

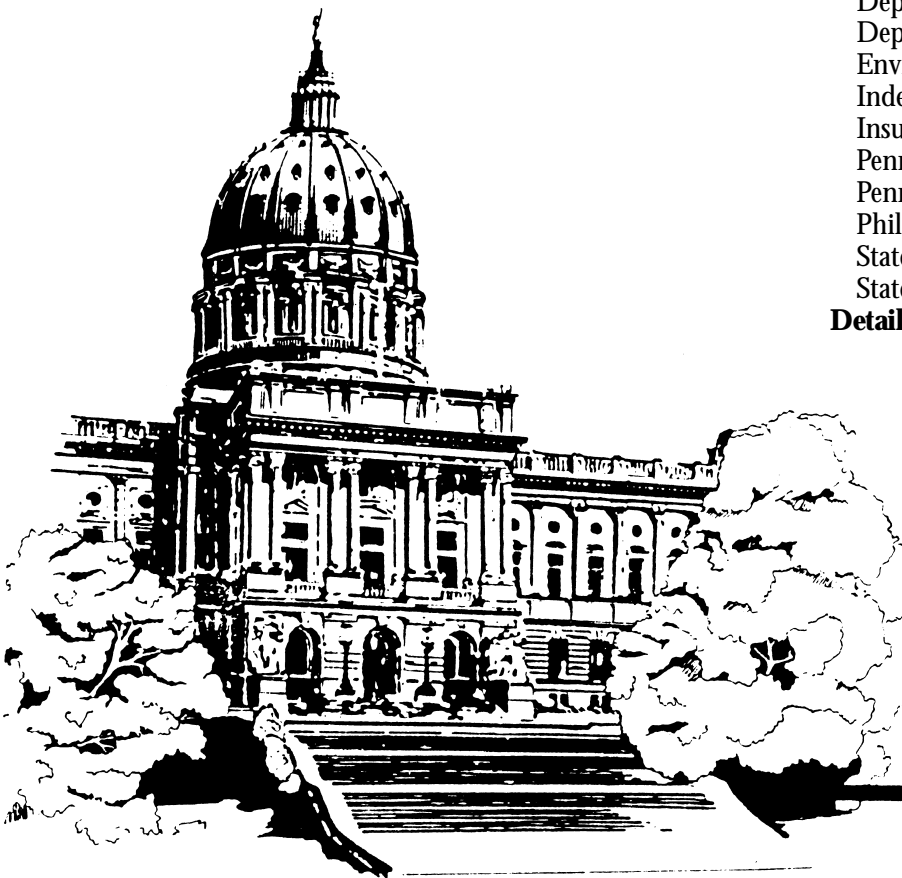
PENNSYLVANIA BULLETIN

Volume 37
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Agencies in this issue

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The Courts
Department of Agriculture
Department of Banking
Department of Education
Department of Environmental Protection
Department of Health
Department of Public Welfare
Department of Transportation
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Independent Regulatory Review Commission
Insurance Department
Pennsylvania Gaming Control Board
Pennsylvania Public Utility Commission
Philadelphia Regional Port Authority
State Board of Pharmacy
State Employees' Retirement System

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

No. 395, October 2007

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Pennsylvania Bulletin

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

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

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

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

Adoption, Amendment or Repeal of Regulations

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

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

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

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

Citation to the *Pennsylvania Bulletin*

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

Pennsylvania Code

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

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

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

How to Find Documents

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

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

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

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Printing Format

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

Fiscal Notes

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

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

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List of Pa. Code Chapters Affected

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THE GENERAL ASSEMBLY

Recent Actions During the 2007 Regular Session of the General Assembly

The following is a summary of recent actions of the General Assembly during the 2007 Regular Session.

<i>Doc. No.</i>	<i>Date of Action</i>	<i>Bill Number</i>	<i>Printer's Number</i>	<i>Effective Date</i>	<i>Subject Matter</i>
2007 GENERAL ACTS OF REGULAR SESSION ENACTED—ACT 057 through 058					
057	Oct 4	HB0483	PN0540	Immediately	Mine Families First Act—enactment
058	Oct 4	SB0779	PN0875	Immediately	Pennsylvania State Police Trooper Robert D. Lapp, Jr., Memorial Highway—designation

* denotes an effective date with exceptions

Effective Dates of Statutes

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

Advance Copies of Statutes

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

Requests for annual subscriptions for advance copies of statutes should be sent to the State Bookstore—PHMC, Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120-0053, accompanied by a check or money order in the sum of \$20, payable to the “Commonwealth of Pennsylvania.”

ROBERT W. ZECH, Jr.,
Director
Legislative Reference Bureau

[Pa.B. Doc. No. 07-1975. Filed for public inspection October 26, 2007, 9:00 a.m.]

THE COURTS

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that John P. Halvonik, having been suspended from the practice of law for a period of 7 months before the United States Patent and Trademark Office by Mandate of the United States Court of Appeals for the Federal Circuit issued November 3, 2006, and Notice of Suspension of the United States Patent and Trademark Office dated November 27, 2006, the Supreme Court of Pennsylvania issued an Order dated October 11, 2007, suspending John P. Halvonik from the practice of law in this Commonwealth consistent with the Mandate of the United States Court of Appeals for the Federal Circuit and the Notice of Suspension of the United States Patent and Trademark Office. 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. 07-1976. Filed for public inspection October 26, 2007, 9:00 a.m.]

INTERBRANCH COMMISSION FOR GENDER, RACIAL AND ETHNIC FAIRNESS

Suggested Standardized Procedures for Jury Selection in Pennsylvania

The Interbranch Commission for Gender, Racial and Ethnic Fairness is hereby submitting for public comment the following Report on Suggested Standardized Procedures for Jury Selection in Pennsylvania. The report has been submitted to the Supreme Court of Pennsylvania and to the President Judge of each judicial district of Pennsylvania for their comments and suggestions, and is now open for public comment.

All communications in reference to the proposed recommendation should be sent no later than November 24, 2007 to:

Lisette M. McCormick, Esquire
Executive Director
Interbranch Commission for Gender, Racial and
Ethnic Fairness
Suite 3130, One Oxford Centre
Pittsburgh, PA 15219 or e-mail to
InterbranchforFairness@pacourts.us

SUGGESTED STANDARDIZED PROCEDURES FOR JURY SELECTION IN PENNSYLVANIA

The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness Jury Service Committee

September 12, 2007

ACKNOWLEDGEMENTS

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The Jury Service Committee

Lynn A. Marks, Esq., Chair
Honorable Ted V. Kondrich
Burton D. Morris, Esq.
Charles Cunningham, Esq.*
Honorable Stephanie A. Domitrovich*
Paula Hannaford-Agor, Esq.**
Honorable Thomas King Kistler*
G. Thomas Munsterman**
Rick Pierce*
E. Marie Queen*
Arthur H. Stroyd, Jr., Esq.*

Members of the Interbranch Commission for Gender, Racial and Ethnic Fairness

Cathy Bissoon, Esq.
Burrell Brown, Esq., Commission Chair
Helen E. Casale, Esq.
Honorable Ida K. Chen
Samuel T. Cooper, Esq.
Honorable Pedro A. Cortés
Jacqueline D'Angelo, Esq.
Khadija T. Diggs, Esq.
Honorable Elizabeth Doyle
Lazar H. Kleit
Honorable Ted V. Kondrich
Honorable Maureen Lally-Green
Roberta D. Liebenberg, Esq.
Lynn A. Marks, Esq.
Lucille Marsh, Esq.
Gladys Miller-Russell
Burton D. Morris, Esq.
Honorable Jane Clare Orié
Nathan C. Pringle, Jr., Esq.
Honorable Doris A. Smith-Ribner
Kathleen D. Wilkinson, Esq.
Nora Winkelman, Esq.
Jennifer Ann Wise, Esq.
Samuel S. Yun, Esq.

Interbranch Commission Staff

Lisette M. McCormick, Esq., Executive Director
Christine M. Kalinik, Paralegal
Glen S. Downey, Intern
Rebecca Olds, Intern

*Members of the Pennsylvania Commission on Justice Initiatives

**National Center for State Courts (NCSC) consultants to the Jury Service Committee.

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INTRODUCTION

Since the early days of the republic, jury service has been a mark of citizenship and a touchstone of civic duty. Indeed, for those who are called, jury service can be what Thomas Jefferson referred to as “the only anchor, ever yet imagined by man, by which a government can be held to the principles of its constitution.”¹ Widespread public participation in the jury system is critical to establishing public confidence in the system. Without that confidence, the rule of law, as well as the health of our democracy, is endangered.

In 2003, a committee appointed by the Supreme Court of Pennsylvania found, in its study of the state justice system, widely differing jury selection procedures in judicial districts across the state. These procedures not only differed from one another but were often found to be ineffective and inefficient. In some jurisdictions, jury commissioners or administrators regularly summoned far more jurors than were needed, at great expense to the counties; the jury source lists tapped far too few minority jurors; and thousands of summons are returned on a daily basis with outdated addresses.

With this in mind, Pennsylvania Supreme Court Chief Justice Ralph J. Cappy requested that the Interbranch Commission for Gender, Racial and Ethnic Fairness search for the best practices among judicial districts in Pennsylvania and nationally, and provide recommendations to the Court incorporating those practices in a standardized set of procedures for selecting juries across the state. The goals are to improve the efficiency of the process of jury selection and to increase public participation and diversity on juries statewide.

The following report is the result of this study. It represents the combined effort of the Jury Service Committee of the Interbranch Commission and the Commission for Justice Initiatives. The Commissions consulted national experts and studies on jury service, reports on jury reform produced by other states and information about practices utilized by individual counties in Pennsylvania. The report covers thirteen areas of jury practice, including the Juror Summons Process; Juror Utilization; Juror Source Lists; Juror Qualifications; Juror Exemptions, Deferrals and Excusals; Juror Failure to Appear; Juror Compensation; Terms of Jury Service; Jury Voir Dire; Peremptory Challenges; Juror Privacy; Juror Security; and Jury Education and Appreciation Campaigns.

This report addresses the elements of the process most likely to influence citizens’ willingness to serve and to determine who is selected to serve. Our goal was to uncover the most efficient and progressive practices in jury selection around the country and apply that knowledge to the development of a standardized system for Pennsylvania.

SECTION ONE

Juror Summons Process

A juror summons is often confusing and difficult for the layperson to understand. This lack of clarity contributes

¹ Evan R. Seamone, *State Inaction to Increase Jury Compensation and the Need to Identify Forward-Looking Standards*, N.Y.U.J.Legis. & Pub. Pol’y, Vol. 5, Number 2, 291 (2002).

to the failure of potential jurors to respond to summonses. In addition to the need for clarity, a juror summons must contain the most recent contact information for the potential juror in order to maximize juror turnout. Using correct addresses also reduces the costs associated with jury operations by decreasing the incidence of returned summonses due to expired addresses.

