosol</b>	<b>10</b>	
<b>[ Nonaerosols ] Nonaerosol</b>	4		<b>[ Nonaerosols ] Nonaerosol [ Aerosols ] Aerosol</b>	<b>10 ]</b>	
General Purpose <b>[ Degreasers ] Degreaser [ Aerosols ] Aerosol</b>	50		<b>[ Sealants ] Sealant and Caulking [ Compounds ] Compound</b>	4	
<b>[ Nonaerosols ] Nonaerosol</b>	4		Shaving <b>[ Creams ] Cream Shaving Gel</b>	5	
Glass <b>[ Cleaners ] Cleaner [ Aerosols ] Aerosol</b>	12		Silicone-Based Multipurpose <b>[ Lubricants ] Lubricant</b>	60	
<b>[ Nonaerosols ] Nonaerosol</b>	4		(Excluding Solid or Semisolid Products)		
<b>Graffiti Remover Aerosol</b>		<b>50</b>	Spot <b>[ Removers ] Remover [ Aerosols ] Aerosol</b>	25	
Nonaerosol		<b>30</b>	<b>[ Nonaerosols ] Nonaerosol</b>	8	
Hair <b>[ Mousses ] Mousse [ Hairshines ] Hair Shine [ Hairsprays ] Hair Spray</b>	6 55 55		Tire <b>[ Sealants ] Sealant and [ Inflators ] Inflation</b>	20	
Hair Styling <b>[ Gels ] Gel</b>	6		<b>Toilet/Urinal Care Aerosol</b>		<b>10</b>
<b>Hair Styling Product Aerosol and Pump Spray</b>		<b>6</b>	<b>Nonaerosol</b>		<b>3</b>
All Other Forms		<b>2</b>			

<i>Product Category</i>	<i>Effective Date</i>	<i>Effective Date</i>
	1/1/2005	1/1/2009
<b>[ Undercoatings ]</b>		
<b>Undercoating</b>		
<b>[ Aerosols ] Aerosol</b>	40	
<b>Wood Cleaner</b>		
<b>Aerosol</b>		17
<b>Nonaerosol</b>		4

Notes: NA = Not applicable on or after January 1, 2009.

**§ 130.213. Products registered under FIFRA.**

For those consumer products that are registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136—136y), the **applicable** effective date of the VOC standards specified in the Table of Standards is 1 year after the date specified in § 130.211 (relating to table of standards).

**§ 130.214. Requirements for charcoal lighter [ materials ] material products.**

The following requirements apply to charcoal lighter material products as defined in § 130.202 (relating to definitions).

\* \* \* \* \*

(2) *Certification requirements.*

(i) A charcoal lighter material **product** formulation will not be certified under this subsection unless the applicant for certification demonstrates to the Department's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material **product** are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, dated February 27, 1991 (South Coast Air Quality Management District Rule 1174 Testing Protocol), **including subsequent amendments**. The provisions relating to LVP-VOC in § 130.333 (relating to LVP-VOC) do not apply to a charcoal lighter material **product** subject to the requirements of this section and § 130.211 (relating to table of standards).

\* \* \* \* \*

**§ 130.215. Requirements for aerosol adhesives.**

(a) As specified in CCR Section 41712(h)(2), the standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial and commercial uses. Except as otherwise provided in §§ 130.331—**[ 130.337 ] 130.338**, 130.351 and 130.352 and 130.411—130.414, a person may not sell, supply, offer for sale, use or manufacture for sale in this Commonwealth an aerosol adhesive which, at the time of sale, use or manufacture, contains VOCs in excess of the specified standard.

(b) For a special purpose spray adhesive:

(1) To qualify as a special purpose spray adhesive, the product must meet **[ one or more of the definitions specified ] the definition of the term “special purpose spray adhesive”** in § 130.202 (relating to definitions), but if the product label indicates that the product is suitable for use on a substrate or application not listed in **[ § 130.202 ] the definition of the term “special**

**purpose spray adhesive,”** the product will be classified as either a “web spray adhesive” or a “mist spray adhesive.”

\* \* \* \* \*

**§ 130.217. Sell-through of products.**

(a) **Sell-through period.** Notwithstanding the provisions of § 130.211 (relating to table of standards) or § 130.215 (relating to requirements for aerosol adhesives), a consumer product manufactured prior to the applicable effective date in § 130.211 may be sold, supplied or offered for sale after the applicable effective date.