Recommendation One

It is recommended that the Pennsylvania Supreme Court require each judicial district to draft clear¹ and practical jury summonses that avoid appearing overly “legalistic” and include the following:

- Jury summonses and qualification questionnaires should be mailed to prospective jurors at the same time—the “one-step process” of summoning prospective jurors.²
- The summons materials should include information about the manner in which jurors are to respond to the summons, including address of courthouse, telephone numbers, and the exact time and date of their appearance.
- The materials should also include a pamphlet or notice with introductory court information, such as appropriate dress, court amenities, and frequently asked questions, allowing for a more attractive and open layout for the summons itself.³
- The qualification questionnaire should be tailored to meet the screening and information needs of the jurisdiction.

- There should be standards for disqualification, deferral, and possible excusal from jury service.

- The summons should include a notice indicating that compliance with the juror summons is not only an obligation of citizenship, but is required by law. In addition, the summons should make clear the consequences for failing to respond to the jury summons and/or failure to appear for jury service.⁴ (See Section Six, Juror Failure to Appear)

In addition, it is recommended that the Supreme Court require each judicial district to establish procedures for resending the summons to those citizens who do not respond initially to a jury summons, as well as procedures for updating and maintaining accurate source lists (such as linkage to and usage of the National Change of Address System [NCOA] and the national deceased list) to help reduce the number of undeliverable summonses.⁵ (See Appendix A for a sample Juror Summons.)

Endnotes

¹ Robert G. Boatright, *Improving Citizen Response to Jury Summonses: A Report with Recommendations* (1998).

² Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p.15 (April 2006).

³ Task Force on Jury System Improvements, Judicial Council of California, *Final Report*, pp. 15-16 (April 2004).

⁴ G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, p. 47 (National Center for State Courts, 4th Ed., 2006).

⁵ *Id* at 49; American Bar Association, *Principles for Juries & Jury Trials*, p. 53 (2005); If the pending legislation regarding the creation of a statewide master jury list is enacted into law, the state administrative office of courts would be responsible for updating the lists used to create the master jury list. However, if a county decides to opt out of that system or if it supplements the master

jury list with other source lists, it is recommended that such a county be held responsible for updating and maintaining the source lists that it uses.

SECTION TWO

Juror Utilization

The most effective way to obtain the cooperation of all citizens in fulfilling their obligation to perform jury service is to minimize the inconvenience to those citizens who are summoned. Our recommendation for a "one day/one trial" jury system supports that goal because it is more efficient than a week-long term system and minimizes the time that jurors must spend at the courthouse. At the same time, however, that system requires more potential jurors to be called into the jury selection process. This has the unfortunate effect of calling more jurors than actually will be needed and costing the court system more money. One way to address this problem is to require standardized panel sizes in combination with a reduction in the term of service for jurors.

Recommendation Two

It is recommended that the Pennsylvania Supreme Court require each judicial district to reduce the number of jurors summoned for a voir dire panel in order to decrease the number of excess prospective jurors summoned. Specifically, it is recommended that the Supreme Court follow the recommendation of the Jury Task Force of the Pennsylvania Association of Court Management ("PACM") that studied this problem and concluded in its Best Practices Report¹ that no more than 40 jurors per case be empanelled in a criminal case. This would allow the court to rule comfortably on ten challenges for cause. In a civil matter, a panel size of 30 is recommended by PACM. This would also give the court the potential for ten challenges for cause. Having ten successful challenges for cause in a civil or criminal matter would be extremely unusual. This system would permit the courts to plan more precisely for the proper number of jurors to be summoned to the courthouse on any one day. The judge should provide advance notice to the jury administrator to enable him or her to summon more persons in the event that more jurors are necessary for a particularly notable or complex case.

Endnotes

¹ Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p. 8-9 (April 2006).

SECTION THREE

Jury Source Lists

The exclusive use of voter and vehicle registration lists for juror selection often leads to a panel of prospective jurors that is over-representative of older, middle and upper-income, well-educated, and non-minority members of the community.¹ Therefore, reliance on these lists alone leads to jury panels that may not be reflective of the community-at-large, particularly the minority community.²

Recommendation Three

In order to produce a jury pool that is more diverse, inclusive, and reflective of the community from which it is drawn, it is recommended that the Supreme Court encourage judicial districts throughout the Commonwealth to obtain their lists of prospective jurors from a statewide master jury list,³ drawn from the following sources:

- Department of Public Welfare
- Department of State
- Department of Revenue
- Department of Transportation⁴

This statewide master jury list will be generated by the Administrative Office of Pennsylvania Courts, and will include the most recent addresses of potential jurors. The list will be distributed to each judicial district on an annual basis.⁵

It is also recommended that the Supreme Court allow each judicial district to supplement its primary juror source lists with additional source lists that may include the following:⁶

- Lists of property owners
- State census lists
- Lists of state unemployment recipients
- Lists of newly naturalized citizens
- Lists of recently graduated high-school seniors
- Persons listed in telephone, city/municipal directories and similar directories
- Lists of holders of hunting and fishing licenses
- Lists of local tax payers

Endnotes

¹ G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, p. 29 (National Center for State Courts, 4th Ed., 2006).

² *Taylor v. Louisiana*, 419 U.S. 522 (1975) (stating that the selection of a jury from "a cross-section of the community is fundamental to the American system of justice"); *People v. Harris*, 679 P.2d 433 (Cal. 1984) (the state's exclusive use of a voter registration list, which did not represent a fair cross-section of the community, deprived the defendant of his right to a jury trial).

³ Task Force on Jury System Improvements, Judicial Council of California, *Final Report*, p. 11 (April 2004).

⁴ See *Salameh v. Spossey*, 731 A.2d 649 (Pa. Comwlth 1999) (concluding that the state's use of other lists besides the mandatory voter registration list is only discretionary but that the use of other lists to find potential jurors is clearly statutorily permitted).

⁵ On July 17, 2007, after unanimous passage by both the Pennsylvania Senate and House, Senate Bill 116, Printer's Number 1038, which provides for such a master list and distribution scheme, was signed into law by Governor Rendell.

⁶ Task Force on Jury System Improvements, Judicial Council of California, *Final Report*, p. 10 (April 2004); G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, p. 91 (National Center for State Courts, 4th Ed., 2006); The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report*, p. 97 (March 2003).

SECTION FOUR

Juror Qualifications

In order to demonstrate that all citizens are not only required but welcome to participate in the jury process, the qualifications for juror service should be presented in an inclusive manner and should be narrowly drawn. Pennsylvania's juror qualification statute generally meets that standard with the exception of the lifetime exclusion of those convicted of crimes punishable by imprisonment of more than one year. Such automatic exclusions excise a

significant share of the citizenry from jury panels, including at least 30% of all African-American males.¹ Such wholesale exclusions often lead to jury panels unreflective of the community-at-large.

Recommendation Four

It is recommended that the present juror qualification statute in Pennsylvania [42 Pa.C.S.A. § 4502(a)]² be revised to reflect the following policy regarding juror qualifications:

- Eligibility for jury service should not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, sexual orientation, or any other objective or subjective factor³ that discriminates against a cognizable group⁴ in the jurisdiction other than those people set forth in the section below.⁵

- All persons are eligible for jury service except those who:⁶

- 1) Are less than eighteen years of age; or
- 2) Are not citizens of the United States; or
- 3) Are not residents of the jurisdiction in which they have been summoned to serve; or
- 4) Lack sufficient command of the English language to be able to effectively communicate in it.

In the past ten years, there has been a dramatic shift among states to permit citizens with criminal records to serve on juries. In particular, seventeen states and the District of Columbia have lifted their lifetime bans for felons.⁷

Currently, in Pennsylvania, any person who has been convicted of a crime punishable by imprisonment for more than one year and who has not been granted a pardon or amnesty is banned for life from serving as a juror. Thus, not only are felons banned for life in Pennsylvania but those convicted of misdemeanors of the first or second degree are banned, as well. Such a stringent law is counter to the national trend away from felon disenfranchisement and toward promoting increased general participation on juries.⁸

Consequently, we join in the recommendation of the Jury Task Force Report *Best Practices Recommendations* of the Pennsylvania Association of Court Management⁹ that section (a)(3) of the present jury qualification statute in Pennsylvania banning felons and those convicted of misdemeanors of the first or second degree from juror service be replaced by a more inclusive statute that is more consistent with those of surrounding states and the nation in general.

In particular, it is recommended that the following sections (a)(5) and (6) be added to the proposed statute set forth above:

- 5) Have been convicted of a felony of any degree or a misdemeanor of the first degree;
- 6) Have been convicted of a misdemeanor of the second degree and have been confined or on probation, parole, or otherwise under court supervision within the previous five years.¹⁰

These reasons should be the exclusive bases for juror ineligibility. Preliminary information regarding juror qualification should be obtained via the Juror Qualification form mailed to prospective jurors along with the Jury Summons (the one-step juror summons process). (See Appendix A for a sample Juror Summons and Juror Qualification Form.)

Endnotes

¹ Christopher Uggen, et al., 2006. *Citizenship, Democracy and the Civic Reintegration of Criminal Offenders*, *The Annals of the American Academy of Political and Social Science* 605: 281, 283.

² (a) General rule.—Every citizen of this Commonwealth who is of the required minimum age for voting for State or local officials and who resides in the county shall be qualified to serve as a juror therein unless such citizen:

(1) is unable to read, write, speak and understand the English language;

(2) is incapable, by reason of mental or physical infirmity, to render efficient jury service; or

(3) has been convicted of a crime punishable by imprisonment for more than one year and has not been granted a pardon or amnesty therefor.

(b) Definition.—For purposes of this section, “convicted of a crime punishable by imprisonment for more than one year” does not include a conviction for any offense under or violation of the former act of May 1, 1929 (P. L. 905, No. 403), [FN1] known as The Vehicle Code, or the former act of April 29, 1959 (P. L. 58, No. 32), [FN2] known as The Vehicle Code, which offense or violation, if it had been committed after July 1, 1977:

(1) would have been substantially similar to an offense currently graded as a summary offense under 75 Pa.C.S.A. (relating to vehicles); or

(2) would not have been a violation of law.

1980, June 26, P. L. 266, No. 78, § 3, imd. effective. Amended 2001, Dec. 17, P. L. 944, No. 113, § 2, imd. effective.

³ Only three states (Alabama, Arkansas, and Illinois) retain any vestiges of the once prominent use of subjective factors in selecting jurors. Only fifty years ago, it was commonplace for there to be bans on “the wrong type of person” for jury service. Jurors were once required to be of “good character,” and “high integrity,” and to be free of “vicious habits” or “unclean thoughts.” See Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 Am. U. L. Rev. 65, 188 (October 2003).

⁴ *U.S. v. Duran De Amesquita*, 582 F. Supp. 1326 (S. D. Fla. 1984) (In determining whether a group is cognizable for the purposes of a challenge to a jury selection plan, the following considerations are pertinent: (1) there must exist some quality or attribute which defines or limits the alleged group; (2) there must exist cohesiveness of attitudes, ideas, or experience which distinguishes the group from the general social milieu; and (3) a community of interest must be present which may not be represented by other segments of the population.)

⁵ See 28 U.S.C.A. § 1862: No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States or in the Court of International Trade on account of race, color, religion, sex, national origin, or economic status.

(June 25, 1948, c. 646, 62 Stat. 952; Mar. 27, 1968, Pub. L. 90-274, § 101, 82 Stat. 54; Oct. 10, 1980, Pub. L. 96-417, Title III, § 302(c), 94 Stat. 1739.)

⁶ G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, p. 35 (National Center for State Courts, 4th Ed., 2006).

⁷ Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 Am. U. L. Rev. 65, 150-57 (October 2003).

⁸ Id.

⁹ Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p. 8 (April 2006).

¹⁰ Interbranch Commission member Judge Elizabeth Doyle does not concur with the portion of this recommendation regarding this modification of the present juror qualification statute in Pennsylvania to lift the lifetime ban on jury service on those convicted of second degree misdemeanors.

SECTION FIVE

Juror Exemptions, Deferrals, and Excusals

While the justice system is required to provide defendants and litigants with an unbiased jury reflective of their community, many “real-world” factors impact whether potential jurors actually participate in the system. Potential jurors often have personal responsibilities, such as child or elder care, or health conditions which render them temporarily unable to perform jury service; others ask to be removed from jury service for reasons of inconvenience or perceived hardship. These conflicts commonly lead to juror dismissals which disproportionately affect low-income and minority individuals, undermining the diversity of many jury pools.¹ Having clearly established and communicated criteria for granting releases from jury service reduces the incidence of discriminatory, inconsistent, or arbitrary standards.

Recommendation Five

It is recommended that the Supreme Court require each judicial district in the Commonwealth to adopt standard procedures to be followed in the event of a request by a juror for an exemption, deferral, or excusal from jury service. Such standard procedures should be guided by the following principles:

- The deferral of jury service shall always be preferred to excusing a prospective juror for a temporary or marginal hardship.²
- Mere inconvenience to a prospective juror or his or her employer is not an adequate reason to be excused from jury duty.
- A prospective juror’s responsibility for providing care for her/his children or elderly parents should not result in an automatic exemption or permanent removal of the person from the list of possible jurors.
- Financial burden, unless significant, is not sufficient.

Suggested standard procedures should include the following (in order of preference):

- **Deferrals**—Individuals scheduled to appear for jury service have the right to one automatic six-month deferral of each appearance, provided all of the following apply:

- 1) The juror has not previously been granted a deferral in that trial term.
- 2) The prospective juror appears in person or contacts an appropriate court official by telephone, electronic mail or in writing to request a deferral (See Appendix B for a sample Request for Deferral or Excusal Form.).
- 3) Prior to the grant of a deferral with the concurrence of an appropriate court official, the prospective juror fixes a date certain on which he or she will appear for jury service that is not more than six months after the date on which the prospective juror originally was called to serve and on which date the court will be in session.

Note: A subsequent request to defer jury service may be approved by a judicial officer only in the event of an emergency, such as a death in the family, grave illness, a natural disaster or a national emergency in which the prospective juror is personally involved, that could not have been anticipated at the time the initial deferral was granted. Prior to the grant of a second deferral, the prospective juror must fix a date certain on which the individual will appear for jury service within six months of the deferral on a date when the court will be in session.

Note: An individual who fails to appear in person on the date scheduled for jury service and who has failed to obtain a deferral in compliance with the provisions for requesting a deferral or who fails to appear on the date set is subject to civil contempt and/or sanctions. See Recommendation Six.

- **Excusals**—In cases of undue or extreme hardship,³ instead of seeking a deferral, an individual may apply in writing to be excused from jury service for a period of up to 24 months (See Appendix B for a sample Request for Deferral or Excusal Form) if:

- 1) The prospective juror has a mental or physical condition that causes him or her to be incapable of performing jury service. The juror or the juror’s personal representative must provide the court with documentation from a physician on his/her letterhead verifying that a mental or physical condition renders the person unfit for jury service for a period of not less than the 24-month period for which the excuse is sought.

- 2) Jury service would cause undue physical or significant financial hardship to the prospective juror or a person under the prospective juror’s care or supervision:

- a. A judge of the court for which the individual was called to jury service shall make determinations of undue or extreme physical or significant financial hardship. The authority to make these determinations is delegable only to court officials.

- b. A person asking to be excused based on a finding of undue or extreme physical or significant financial hardship must take all actions necessary to obtain a ruling on that request by no later than the date on which the individual is scheduled to appear for jury duty.

- c. Undue or extreme physical or significant financial hardship is limited to circumstances in which an individual would:

- (i) Be required to abandon a person under the individual’s personal care or supervision due to the impossibility of obtaining an appropriate substitute caregiver during the period of participation in the jury pool or on the jury;

- (ii) Incur costs that would have a substantial adverse impact on the payment of the individual’s necessary daily living expenses or on those for whom the individual provides the principal means of support; or

- (iii) Suffer physical hardship that would result in injury or illness.

- d. Undue or extreme physical or significant financial hardship does not exist based solely on the fact that a prospective juror will be required to be absent from the prospective juror’s place of employment.

- e. Persons asking a judge to grant an excusal based on undue extreme physical or significant financial hardship may be required to provide the judge with documentation, such as, but not limited to, medical statements from licensed physicians, proof of dependency or guardianship

and similar documents to support the request to be excused. Failure to provide satisfactory documentation shall result in a denial of the request to be excused.

Note: After 24 months, a person excused from jury service shall again become eligible for qualification as a juror unless the person was excused permanently from service. A person is excused permanently from jury service only when the judge determines that the underlying grounds for being excused are permanent in nature.

Note: Upon reaching 70 years of age, an individual may notify the Court of Common Pleas of the county in which he or she resides that he/she wishes to permanently opt out of future jury service. The court, upon receipt of the notification, shall not call the individual to jury service. An individual who is under consideration to serve in a trial or has been selected to serve in a trial should not be permitted to use these procedures to opt out of that service.

• **Exemptions**—All automatic exemptions from jury service based upon profession should be eliminated as a matter of law.⁴

Endnotes

¹ PA Joint Comm. Rpt. 2300, *Minority Representation in the Jury Selection Process in Pennsylvania*, p. 84 (May 2003).

² California Center for Judicial Education and Research, *Jury Management Bench Handbook*, p. 11 (2002 Ed.).

³ American Bar Association, *Principles for Juries & Jury Trials*, p. 52 (2005); Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p. 7 (April 2006); G. Thomas Munsterman, *The Jury Patriotism Act*, *The Court Manager*, Vol. 18, Issue 2, p. 71 (Summer 2003).

⁴ G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, p. 35 (National Center for State Courts, 4th Ed., 2006); G. Thomas Munsterman, *The Jury Patriotism Act*, *The Court Manager*, Vol. 18, Issue 2, p.72 (Summer 2003).

SECTION SIX

Juror Failure to Appear

The importance of jury duty is often not understood, and many potential jurors see no imminent consequences for ignoring their summonses. Yet the failure-to-appear rate can significantly affect the quality and makeup of Pennsylvania juries. According to one study, the single biggest predictor of failure-to-appear rates was whether prospective jurors believed that failing to appear would result in negative consequences.¹

Recommendation Six

In order to reduce the failure-to-appear rate of prospective jurors, it is recommended that the Supreme Court require each judicial district to formulate a written policy addressing the steps and consequences (including show-cause hearings) for jurors who fail to follow proper procedures, respond to a jury summons, and/or appear for jury service.² This written policy should be mailed to prospective jurors along with their summonses. In addition, on each qualification questionnaire, the Supreme Court should require a signature line, which requires prospective jurors to acknowledge that they have read and understand the consequences of the failure to complete the questionnaire or to respond to a jury summons.

Consistently applied follow-up procedures will convey to the community that courts are aware of citizens' failure to

respond to jury summonses and that the courts will take appropriate action. It is very important that judicial districts follow-up on non-responders at all stages of the jury summoning process. A typical progression of follow-up steps is:

- A follow-up letter or second summons.
- Issuance of a Failure-to-Appear (FTA) Notice.
- Issuance of an Order-to-Show Cause (OSC) Notice.
- Issuance of Civil Contempt Citation and/or Sanctions.³

Due to the high cost and other problems associated with the administration of a coercive enforcement policy, however, it is recommended that enforcement policies be carefully crafted. Possible enforcement techniques may include:

- The issuance of a small number of show-cause warrants per year that are well-publicized to demonstrate to the general public that there is a penalty for failing to respond to a summons.

- Amendments to the Rules of Civil Procedure and Motor Vehicle Code to provide procedures for placing a hold upon driver license renewals of those persons who fail to respond to juror summonses and subsequent correspondence regarding jury service. Holds may be removed for those who genuinely failed to receive their jury summonses by providing current address information for the issuance of a new summons⁴ and agreeing to serve when summoned.

Endnotes

¹ Robert G. Boatright, *Improving Citizen Response to Jury Summonses: A Report with Recommendations* (1998).

² Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p.7 (April 2006)

³ The Los Angeles County Superior Court assessed its follow-up program and found that 29% of persons who failed to respond to the first summons did respond to the second summons; an additional 6% responded after receiving the FTA notice, and 18% responded after receiving the OSC notice. Thus, the overall effect of the Los Angeles follow-up program was that more than half (53%) of nonresponders eventually responded to the jury summons. Some of the nonresponses might have been caused by the nonreceipt of the jury summonses or the failure to properly return them to the court. Linkage to and use of the National Change of Address System (NCOA) should help to significantly reduce this number of nonresponders.

⁴ Task Force on Jury System Improvements, Judicial Council of California, *Final Report*, p. 13 (April 2004).

SECTION SEVEN

Juror Compensation

Jury service can often impose economic hardships that significantly reduce juror participation rates. Economic hardship excusals tend to disproportionately affect minorities, leading to jury pools that do not accurately reflect Pennsylvania's growing diversity.¹ To compound the problem, Pennsylvania's juror compensation scale, unlike those of most other states, has remained effectively unchanged since 1980.² In addition, many studies connect an ability to serve with issues that appear to be gender-related.³ The responsibility for childcare predominately falls upon women and the relative lack of childcare services for jurors is a major impediment to women serving as jurors.