(b) **This section does not apply to a consumer product that does not display on the product container or package the date on which the product was manufactured, or a code indicating the date, in accordance with § 130.371 (relating to product dating requirements).**

**EXEMPTIONS**

**§ 130.331. Products for shipment and use outside this Commonwealth.**

\* \* \* \* \*

(b) This subchapter does not apply to a **[ manufacturer or distributor who sells, supplies or offers for sale in this Commonwealth a ]** consumer product that does not comply with the VOC standards specified in § 130.211 (relating to table of standards), as long as the manufacturer or distributor **of the noncomplying consumer product** can demonstrate both that the **noncomplying** consumer product is intended for shipment and use outside of this Commonwealth, and that the manufacturer or distributor has taken **[ reasonable ] reasonably** prudent precautions to assure that the **noncomplying** consumer product is not distributed in this Commonwealth.

**§ 130.332. Antiperspirants and deodorants.**

\* \* \* \* \*

(b) The VOC limits specified in § 130.211 **[ do not apply to fragrances up to a combined level of 2% by weight contained in a consumer product and ]** do not apply to colorants up to a combined level of 2% by weight contained in an antiperspirant or deodorant.

\* \* \* \* \*

**§ 130.334. Products registered under FIFRA.**

The requirements of § 130.371 (relating to **[ code-dating ] product dating**) do not apply to consumer products registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136—136y).

**§ 130.335. Air fresheners.**

(a) The VOC limits specified in § 130.211 (relating to table of standards) do not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs **[ under § 130.202 (relating to definitions) ]** or exempted under **[ this section ] § 130.333 (relating to LVP-VOC).**

(b) The VOC limits specified in § 130.211 do not apply to **[ air fresheners and ]** insecticides containing at least 98% paradichlorobenzene.

**§ 130.338. Fragrances.**

The VOC limits specified in § 130.211 (relating to table of standards) do not apply to fragrances up to a combined level of 2% by weight contained in a consumer product.

**ADMINISTRATIVE REQUIREMENTS**

**§ 130.371. [ Code-dating ] Product dating.**

**(a) [ Code-dating ] Product dating requirements.**

(1) Each manufacturer of a consumer product subject to §§ 130.211—[ 130.216 ] 130.217 (relating to standards) shall clearly display on each consumer product container or package, the day, month and year on which the product was manufactured, or a code indicating that date.

(2) A manufacturer who uses the following code to indicate the date of manufacture will not be subject to the requirements of subsection (b)(1), if the code is represented separately from other codes on the product container so that it is easily recognizable:

YY DDD = year year day day day

where,

YY = two digits representing the year in which the product was manufactured

DDD = three digits representing the day of the year on which the product was manufactured, with "001" representing the first day of the year, "002" representing the second day of the year, and so forth (that is, the "Julian date").

(3) The product date or code required by this section must be displayed on each consumer product container or package no later than 12 months prior to the effective date of the applicable standard specified in § 130.211 (relating to table of standards).

(4) The date or date-code information [ shall ] must be located on the container or inside the cover/cap so that it is readily observable or obtainable (by simply removing the cap/cover) without irreversibly disassembling a part of the container or packaging. [ This date or code shall be displayed on each consumer product container or package no later than January 1, 2004. ]

(5) For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing any product packaging.

(6) The requirements of this subsection do not apply to products containing [ no ] either of the following:

(i) No VOCs [ as defined in § 130.202 (relating to definitions), or containing ].

(ii) VOCs at 0.10% by weight or less.

(b) [ Explanation of code ] Additional product dating requirements.

(1) If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to §§ 130.211—[ 130.216 ] 130.217, an explanation of the date portion of the code [ shall ] must be filed with the Department no later than 12 months prior to the effective date of the applicable standard specified in § 130.211.

(2) If a manufacturer changes a code indicating the date of manufacture for a consumer product subject to paragraph (1), an explanation of the modified code must be submitted to the Department before products displaying the modified code are sold, supplied or offered for sale in this Commonwealth.

(3) A person may not erase, alter, deface or otherwise remove or make illegible a date or code indicating the date of manufacture from a regulated product container without the express authorization of the manufacturer.

(4) Date code explanations for codes indicating the date of manufacture are public information and may not be claimed as confidential.

**§ 130.372. Most restrictive limit.**

(a) Products manufactured before January 1, 2009, and FIFRA-registered insecticides manufactured before January 1, 2010.

(1) Notwithstanding the definition of "product category" in § 130.202 (relating to definitions), if on the principal display panel of a consumer product manufactured before January 1, 2009, or a FIFRA-registered insecticide manufactured before January 1, 2010, a representation is made that the product may be used [ as ], or is suitable for use, as a consumer product for which a lower VOC limit is specified in § 130.211 (relating to table of standards), the lowest VOC limit applies.

(2) [ This ] The requirement of paragraph (1) does not apply to general purpose cleaners [ and ], antiperspirant/deodorant products or insecticide foggers.

(b) Products manufactured on or after January 1, 2009, and FIFRA-registered insecticides manufactured on or after January 1, 2010.

(1) Notwithstanding the definition of "product category" in § 130.202, if on the container or packaging of a consumer product manufactured on or after January 1, 2009, or a FIFRA-registered insecticide manufactured on or after January 1, 2010, or on a sticker or label affixed to the container or packaging, a representation is made that the product may be used, or is suitable for use, as a consumer product for which a lower VOC limit is specified in § 130.211, the lowest VOC limit applies.

(2) The requirement of paragraph (1) does not apply to general purpose cleaners, antiperspirant/deodorant products or insecticide foggers.

**§ 130.373. Additional labeling requirements for aerosol [ adhesives ] adhesive, adhesive remover, electrical cleaner, electronic cleaner, energized electrical cleaner and contact adhesive products.**

(a) In addition to the requirements specified in §§ 130.371, 130.372, 130.391 and 130.392, both the manufacturer and responsible party for each aerosol adhesive, electrical cleaner, electronic cleaner, energized electrical cleaner and contact adhesive product subject to this subchapter shall ensure that all products clearly display the following information on each product container which is manufactured on or after [ January 1, 2005 ] the applicable effective date for the category specified in § 130.211 (relating to table of standards):

(1) The [aerosol adhesive] product category as specified in § 130.211 [(relating to table of standards)] or an abbreviation of the category shall be displayed.

(2) The applicable VOC standard for the product that is specified in § 130.211, except for energized electrical cleaner products, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the Department, as provided in §§ 130.451—130.465 (relating to ACP for consumer products).

\* \* \* \* \*

(b) The information required in § 130.371(a) (relating to [code-dating] product dating requirements) shall be displayed on the product container so that it is readily observable without removing or disassembling a portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing product packaging.

**VARIANCES**

**§ 130.411. Application for variance.**

(a) A person who cannot comply with §§ 130.211—[130.216] 130.217 (relating to standards), because of extraordinary reasons beyond the person’s control, may apply in writing to the Department for a variance. The variance application must set forth:

\* \* \* \* \*

(b) No later than 75 days after receipt of a complete variance application containing the information required in subsection (a), the Department will hold a public hearing in accordance with § 130.471 (relating to public hearings) to determine:

(1) Whether a variance from the requirements in §§ 130.211—[130.216] 130.217 is necessary.

(2) Under what conditions a variance from the requirements in §§ 130.211—[130.216] 130.217 is necessary.

(3) To what extent a variance from the requirements in §§ 130.211—[130.216] 130.217 is necessary.

(c) The Department will not grant a variance unless the applicant demonstrates in writing the following to the Department’s satisfaction:

(1) That because of reasons beyond the reasonable control of the applicant, requiring compliance with §§ 130.211—[130.216] 130.217 would result in extraordinary economic hardship.