Recommendation Seven

It is recommended that the Supreme Court support legislation designed to compensate jurors adequately for their service to the courts. Such legislation should encompass the following principles:

- When the jury service entails only a short period of time (e.g. three days or less), either the daily fee should be sufficient, at a minimum, to reimburse jurors for reasonable out-of-pocket expenses (transportation, parking, meals, and childcare) or vouchers should be provided to jurors in reasonable amounts to cover those expenses.⁴

- For longer trials, jurors should be compensated for reasonable expenses and lost wages. This can be accomplished by either:

- 1) Raising the juror compensation scale for trials lasting over three days, including the possible implementation and creation of a lengthy trial fund⁵; and/or

- 2) Offering employers economic incentives to compensate employees summoned for jury duty.

- Possible programs to fund increased juror compensation that have been used successfully elsewhere include:⁶

- A \$5 civil case filing fee to be paid into the jury compensation fund.

- Raise jury demand fees.⁷

- Compensate jurors from fees paid for the reinstatement of state driver's licenses.

- No pay for first day of service, one-day trial or first day of longer trial, but increased pay for trials lasting over three days.

- All employers should be prohibited from discharging, laying off, denying advancement opportunities to, or otherwise penalizing employees who miss work because of jury service.⁸

- Where possible, court administrators should try to establish childcare facilities in courthouses by utilizing the funding through Title 42 Pa.C.S.A. § 3721 for the start-up and daily operating costs of such facilities.

Endnotes

¹ PA Joint Comm. Rpt. 2300, *Minority Representation in the Jury Selection Process in Pennsylvania*, p. 84 (May 2003).

² Pennsylvanians for Modern Courts, *Report on Juror Compensation in Pennsylvania*, p. 1 (August 2006). The \$9 per day rate for the first three days of juror service, in fact, has remained unchanged since 1959. In 1980, juror compensation was increased to \$25 per day AFTER the first three days of service.

³ The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report*, p. 104 (March 2003).

⁴ American Bar Association, *Principles for Juries & Jury Trials*, p.8 (2005).

⁵ See G. Thomas Munsterman, *The Jury Patriotism Act*, *The Court Manager*, Vol. 18, Issue 2, p.71 (Summer 2003); see similar language in statutes authorizing Lengthy Trial Funds in the following states: Arizona (A.R.S. § 21-222), Oklahoma (28 O.S. 86) and Mississippi (Miss. Code Ann. § 25-7-61); and similar proposed legislation in Missouri (House Bill No. 1143, 2004 Session) and Georgia (House Bill 1323, 2004 Session), among others.). In 2005, the Texas Legislature passed and the governor signed into law Senate Bill 1704 increasing compensation for

jurors from six dollars a day to 40 dollars a day, starting on the juror's second day of service. The bill also provided for state reimbursement to counties for juror pay and for the funding of juror reimbursement through court costs that are deposited into a Jury Service Fund, not unlike the Lengthy Trial Funds referenced above.

- Rules for the Establishment of the Fund:

- 1) The selection and appointment of an administrator of the fund;

- 2) Procedures for the administration of the fund, including payments of salaries of the administrator and other necessary personnel;

- 3) Procedures for the accounting, auditing and investment of money in the fund;

- 4) The administrator should report annually on the administration of the Lengthy Trial Fund to the Supreme Court and the General Assembly, setting forth the money collected for and disbursed from the fund.

- Collection of Money for the Fund:

- 1) Each trial court in this Commonwealth should collect from each attorney who files a civil case, unless otherwise exempted under the provisions of this section, a fee of \$5 per case to be paid into the Lengthy Trial Fund. A lawyer should be deemed to have filed a case at the time the first pleading or other filing on which an individual lawyer's name appears is submitted to the court for filing and opens a new case. All fees should be forwarded to the administrator of the Lengthy Trial Fund for deposit.

- Wage Replacement or Supplementation:

- 1) The fees deposited in the Lengthy Trial Fund should be used to pay wage replacement or supplementation to any juror in civil litigation beginning on the fourth day of service. The amount paid from the fund should be no more than is needed to relieve financial hardship and, in no event, should exceed \$100 per day per juror.

- 2) The fees deposited in the Lengthy Trial Fund should also be used to pay wage replacement or supplementation not to exceed \$300 per day to jurors, beginning on the tenth day of service.

- 3) The amount of disbursements from the Lengthy Trial Fund may be limited, based on the availability of financial resources.

- Requests for Payment:

- 1) A juror who is serving or has served on a jury that qualifies for payment from the Lengthy Trial Fund should submit a request for payment from the fund on a form provided by the administrator. Payment should be limited to the difference between the State-paid jury fee and the actual amount of wages a juror earns, up to the maximum level payable minus any amount the juror actually receives from the employer during the same time-period.

- 2) The form should disclose the juror's regular wages, the amount the employer will pay during the term of jury service, the amount of replacement or supplemental wages requested and any other information the administrator deems necessary.

- 3) Juror should be required to submit verification from the employer as to the wage information provided to the administrator prior to payment from the

fund. The employee's most recent earnings statement or similar document should qualify as wage information.

4) If an individual is self-employed or receives compensation other than wages, the individual should provide a sworn affidavit attesting to his or her approximate gross weekly income, together with such other information as the administrator may require in order to verify weekly income.

• Exemptions: The following attorneys and causes of action should be exempt from payment of the Lengthy Trial Fund fee:

- 1) Government attorneys appearing in the course of their official duties;
- 2) Pro se litigants;
- 3) Cases in small claims court.
- 4) Claims seeking Social Security disability determinations, individual veterans' compensation or disability determinations, recoupment actions for government-backed educational loans or mortgages, child custody and support cases, actions brought in forma pauperis, and any other filings designated by rule that involve minimal use of court resources and that customarily are not afforded the opportunity for a trial jury.

⁶ Paula Hannaford-Agor, *The Laborer is Worthy of His Hire and Jurors Are Worthy of Their Juror Fees*, *The Court Manager*, p. 39 (Vol. 21, Issue 2, Summer 2006).

⁷ Jury demand fees are quite numerous in jurisdictions around the country. Although the actual fee structures vary widely, taking into account factors such as the type of case involved and whether the petitioner is demanding a six or a twelve person jury, the basic idea is quite similar: those parties that are not indigent and request a jury for their civil trial are required by the court to pay a fee for that jury.

⁸ See G. Thomas Munsterman, *The Jury Patriotism Act*, *The Court Manager*, Vol. 18, Issue 2, p.71 (Summer 2003); Employers should be prohibited from requiring jurors to use leave or vacation time for the time spent on jury service or to make up the time they served [see similar language in statutes in the following states: Arkansas (A.C.A. § 16-31-106), Kansas (K.S.A. 43-173), Kentucky (K.R.S. 29A.160), Maine (14 M.R.S.A § 1218), and Nebraska (Neb. Rev. Stat. § 25-1640)].

1) Job preservation—A person who is summoned to serve as a juror and who notifies his or her employer of the summons within a reasonable period of time after receipt of the summons and prior to his or her appearance for jury duty should not be removed or otherwise be subject to any adverse employment action as a result of the jury duty.

2) Benefits protection—An employee should not be required or requested to use annual, vacation or sick leave for time spent responding to a summons for jury duty, participating in the jury selection process or serving on a jury. This provision should not be construed to require an employer to provide annual, vacation or sick leave to employees under the provisions of this act who are not entitled to such benefits under company policies.

Note: In Pennsylvania, there is a statutory exception to these prohibitions for small businesses that states: "Subsection (a) [prohibiting an employer from depriving an employee of his employment, seniority position

or benefits, or from threatening or otherwise coercing an employee because of jury service] shall not apply to any employer in any retail or service industry employing fewer than 15 persons or any employer in any manufacturing industry employing fewer than 40 persons." [42 Pa.C.S.A. § 4563 (d)]

SECTION EIGHT

Term of Jury Service

Respect for jurors and their commitments should be the guiding principle of all judicial districts. Research indicates that juror satisfaction is directly linked to how effectively juror time is managed. Reducing the amount of time jurors wait before being assigned or dismissed not only increases juror satisfaction, but also significantly reduces the number of deferrals and hardship excusals.

Recommendation Eight

It is recommended that the Supreme Court require judicial districts to use a "one day/one trial" or a "one day/multiple trial" process of summoning jurors.¹ This recommendation is made because the national trend is toward a one-day process that is more cost-efficient and more convenient to the jurors.² The specific details of that process can be established by each judicial district, although essentially a "one-day/one-trial" system works as follows:

• The court calls the jurors to serve for a period of one day. On that first day, the person is either:

1) Selected as a juror who serves until the case is complete, in which case the juror is not summoned again for three years if the length of the trial was four or more days, or one year if the length of the trial was three days or less;

2) Not selected as a juror, in which case the juror is considered to have fulfilled his/her obligation of service for a period of one year.³

• Courts should use on-call telephone standby notice systems⁴ to prevent unnecessary appearances of potential jurors as a critical part of operating a "one-day/one-trial" system.⁵

Endnotes

¹ Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p. 6 (April 2006); G. Thomas Munsterman, *The Jury Patriotism Act*, *The Court Manager*, Vol. 18, Issue 2, p.71 (Summer 2003); The Supreme Court of Ohio Task Force for Jury Service, *Report*, p. 231 (February 2004).

² G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, p. 25 (National Center for State Courts, 4th Ed., 2006).

³ 42 Pa.C.S.A. § 4503(a)(2).

⁴ Allegheny County is one county that utilizes a "one day/one trial" process with an on-call telephone standby system. A telephone number and website appear on the summons issued to a potential juror. The potential juror must call the automated telephone system or log on to the website after 4:00 p.m. the night before he/she is due to serve. A group number is also listed on the summons. The automated system lists the group numbers that must report for jury service the following day, and gives the building, room number, and time the potential juror should report. If his/her group number is not mentioned, the potential juror is excused from jury duty, but is still credited for one day of service.

⁵ Task Force on Jury System Improvements, Judicial Council of California, *Final Report*, p. 32 (April 2004).

SECTION NINE

Jury Voir Dire

No other stage of the jury trial varies so dramatically from jurisdiction to jurisdiction and judge to judge as voir dire. Although the purpose of jury selection is to identify and remove prospective jurors who could not serve fairly and impartially, there is much debate about the best practices to achieve that goal.

A cursory voir dire examination may fail to obtain information necessary for the judge to make rulings on challenges for cause and for the parties to exercise their peremptory challenges. A voir dire examination that fails to make sufficient inquiry does not fulfill the purpose of the procedure. Without sufficient information for the court and counsel to evaluate jurors, juries are selected based on intuition, speculation and stereotyping.

It should be noted that in many courtrooms judges are currently conducting voir dire in a thorough and meaningful manner. Others, however, are doing so in a rather perfunctory manner or not at all which is inconsistent with the goal of voir dire.

Recommendation Nine

It is recommended that the Supreme Court require all judicial districts to follow the same general practices when conducting voir dire. Statements to, and questioning of, prospective jurors should be done initially by the judge, followed by questions, if necessary, by counsel for each side under the supervision of the judge. In some cases, compliance with some of these recommendations will take some additional time. Research shows, however, that those states whose practices conform with these recommendations report that the result is well worth the minimal extra time expended.

1. General explanation of voir dire by the judge to all prospective jurors present: The judge should ask the jurors who are not in the jury box to listen closely to the questions asked of jurors who are in the jury box.

- (a) Explain the concept of voir dire to the jurors.¹
- (b) Explain to the prospective jurors why some of them may be selected and others will not.²
- (c) Introduce the parties and attorneys.
- (d) Identify witnesses: Name the witnesses who may be called or referred to by other witnesses.
- (e) The judge should inform the prospective jurors of the anticipated length of the trial, and ask if there is any reason why they could not serve as jurors for this time period.

2. Voir dire opening:³ In both criminal and civil trials, the judge should have the discretion to either give a short summary of the case to the entire panel of prospective jurors or allow each counsel, with the input of both parties, to give a short statement describing the case to the panel—a so-called “voir dire opening or mini-opening.” Such statements can help jurors respond more openly during voir dire, especially with regard to possible bias issues. The recommended procedures for implementing voir dire openings by counsel are:

- (a) Each counsel should be allotted a brief period of time (no more than five minutes) to summarize the case from their side’s point of view.

(b) Special considerations for criminal matters are:

- i. *Rosario*⁴ material should be provided to the defense before counsel is asked to deliver a voir dire opening.
- ii. A defense attorney’s decision to make a voir dire opening does not preclude exercising the defendant’s right not to make an opening statement at the start of the trial.
- iii. The prosecution’s voir dire should be first and there should be no rebuttal.

(c) Where the judge decides to permit counsel to give a voir dire opening, it is suggested that the judge provide introductory remarks to the potential jurors before the commencement of the voir dire openings. Such a statement could be as follows:

“Before we begin the process of asking you questions about your qualifications to serve on this case, each attorney will give a brief statement about the case. I’ve asked them to limit their remarks to a brief presentation. Of course, what the attorneys say to you by way of opening remarks both now, and again later just before we begin hearing from the witnesses, is not evidence. These statements are offered to you now as a kind of ‘preview’ of the case. The purpose in doing so is to allow us a greater opportunity to explore with you anything that might impact your ability to serve fairly and impartially as a juror in this case.”

3. Juror background information: Jurors should complete a background questionnaire before they are assigned to a panel.⁵ The judge should tell the jurors that they have a duty to disclose possible bias or prejudice. If there are indications, either on the Juror Information Questionnaire or elsewhere, that a prospective juror has beliefs or personal experiences that raise concerns about his/her ability to be impartial, the voir dire should include open-ended questions which allow the prospective juror to explain these opinions and beliefs.⁶ The court should allow counsel for both sides to question jurors individually about the extent of their beliefs, preconceptions and sensitivities.⁷ Under no circumstances, however, should the resulting voir dire be limited to the juror’s subjective self-assessment of his or her ability to be fair and impartial.⁸

4. Questions regarding the case: Questions should be asked to the entire group of prospective jurors, asking them to answer verbally or to raise their hands. On sensitive matters or prior exposure to potentially prejudicial material, it is recommended that jurors be examined outside the presence of other jurors.⁹ Sensitive matters are those matters that might be potentially embarrassing or intrusive into the juror’s private life, beliefs, or those matters which if discussed in the presence of the jury panel, might prejudice or influence the panel by exposing other potential jurors to improper information. The judge should ask any follow-up questions to particular jurors based on their answers to either general questions about themselves or to questions regarding the case-at-bar. After examination of the prospective jurors by the judge, there may be additional questioning by counsel for each side, under the supervision of the judge and subject to reasonable time limits.

Endnotes

¹ Possible comments to the jurors could including the following:

“The attorneys for the parties in this case and I will be asking you questions to determine if you will be the jurors in this case. If any of these questions embarrass you or cause you discomfort, please raise your hand

and tell me you prefer to respond to the question in private. You will then do so outside the presence of other potential jurors, with just the court reporter, the attorneys and me present.”

² Possible comments to the jurors could including the following:

“Based on your responses to the questions we ask, we may conclude that this may not be the best case for you to serve on, and we may excuse you with our thanks, to return to the jury assembly room for assignment to jury service on another case.”

³ In 2003, New York State, under the leadership of Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman, established the Jury Trial Project that piloted, among other innovations, voir dire openings by attorneys in 22 trials. The project gathered significant data from all participants in these trials. Judges presiding over trials where voir dire openings were used reported that the procedure was enormously successful, improving not only the jurors’ candor, but also their willingness to serve and, in addition, increasing their understanding of why they were being questioned. In fact, one judge reported the following:

“At first, I was skeptical. After using voir dire openings in several criminal trials, and then sitting on a trial where they were not used, I can’t envision a case in which I would not like the attorneys to give brief voir dire openings. Jury selection is clearly improved by letting attorneys tell the venire a little bit about the case before question begins.”

In addition, both the New York State Association of District Attorneys and the New York State Public Defense Bar endorse the use of voir dire openings. See, New York Jury Trial Project, *Final Report of the Committees of the Jury Trial Project*, p. 19-25 (April 2005).

⁴ *People v. Rosario*, 173 N.E.2d 881 (N.Y. 1961) (statements of witnesses must be turned over to defense counsel prior to opening statements—and in this case, prior to voir dire opening).

⁵ American Bar Association, *Principles for Juries & Jury Trials*, Principle 11A (2005).

⁶ See American Bar Association, *Principles for Juries & Jury Trials*, Principle 11B (2005); ABA Standards For Criminal Justice, § 15-2.6 (a); National Jury Project, *Jurywork Systematic Techniques* (Second Edition), p. 2-56.5.

“Reliance on fixed-response or closed-ended questions alone in the voir dire presents a barrier to effectively eliminating bias or prejudice. A closed-ended question is one in which the answer is limited to a single response such as yes, no, agree, disagree. Such fixed-response or leading questions will not be useful in gaining information about a prospective juror’s attitudes, prejudices, or judgment.

Every lawyer and judge knows that leading questions are designed to suggest or control the content of the response elicited. A leading voir dire question, for example, ‘Is there anything about the race or background of the defendant that would prevent you from being fair and impartial?’ informs the prospective juror that the ‘correct’ answer is ‘no’ and provides the court with no information regarding the subtle impact of the juror’s biases. Indeed, many prejudiced individuals consider themselves fair-minded people who simply are ‘aware of the inferiority of certain minority groups.’ Only open-ended questions requir-

ing jurors to formulate their thoughts in their own words will separate those jurors who are actually without unfair prejudice from those who are merely unaware of their unfair prejudices.

Open-ended, non-leading questions encourage respondents to explain their opinions and attitudes in their own words, thus penetrating stereotyped and socially desirable responses. Only non-leading questions will uncover underlying attitudes and prejudices unlikely to surface in perfunctory responses to closed-ended questions.”

See also National Jury Project, *Jurywork Systematic Techniques* (Second Edition), p. 2-28.

“Questions requiring jurors’ subjective evaluation of their ability to be fair and impartial have consistently been held to be an inadequate basis upon which to assess jurors’ qualifications.”

⁷ American Bar Association, *Principles for Juries & Jury Trials*, Principle 11B (2005).

⁸ See *People v. Tyburski*, 445 Mich. 606, 518 N.W. 2d 441, 448, 449 (Supreme Court of Michigan, 1994) (lead opinion of Court) (“It is imperative, in securing the rights of the parties to an impartial jury, for the court to allow the elicitation of enough information so that the court itself can make an independent determination of a juror’s ability to be impartial.” Courts indeed should be allowed wide discretion in the manner they employ to achieve the goal of an impartial jury. However, a court does not have discretion to simply fail to elicit enough information during voir dire to make an intelligent assessment of bias.); *Young v. State*, 407 A.2d 517, 521 (Supreme Court of Delaware, 1978) (“Consequently, the trial judge should not merely go through the form of obtaining juror’s assurances of impartiality, but rather, he should conduct an examination designed to elicit answers which provide an objective basis for his evaluation.”); *Rosales-Lopez v. United States*, 451 U.S. 182, 101 S. Ct. 1629, 1634, 68 L.Ed. 2d. 22 (1981) (“Without an adequate voir dire the trial judge’s responsibility to remove prospective jurors who will not be able impartially to follow the court’s instructions and evaluate the evidence cannot be fulfilled.”). *People v. Williams*, 29 Cal.3d 392, 402, 628 P.2d 869, 873, 174 Cal. Rpt. 317, 321 (Supreme Court of California, 1981). (“Our Courts have become increasingly aware that bias often deceives its host by distorting his view not only of the world around him, but also of himself. Hence although we must presume that a potential juror is responding in good faith when he asserts broadly that he can judge the case impartially [citation omitted], further interrogation may reveal bias of which he is unaware or which, because of his impaired objectivity, he unreasonably believes he can overcome.”) See also *Silverthorne v. United States*, 400 F.2d 627, 639 (9th Cir. 1968), cert. den. 400 U.S. 1022 (1971) (“But whether a juror can render a verdict based solely on evidence adduced in the courtroom should not be adjudged on the juror’s own assessment of self-righteousness without something more.”); *Murphy v. Florida*, 421 U.S. 794, 95 S. Ct. 2031, 2036, 44 L.Ed.2d 589 (1975) (“[The juror’s assurances that he is equal to the task [of impartiality] cannot be dispositive of the accused’s rights. . .”); *People v. Tyburski*, 445 Mich. 606, 518 N.W. 2d 441, 452n. 16 (Supreme Court of Michigan, 1994) (lead opinion of Court) (“Courts have long recognized that juror self-assessment of bias is inherently untrustworthy. Questions that do not go beyond juror self-assessment do not adequately cover the area of potential bias.”).

See also ABA Standards for Criminal Justice, § 15-2.4 (a and b); National Jury Project, *Jurywork Systematic Techniques* (Second Edition), p. 2-17.

“Attorney participation in the questioning lessens the social distance between questioner and respondents, thus minimizing evaluation apprehension and minimizing the prospective jurors’ tendency to try to please the interviewer.”