\* \* \* \* \*

**§ 130.412. Variance orders.**

A variance order will specify a final compliance date by which the requirements of §§ 130.211—[130.216] 130.217 (relating to standards) will be achieved. A variance order will contain a condition that specifies increments of progress necessary to assure timely compliance, and other conditions that the Department, in consideration of the testimony received at the hearing, finds necessary.

**§ 130.414. Modification of variance.**

Upon the application of a person, the Department may review, and for good cause, modify or revoke a variance from requirements of §§ 130.211—[130.216] 130.217

(relating to standards) after holding a public hearing in accordance with § 130.471 (relating to public hearings).

**TEST METHODS**

**§ 130.431. Testing for compliance.**

(a) Testing to determine compliance with this subchapter shall be performed by one of the following:

(1) Using CARB Method 310, “Determination of Volatile Organic Compounds (VOC) in Consumer Products,” adopted September 25, 1997, and as last amended on [September 3, 1999] May 5, 2005, including subsequent amendments.

(2) Alternative methods which are shown to accurately determine the concentration of VOCs in a subject product or its emissions may be used upon written approval of the Department.

(3) Calculation of the VOC content from records of the amounts of constituents used to make the product under the following criteria:

\* \* \* \* \*

(ii) For the purposes of this section, the VOC content (expressed as a percentage) shall be calculated according to the following equation:

$$\text{VOC [Content] content} = \frac{(B - C)}{A} \times 100$$

where,

A = total net weight of unit (excluding container and packaging)

B = total weight of all VOCs per unit.

C = total weight of VOCs exempted under §§ 130.331—[130.337] 130.338, 130.351 and 130.352 per unit

\* \* \* \* \*

(b) Testing to determine whether a product is a liquid or solid shall be performed using ASTM D4359-90 [(May 25, 1990)] (2000)e1, including subsequent amendments.

(c) Testing to determine compliance with the certification requirements for charcoal lighter material products shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), including subsequent amendments.

(d) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials products shall be performed using ASTM D86-[90]04b, [(September 28, 1990)] including subsequent amendments.

\* \* \* \* \*

**ACP FOR CONSUMER PRODUCTS**

**§ 130.452. Exemption.**

A manufacturer of consumer products which has been granted an ACP agreement by the CARB under the ACP provision in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the CCR shall be exempt from § 130.211 (relating to table of standards) for the period of time that the CARB ACP agreement remains in effect provided that all ACP [Products] products within the CARB ACP agreement are contained in § 130.211. A manufacturer claiming such an ACP agreement on this basis shall submit to the Department a copy of the CARB

ACP decision (that is, the Executive Order), including the conditions established by CARB applicable to the exemption.

**§ 130.453. Request for exemption.**

(a) Manufacturers of consumer products that have been granted an ACP agreement **by the CARB** under the ACP provision in Subchapter 8.5, Article 4, sections 94540—94555, of Title 17 of the CCR based on California specific data, or that have not been granted an exemption by the CARB may seek an ACP agreement with the Department.

\* \* \* \* \*

**§ 130.454. Application for an ACP.**

(a) Manufacturers of consumer products that have been granted an ACP agreement under the ACP provision in Subchapter 8.5, Article 4, sections 94540—94555, of Title 17 of the CCR based on California specific data, or that have not been granted an exemption by the CARB may seek an ACP agreement with the Department.

\* \* \* \* \*

(8) Contain an operational plan covering the products identified under this section for each compliance period that the ACP will be in effect. This plan **[ shall ] must:**

(i) Identify the compliance periods and dates for the responsible ACP party to report the information required by the Department in the ACP agreement **[ approving an ACP ]**. The length of the compliance period chosen by the responsible ACP party may be no longer than 365 days.

\* \* \* \* \*

**§ 130.455. Recordkeeping and availability of requested information.**

(a) Information specified in the ACP agreement **[ approving an ACP ]** shall be maintained by the responsible ACP party for at least 3 years after the records are generated. The records shall be clearly legible and maintained in good condition during this period.