⁹ABA Standards For Criminal Justice, § 15-2.4(d); ABA Standards For Criminal Justice, § 15-2.4 (e); National Jury Project, *Jurywork Systematic Techniques* (Second Edition), p. 2-16.1.

“Examining individual jurors outside the presence of other jurors is preferable to examining jurors in the presence of a large group. Individualized examination promotes candor by eliminating pressure to conform and minimizing the possibility of public embarrassment.”

SECTION TEN

Peremptory Challenges

The problem of the improper use of peremptory challenges to eliminate minorities from juries has given rise to calls to eliminate or substantially reduce the number of peremptory challenges in civil and criminal trials around the country.¹ Indeed, the Honorable Judith Kaye, Chief Judge of the New York Court of Appeals, acknowledged in her State of the Judiciary Address in 2005 that peremptory challenges are a grave threat to minority representation on juries and to jury service in general. Her subsequent proposal to reduce by half New York’s then existing twenty peremptory challenges in criminal cases mirrored the proposal of the Arizona Supreme Court Committee on the More Effective Use of Juries to reduce the number of peremptory challenges by one-half, and one of the thirty-two proposals for reform by a Committee in the District of Columbia calling for the elimination or drastic reduction of peremptory challenges.²

Some courts and jury innovation committees have attempted to resolve the problem of balancing the need for peremptory challenges against the risk of their misuse by expanding the voir dire process to permit liberal questioning of potential jurors. Rather than call for the elimination or a reduction in the number of peremptory challenges in this report, it was decided, instead, to set forth a series of principles by which the exercise of peremptory challenges should be guided and recommend that the Supreme Court Criminal and Civil Procedure Rules Committees be assigned to review the issue.³

Recommendation Ten

It is recommended that the Supreme Court require all judicial districts to follow the same standard procedures for peremptory challenges, guided by the following principles:⁴

- Peremptory challenges should be available to each of the parties.

- The number of and procedure for exercising peremptory challenges should be uniform.

- The number of peremptory challenges should be limited to a number no larger than necessary to provide reasonable assurance of obtaining an unbiased jury and to provide the parties confidence in the fairness of the jury.⁵

- Courts should have the discretion to provide additional peremptory challenges when justified.

- Following completion of the examination of jurors, the parties should exercise their peremptory challenges by alternately striking names from the list of panel members until each side has exhausted or waived the permitted number of challenges.

- Fair procedures should be utilized in the exercise of challenges.

- All challenges, whether for cause or peremptory, should be exercised so that the jury panel is not aware of the nature of the challenge, the party making the challenge, or the basis of the court’s ruling on the challenge.

- After completion of the examination of jurors and the hearing and determination of all challenges for cause, the parties should be permitted to exercise their peremptory challenges as set forth above. A party should be permitted to exercise a peremptory challenge against a member of the panel who has been passed for cause.

- The court should not require a party to exercise any challenges until the attorney for that party has had sufficient time to consult with the client, and in cases with multiple parties on a side, with co-parties.

- No juror should be sworn to try the case until all challenges have been exercised or waived, at which point all jurors should be sworn as a group.

- No party should be permitted to use peremptory challenges to dismiss a juror for constitutionally impermissible reasons.⁶

- It should be presumed that each party is utilizing peremptory challenges validly, without basing those challenges on constitutionally impermissible reasons.

- A party objecting to the challenge of a juror on the grounds that the challenge has been exercised on a constitutionally impermissible basis, establishes a prima facie case of purposeful discrimination by showing that the challenge was exercised against a member of a constitutionally cognizable group; and by demonstrating that this fact, and any other relevant circumstances, raise an inference that the party challenged the juror because of the juror’s membership in that group.

- When a prima facie case of discrimination is established, the burden shifts to the party making the challenge to show a nondiscriminatory basis for the challenge.

- The court should evaluate the credibility of the reasons proffered by the party as a basis for the challenge. If the court finds that the reasons stated are not pretextual and otherwise constitutionally permissible and are supported by the record, the court should permit the challenge. If the court finds that the reasons for the challenge are pretextual, or otherwise constitutionally impermissible, the court should deny the challenge and, after consultation with counsel, determine whether further remedy is appropriate. The court should state on the record the reasons, including whatever factual findings are appropriate, for sustaining or overruling the challenge.

- When circumstances suggest that a peremptory challenge was used in a constitutionally impermissible manner, the court on its own initiative, if necessary, shall advise the parties on the record of its belief that the challenge is impermissible, and its reasons for so concluding and shall require the party exercising the challenge to make a showing of a nondiscriminatory basis for the challenge.

Endnotes

¹ The Special Committee of the New Jersey Supreme Court on Peremptory Challenges and Jury Voir Dire recommended that the number of peremptory challenges presently allowed in criminal trials in New Jersey be substantially reduced. It found that "in courtrooms where judges liberally grant challenges for cause, the jury selection process moves along more quickly, the use of a large number of peremptory challenges is avoided, and the parties' satisfaction with the final composition of the jury is high." Although the New Jersey Supreme Court did not act on the Committee's recommendation to reduce the number of peremptory challenges, instead holding it in for a year, "a significant factor informing that recommendation was the anticipated improvement of the quality of the voir dire process that will be achieved by the implementation of certain improved standards. The two work hand-in-hand. With improved and more expansive voir dire and more liberal excusals for cause, the need for peremptory challenges should be significantly diminished." Directive #21-06 of the Administrative Office of the Courts in the State of New Jersey, pp. 2, 3, 8, December 11, 2006.

² *Black, White and Grey: The American Jury Project and Representative Juries*, Mary Catherine Campbell, Georgetown Journal of Legal Ethics, p. 14 (2005).

³ In its Jury Task Force Report, *Best Practices Recommendations*, the Pennsylvania Association of Court Management recommended that the Pennsylvania Supreme Court Criminal Rules Committee be assigned the task of "examining the number of peremptories awarded to each side in civil and criminal cases and possibly reducing the number of peremptories for each side." Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p. 6 (April 2006). It is recommended that the Pennsylvania Supreme Court Criminal Rules Committee work jointly with the Pennsylvania Supreme Court Civil Rules Committee on this task.

⁴ American Bar Association, *Principles for Juries & Jury Trials*, p.66-68 (2005).

⁵ In Pennsylvania, all judicial districts are bound by Pa.R.C.P. 634 that sets forth the number of peremptory challenges permitted to be exercised by each party as follows:

(A) Trials Involving Only One Defendant:

(1) In trials involving misdemeanors only and when there is only one defendant, the Commonwealth and the defendant shall each be entitled to 5 peremptory challenges.

(2) In trials involving a non-capital felony and when there is only one defendant, the Commonwealth and the defendant shall each be entitled to 7 peremptory challenges.

(3) In trials involving a capital felony and when there is only one defendant, the Commonwealth and the defendant shall each be entitled to 20 peremptory challenges.

(B) Trials Involving Joint Defendants:

(1) In trials involving joint defendants, the defendants shall divide equally among them that number of peremptory challenges that the defendant charged with the highest grade of offense would have received if tried separately; provided, however, that each defendant shall be entitled to at least 2 peremptory challenges. When such division of peremptory chal-

lenges among joint defendants results in a fraction of a peremptory challenge, each defendant shall be entitled to the next highest number of such challenges.

(2) In trials involving joint defendants, it shall be within the discretion of the trial judge to increase the number of peremptory challenges to which each defendant is entitled up to the number of peremptory challenges that each defendant would have received if tried alone.

(3) In trials involving joint defendants, the Commonwealth shall be entitled to peremptory challenges equal in number to the total number of peremptory challenges given to all of the defendants.

⁶ The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report*, p. 97 (March 2003).

SECTION ELEVEN

Juror Privacy

The issue of juror privacy has received greater attention over the past decade, particularly as courts have come to recognize how multifaceted and complex the issue really is. Jurors legitimately desire to avoid disclosure of sensitive or embarrassing information. In addition, jurors may fear that disclosure of personal information to a criminal defendant may lead to harassment or harm. When jurors understand that courts take the issue of protecting their privacy seriously (without interfering with the parties' right to a fair trial), they are often more open, forthright, and understanding of the necessity of answering questions that may result in the release of personal information.

Recommendation Eleven

It is recommended that the Supreme Court require judicial districts to balance juror privacy interests against party and public interests in court proceedings. To achieve that balance, judicial districts should adopt the following guidelines:¹

- Juror voir dire should be open and accessible for public view except as provided herein. Closed voir dire proceedings should only occur after a finding by the court that there is a threat to the safety of the jurors or evidence of attempts to intimidate or influence the jury.

- Judges should have the discretion to redact juror identifying information, such as date of birth and/or home address and telephone number, from the materials provided to the defendant.

- Requests to jurors for information should differentiate among information collected for the purpose of juror qualification, jury administration, and voir dire.

- Judges should ensure that jurors' privacy is reasonably protected, and that questioning is consistent with the purpose of the voir dire process.

- Courts should explain to jurors how the information they provide will be used, how long it will be retained, and who will have access to it.

- Courts should consider juror privacy concerns when choosing the method of voir dire (open questioning in court, private questioning at the bench, or a jury questionnaire) to be used to inquire about sensitive matters.

- Courts should inform jurors that they may provide answers to sensitive questions privately to the court and the parties.

- Jurors should be examined outside the presence of other jurors with respect to questions of prior exposure to potentially prejudicial material.

- Following jury selection and conclusion of the trial, the court should keep all juror identifying information confidential unless good cause is shown to the court which would require disclosure.² Original records, documents and transcripts relating to juror summoning and jury selection may be destroyed when the time for appeal has passed, or the appeal is complete, whichever is longer, provided that, in criminal proceedings, the court maintains for use by the parties and the public exact replicas (using any reliable process that ensures their integrity and preservation) of those items.³

- Without express court permission, surveillance of jurors and prospective jurors outside the courtroom by or on behalf of a party should be prohibited.

- If cameras are permitted to be used in the courtroom, they should not be allowed to record or transmit images of the jurors' faces.

Endnotes

¹ Many, but not all, of the recommended guidelines were found in the American Bar Association's *Principles for Juries & Jury Trials* at p. 35-36 (2005).

² In a recent decision, *Commonwealth v. Karl Long*, 922 A.2d 892 (Pa. 2007), the Pennsylvania Supreme Court reversed the decision of the Pennsylvania Superior Court denying the press the right of access to jurors' names and addresses in a highly publicized and sensationalized murder case. The Court held that the First Amendment provides "a qualified right of access to jurors' names but not addresses." In describing the qualified nature of the right of access to jurors' names, the Court stated that a court may be justified in withholding jurors' names but "[such] closure must be supported by specific findings demonstrating that there is a substantial probability that an important right will be prejudiced by publicity and that reasonable alternatives to closure cannot adequately protect the right."

³ Paula L. Hannaford, *Safeguarding Juror Privacy: A New Framework for Court Policies and Procedures*, 85 *Judicature* 18, p. 44 (2001).

SECTION TWELVE

Juror Security

Jurors give their time and service to render verdicts in cases that sometimes arise from highly dangerous activities. Courthouses must provide jurors with not only the physical safety they deserve, but with the peace-of-mind necessary to preserve the integrity of the jury process.

Recommendation Twelve

It is recommended that the Supreme Court require judicial districts to formulate a plan to address security in the courthouse for jurors as well as security concerns for jurors in their transit to and from parking facilities or public transportation to the courthouse, including the following:

- In high profile trials, jurors should be informed of the availability of police or sheriff escorts who, upon request, can accompany them to and from parking areas.¹

- Jurors empanelled for a case or in deliberations after the close of normal business hours should be escorted to their vehicles, if requested.²

- The same recommendation regarding juror privacy (Recommendation 11) should be considered by judicial districts in devising their juror security plans.

Endnotes

¹ Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations*, p.14 (April 2006).

² *Id.*

SECTION THIRTEEN

Jury Education and Appreciation Campaigns

Since widespread citizen participation is essential to achieving a diverse and fully functional jury system, the importance of a citizen education campaign surrounding jury service cannot be overstated. Citizen education campaigns provide an opportunity for the judicial branch to teach important values of citizenship, such as a trial by jury. In addition, they provide an effective vehicle for fostering positive court relations with the community.

Recommendation Thirteen

It is recommended that the Supreme Court encourage judicial districts to adopt a variety of public outreach strategies¹ in which the community learns about the concept of trial by jury, including the importance of jury service. Examples include:

- 1) Juror appreciation activities held during Pennsylvania's Juror Appreciation Week in early May of each year;

- 2) Press conferences with leaders of all branches of government announcing a special day of appreciation for jurors;

- 3) Public-service advertising campaigns using newspapers, television, mass transit, public buildings, libraries, grocery stores, courthouses, and schools;

- 4) Targeted media outreach using radio and television interviews and opinion articles or editorials in print media;

- 5) Targeted educational outreach to high school government, speech, American history, or civics classes through which judges, court administrators and bar associations explain the role of the jury in the judicial process;

- 6) The development of educational videos that put student audiences in the role of a simulated jury, hearing evidence and jury instructions and deciding cases;

- 7) The development of jury pages on court web sites that highlight the importance of trial by jury in the American justice system and discuss recent efforts by courts to improve the conditions of jury service;

- 8) Post-trial discussions in which judges express their appreciation to jurors who have just completed their service;

- 9) Expressions of appreciation by judges to citizens who have shown up in response to a jury summons but who have not been chosen to serve on a particular case;

- 10) Certificates of appreciation distributed to those who serve;

- 11) Newspaper stories that are aimed at educating citizens about the litigation process;

- 12) The development of web sites that are linked to videos on juror education so that jurors can view the video from home; and

- 13) The development of moot court opportunities for high school students.

Endnotes

¹ G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations*, p. 22 (National Center for State Courts, 4th Ed., 2006); The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report*, p. 98 (March 2003).

Sources**Pennsylvania**

PA Joint Commission Report 2300, *Minority Representation in the Jury Selection Process in Pennsylvania* (May 2003).

Pennsylvania Association of Court Management Jury Task Force Report, *Best Practices Recommendations* (April 2006).

Pennsylvanians for Modern Courts, *Report on Juror Compensation in Pennsylvania* (August 2006).

The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, *Final Report* (March 2003).

The Pennsylvania Supreme Court Judicial Council Committee on Judicial Safety and Preparedness (2002).

National

American Bar Association, *Principles for Juries & Jury Trials* (2005).

American Judicature Society, *Judicious Use of Juror Anonymity*, Editorial (January 2003).

California Center for Judicial Education and Research, *Jury Management Bench Handbook* (2002 Ed.).

Christopher Uggen, et al., 2006. *Citizenship, Democracy and the Civic Reintegration of Criminal Offenders*, *The Annals of the American Academy of Political and Social Science* 605: 281, 283.

Mary Catherine Campbell, *Black, White and Grey: The American Jury Project and Representative Juries*, *Georgetown Journal of Legal Ethics* (2005).

Directive #21-06 of the Administrative Office of the Courts in the State of New Jersey, December 11, 2006.

G. Thomas Munsterman, *The Jury Patriotism Act*, *The Court Manager*, Vol. 18, Issue 2 (Summer 2003).

G. Thomas Munsterman, Paula L. Hannaford & G. Marc Whitehead, eds., *Jury Trial Innovations* (National Center for State Courts, 4th Ed., 2006).

Paula Hannaford-Agor, *Safeguarding Juror Privacy: A New Framework for Court Policies and Procedures*, 85 *Judicature* 18 (2001).

Paula Hannaford-Agor, *The Laborer is Worthy of His Hire and Jurors Are Worthy of Their Juror Fees*, *The Court Manager* (Vol. 21, Issue 2, Summer 2006).

Robert G. Boatright, *Improving Citizen Response to Jury Summonses: A Report with Recommendations*, American Judicature Society (1998).

Task Force on Jury System Improvements, Judicial Council of California, *Final Report* (April 2004).

The Supreme Court of Ohio Task Force for Jury Service, *Report* (February 2004).

Additional Web Resources

American Bar Association:	http://www.abanet.org/jury/
American Judicature Society:	http://www.ajs.org/jc/index.asp
California Juror Resources:	http://www.courtinfo.ca.gov/jury/
Fifth Judicial District of PA Juror Resources:	http://www.alleghenycourts.us/jury/default.asp
First Judicial District of PA Juror Resources:	http://courts.phila.gov/jury/service/
National Center For State Courts:	http://www.ncsconline.org/Juries/home.htm
New York Juror Resources:	http://www.nyjuror.gov/home/
Pennsylvanians for Modern Courts:	http://www.pmconline.org

[Pa.B. Doc. No. 07-1977. Filed for public inspection October 26, 2007, 9:00 a.m.]

Title 25—LOCAL COURT RULES

ERIE COUNTY

Rules of Criminal Procedure Nos. 106, 117, 310, 541, 570, 571, 590 and 600; No. AD-48-2007

Order

And Now, To-Wit, this 19th day of September, 2007, the following Local Rules of Criminal Procedure having been consented to by the Criminal Practice Section and approved by the Court are hereby *Ordered* adopted and effective as to Erie County 30 days after publication of same in the *Pennsylvania Bulletin*.

By the Court

ELIZABETH K. KELLY,
President Judge

RULE 106 - Continuances

A deadline shall exist for the filing of continuances by either the Commonwealth or a defendant for cases listed for a particular trial term. This deadline shall be the second business day of the week immediately preceding the trial term. The deadline may be extended by the Court. Any motions for continuance filed prior to the deadline shall be considered by the pre-assigned judge. After the deadline, all motions for continuance must be considered by the judge who will preside over the case at trial. Notice as to the last date for continuances shall be published by the court in its annual schedule.

RULE 117 - Magisterial District Judge Coverage for Issuing Warrant; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail

A. To the extent required by Pa.R.Crim.P. 117, Magisterial District Judges shall be available to provide continuous coverage for the issuance of search warrants, the issuance of arrest warrants, to accept and set bail, to conduct summary trials, and to conduct preliminary arraignments.

1. The provision of continuous coverage shall be by the traditional on-call system as presently established and exercised in Erie County. Specifically, the Magisterial District Judges shall remain on-call during non-regular business hours on a rotating basis. The Assistant Court Administrator shall maintain a copy of said rotating schedule.

2. The hours of 6:00 a.m. to 10:00 p.m. for conducting a summary trial or bench warrant hearing pursuant to Pa.R.Crim.P. 431 shall not be extended.

B. Magisterial District Judges, the Clerk of Courts and the Warden of the Erie County Prison shall be authorized to accept bail pursuant to, and subject to the limitations of, the Pennsylvania Rules of Criminal Procedure. The Warden's authority is limited to accepting the bail deposit, delivering the bail to the issuing authority or clerk of courts and, under Pennsylvania Rule of Criminal Procedure 525, releasing the defendant upon execution of the bail bond.

C. Regular business hours for each Magisterial District Judge Office shall be Monday through Friday from 8:30 a.m. until 4:30 p.m.

RULE 177 - A.R.D.

An original application for entry into the Accelerated Rehabilitative Disposition (A.R.D.) program shall be filed with the District Attorney, and a copy shall be filed at the Office of the Criminal Court Administrator. The Criminal Court Administrator shall mark the date of filing on the copy. A sample Application follows.

COMMONWEALTH	:	IN THE COURT OF COMMON
OF PENNSYLVANIA	:	PLEAS
	:	OF ERIE COUNTY,
	:	PENNSYLVANIA
	:	
v.	:	CRIMINAL DIVISION
	:	
	:	No. of
	:	OTN:

APPLICATION FOR DISPOSITION UNDER PROGRAM OF ACCELERATED REHABILITATIVE DISPOSITION/PROBATION WITHOUT VERDICT

Application is hereby made for disposition of this case under the Accelerated Rehabilitative Disposition/ Probation Without Verdict Program. To assist the District Attorney's Office in evaluating the suitability of this case for the ARD/PWOV Programs, the following information is provided: **INSTRUCTIONS:** Answer all questions that apply. If a question does not apply, answer it with the initials "N.A."

1. Full Name of the Defendant: _____
2. Maiden Name of Defendant; or other last names previously used: _____
3. Date of Birth: _____ Social Security Number: _____
4. Present Address: _____
Phone (Home) (____) _____ (Work) (____) _____
5. Previous Addresses and length of time at each (go back 10 years): _____

6. Present Employment: _____

7. Education—Schools and Highest Year attained: _____

8A. Have you ever been found guilty or pleaded guilty or no contest to any criminal violation of any kind in any court other than for summary offenses, whether in Pennsylvania or anywhere else? If so, explain giving date, place, charge(s), and disposition. _____

8B. Do you have any other pending criminal charge(s) or have you ever been placed on ARD or PWOV? If so, explain giving date, place, charges and disposition. _____

8C. If charged with Driving Under the Influence: Have you ever been adjudicated a delinquent or entered into a consent agreement as a juvenile after being charged with Driving Under the Influence of Alcohol? If so, explain giving details. _____

9. Explanation of your present case, including all details (use reverse side if needed): _____

10. By applying for ARD/PWOV and by signing this application, I acknowledge, certify and understand each of the following rights and responsibilities:

A. I have been advised and I understand that I have a constitutional right to a speedy trial; that pursuant to Pa.R.Crim.P. 1100, the Commonwealth must bring my case to trial within 365 days from the date of the filing of the Criminal Complaint charging me. If my case is not brought to trial within 365 days from the filing of the Criminal Complaint, I understand that I can ask the Court to dismiss all charges against me. Furthermore, I understand that in the event I am incarcerated on these charges, the Commonwealth must bring my case to trial within 180 days from the date of the filing of the Criminal Complaint; if the Commonwealth fails to do so, I can ask the Court for nominal bail.