\* \* \* \* \*

**§ 130.457. Limited-use surplus reduction credits for early reformulations of ACP products.**

\* \* \* \* \*

(c) Surplus reduction credits issued under this section shall be calculated separately for each early reformulated ACP product by the Department according to the following equation:

$$SR = \text{Enforceable [ Sales ] sales} \times \frac{((VOC [ Content ] content)_{initial} - (VOC [ Content ] content)_{final})}{100}$$

where,

SR = surplus reductions for the ACP product, expressed to the nearest pound

**[ Enforceable Sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product, ]**

VOC **[ Content ] content**<sub>initial</sub> = the Pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in § 130.211, whichever is the lesser of the two, expressed to the nearest 0.1 pound of VOC per 100 pounds of ACP product **[ , ]**.

VOC **[ Content ] content**<sub>final</sub> = the VOC **[ Content ] content** of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pound of VOC per 100 pounds of ACP product.

(d) The use of surplus reduction credits issued under this section shall be subject to the following:

(1) Surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls generated during the first compliance period occurring immediately after the issuance of the ACP agreement **[ approving an ACP ]**, and may not be used for another purpose.

\* \* \* \* \*

**§ 130.458. Reconciliation of shortfalls.**

(a) At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period, as specified in the ACP agreement **[ approving the ACP ]**. Upon receipt of this information, the Department will deter-

mine the amount of a shortfall that has occurred during the compliance period, and notify the responsible ACP party of this determination.

(b) The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement **[ approving the ACP ]**, within 30 working days from the date of written notification of a shortfall by the Department.

(c) Shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the Department, by implementing the reconciliation of shortfalls plan specified in the ACP agreement **[ approving the ACP ]**.

(d) The requirements specified in the ACP agreement **[ approving an ACP ]**, including the applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

**§ 130.460. Modifications that require Department preapproval.**

The responsible ACP party may propose modifications to the enforceable sales records or reconciliation of shortfalls plan specified in the ACP agreement **[ approving the ACP ]**. Proposed modifications shall be fully described in writing and forwarded to the Department. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this subchapter. The responsible ACP party shall meet all applicable requirements of the existing ACP until a proposed modification is approved in writing by the Department.

**§ 130.462. Modification of an ACP by the Department.**

(a) The Department will modify the ACP as necessary to ensure that the ACP meets the requirements of this subchapter and that the ACP emissions will not exceed the ACP limit if the Department determines one of the following:

\* \* \* \* \*

(3) The ACP emissions are exceeding the ACP **[ Limit ]** limit specified in the ACP agreement.

\* \* \* \* \*

(c) If an applicable VOC standard specified in § 130.211 (relating to table of standards) is modified by CARB in a future rulemaking, the Department will modify the ACP limit specified in the ACP agreement **[ approving an ACP ]** to reflect the modified ACP VOC standards as of its effective date.

**§ 130.465. Other applicable requirements.**

\* \* \* \* \*

A reasonable ACP party may transfer an ACP to another responsible ACP party, provided that the following conditions are met:

(2) The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with the requirements of the ACP agreement **[ approving the ACP ]** and this subchapter.

**PUBLIC HEARING REQUIREMENTS**

**§ 130.471. Public hearings.**

(a) Prior to issuance, **extension**, modification or revocation of a variance order or an ACP, the Department will

hold **[ a hearing ]** three public hearings to take public comment **on the application for a variance or on the proposed extension, modification or revocation of a variance order. The public hearings will be held in the eastern, central and western parts of the Commonwealth.**

(b) **The applicant shall publish notice of the time, place and purpose of the three public hearings in newspapers of general circulation at least 30 days prior to the hearings.**

(c) The Department will publish notice of the time, place and purpose of the **[ hearing ]** three public hearings in **[ a local newspaper of general circulation and ]** the *Pennsylvania Bulletin* **[ not less than ]** at least 30 days prior to the **[ hearing ]** hearings.

**[ (c) ] (d)** At least 30 days prior to the **[ hearing ]** hearings, the Department will make available **[ the ]** to the public the following:

(1) **The application for the variance or ACP [ and the ] or, if the hearings are for an extension, modification or revocation, the variance or ACP order.**

(2) **The proposed order for issuing, extending, modifying or revoking the variance or ACP.**

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