I hereby waive (give up) all of my constitutional rights to a speedy trial as set forth from the date I sign this Application until I either complete the ARD Program or am revoked from it, should I violate the conditions the Court imposes on me. In the event my Application for ARD is denied, I waive (give up) all of my constitutional rights to a speedy trial as set forth from the date I sign this Application until the last scheduled day of the term of Criminal Court next following the date of my rejection. I have been advised and I understand that by signing this waiver I am waiving (giving up) any and all rights I may have to be tried within 180th (if in jail) or 365th day following the filing of the Criminal Complaint against me. I am signing the waiver because I understand it is to my benefit to do so and to allow the District Attorney as much time as he needs to evaluate my suitability for the ARD Program. I have not been made any promises, nor have I been forced or coerced to sign this waiver.

B. I understand I have the right to be represented by an attorney on my charge(s) and also in connection with my ARD/PWOV Application, if I cannot afford counsel, the Court will provide me free counsel through the Erie County Public Defender's Office.

C. It is my responsibility to notify the District Attorney's Office, **in writing** of my arrest and/or conviction for **any** offense occurring after this Application is made and

before it is rejected or I am accepted into the Program by the Court. Failure to comply with this requirement is grounds for refusal of the Application and/or may be treated as a false statement subjecting me to prosecution and/or for removal from the Program.

D. If charged with Driving Under the Influence: I understand that it is my responsibility to arrange for a CRN evaluation. I understand that I cannot be placed in the A.R.D. program unless such evaluation is completed. I further understand that I am to contact D.W.I. Program, 36 North Park Row, Erie, PA 16501 at 814-454-3326 between 9:00 a.m. and 3:30 p.m. to arrange an appointment.

E. I acknowledge that I have completed (or will complete prior to my A.R.D. hearing) all processing (e.g. fingerprinting, etc.) required of me. I understand that failure to do so may delay my acceptance into the program.

F. The information I have provided above is true and correct. I understand if I have provided false information on this Application, that reason alone is sufficient to refuse this Application. In addition, I understand that by providing false information I can be prosecuted for offenses including, but not limited to, perjury, false swearing and/or unsworn falsification to authorities.

DATE: _____
DEFENDANT

DATE: _____
ATTORNEY FOR DEFENDANT

DATE: _____
*WITNESS

Revised 1/99 *When defendant has no attorney

RULE 181 - A.R.D.

The filing deadlines imposed in Pa.R.Crim.P. 304, 305, and 307 shall be specially calculated in those instances where a defendant is either refused entry into the A.R.D. program or when revoked from the program.

(a) When the application is made BEFORE arraignment, all filing deadlines are preserved and calculations shall commence upon date of refusal or revocation.

(b) When the application is made AFTER arraignment, filing of the application shall toll the running of the deadlines. Any number of days remaining shall remain and calculations will re-commence upon date of refusal or revocation.

(c) When any filing deadline has passed before the filing of the A.R.D. application, that deadline shall be deemed missed and unavailable except upon motion and order of the court.

RULE 184 - A.R.D.

If properly waived by the defendant, as indicated in an application for A.R.D. or in an additional filing, each case which is refused entry into the A.R.D. program or revoked therefrom shall go to trial during the session of court determined by Court Administration based upon Rule 1100 calculations. Proper waiver, as indicated above, exists when the defendant signs a Rule 1100 waiver which specifically extends the period of waiver 60 days beyond the date of rejection or revocation. A sample application is set forth with sample waiver language included.

RULE 300 - Case Assignments

A. Pre-trial: All cases bound to Court will be assigned to one of the Judges in the Criminal Division. This will be

done by the Court Administrator at or about the time of arraignment or waiver thereof. The assigned judge will hear and resolve all pre-trial matters pertaining to the case.

B. Sentencing: In all cases disposed of by plea (except post-arraignment pleas) the assigned judge shall be the sentencing judge. In all cases wherein a jury trial has been held and a verdict entered, the trial judge shall be the sentencing judge. However, in any case where the designated judge may be unavailable for sentencing, another judge, designed by the President-Judge, may be substituted.

C. Sentencing Date: A sentencing date shall be set for all cases at the time of plea or verdict. Any change requested in this date must be made directly with the assigned sentencing judge and subject to his/her discretion.

RULE 301 - Continuances

A deadline shall exist for the filing of continuances by either the District Attorney or defendant for cases listed for a particular trial term. This deadline will not be sooner than the Wednesday prior to the first day of the trial session. Any motions for continuance filed prior to the deadline shall be filed with the pre-assigned judge. After the deadline, all motions for continuance must be filed with the Administrative Judge of the Criminal Division. Notice as to the last date for continuances shall be published by the court in its annual schedule.

RULE 302 - Procedure for Attorney Changes

1. If, prior to or at the arraignment, another attorney files an appearance, or files any papers on behalf of the defendant (including signing the rights sheet) that attorney will be listed as the attorney of record. It would not be necessary, in that instance, for the previous attorney to file a motion to withdraw as counsel. If no attorney files an appearance or represents the defendant at the arraignment, the previous attorney will need to file a motion to withdraw.

2. After the arraignment, any attorney who is listed as attorney of record will have to file a motion, with the Court, requesting permission to withdrawn from the case. If the original attorney has not presented a motion to withdraw, both his/her name and the name of any attorney filing an appearance will be listed on the daily court schedule.

3. This procedure will apply to the public defender except when the change is merely from one public defender to another.

4. When a new attorney takes over a case, it is the responsibility of the previous attorney to notify new counsel of any upcoming hearings, trial subpoenas, etc. If the defendant was previously pro se, it is the responsibility of the Criminal Court Administrator to notify new counsel of the above.

RULE 303 - Arraignment

The defendant and counsel (or a representative thereof) shall be required to appear at the scheduled time of arraignment. The presence of the defendant and/or counsel may be waived by the filing of a signed "Waiver of Arraignment" prior to the scheduled date of arraignment. A sample waiver is attached. Copies should be sent to the Clerk of Records, Trial Court Administrator, defense attorney and defendant.

IN THE COURT OF COMMON PLEAS,
COUNTY OF ERIE, PENNSYLVANIA
—CRIMINAL DIVISION—

COMMONWEALTH OF
PENNSYLVANIA

No. (s) _____

vs.

WAIVER OF ARRAIGNMENT

You, as defendant, are hereby notified of your right to be formally arraigned on the above-captioned docket(s), and:

You, as defendant, are further advised that:

1. If you wish to plead guilty you should contact the Court Administrator's Office to schedule the date for your guilty plea;

2. If you are entering a plea of not guilty, you are hereby advised of the time limitations for the filing of the following motions:

(a) request for a bill of particulars under Pa.R.Crim.P. 572 must be made within 7 days thereafter, and

(b) motion for pre-trial discovery under Pa.R.Crim.P. 573 must be made within 14 days thereafter, and

(c) omnibus motion for relief under Pa.R.Crim.P. 578 must be filed and served within 30 days thereafter, NOTE: These time periods will commence the date of your scheduled arraignment.

On this _____ day of _____, _____, after having conferred with counsel of my choice, and after having been advised of my right to be arraigned on any all information(s) in this matter, I hereby waive my right to be so arraigned.

If you have a change in your address, please contact the Criminal Court Administrator's Office at (814) 451-6305.

DEFENDANT

ADDRESS

CITY, STATE, ZIP

TELEPHONE NUMBER

ATTORNEY FOR DEFENDANT

NOTE:

Attorneys not members of the Erie County Bar, please provide address and telephone number.

RULE 305 - Pre-Trial Discovery

Within fourteen (14) days of arraignment, all parties shall send a written request to the opposing party for information required under Rule 305 of the Pennsylvania Rules of Criminal Procedure. When there are items requested by one party which the other party refuses to disclose, the demanding party may then make appropriate motion to the court as part of its omnibus pre-trial

motion. In such a motion the party must set forth the fact that a good faith effort to discuss the request of material has taken place and proved unsuccessful. Further, the motion shall set forth the fact that a written request was made to the other party within fourteen (14) days of arraignment.

RULE 310 - A.R.D.

A. An original application for entry into the Accelerated Rehabilitation Disposition (A.R.D.) program shall be filed with the Commonwealth, and a copy shall be filed at the Office of the Criminal Court Administrator. The Criminal Court Administrator shall mark the date of filing on the copy. The application shall include language that waives Pa.R.Crim.P. 600. A sample application is set forth herein.

B. The filing deadlines imposed by Pa.R.Crim.P. 304, 305, 307, 567, 568, 572, 573, 578 and 579 shall be specially calculated in those instances where a defendant applies for, is refused entry into, or is revoked from the A.R.D. program as follows:

1. When the application is made BEFORE arraignment, all filing deadlines are preserved and calculations shall commence upon date of refusal or revocation.

2. When the application is made AFTER arraignment, filing of the application shall toll the running of the deadlines. Any number of days remaining shall remain and calculations will recommence upon date of refusal or revocation.

3. When any filing deadline has passed before the filing of the A.R.D. application, that deadline shall be deemed missed and unavailable except upon motion and order of the court.

RULE 319 - Plea Bargains

A deadline shall exist, after which the Court will not accept a plea to lesser or reduced offenses. This deadline will not be sooner than the Wednesday prior to the first day of the trial session. After said date, if a case is called to trial by the Court Administrator, the District Attorney and defendant shall (1) proceed to trial; (2) enter a plea as charged; or (3) the court shall dismiss the case. Notice as to the last date for plea bargain shall be published by the court in its annual schedule.

RULE 319A - Post Arraignment Pleas

If a defendant enters a plea before the Court no later than ten (10) days after arraignment or refusal from the ARD/PWOV program, said defendant may have the option of assignment to another judge, other than the original assigned judge, for purposes of sentencing. The assignment of alternative sentencing judges under this section shall be determined by the President Judge.

RULE 541 - Waiver of Preliminary Hearing: Filing for Expedited A.R.D.

A. **Expedited A.R.D.** An Original application for entry into the Expedited Accelerated Rehabilitative Disposition ("Expedited A.R.D.") program may be filed with the Magisterial District Judge who is assigned to preside over the preliminary hearing. The Magisterial District Judge shall forward the application to the Clerk of Courts and the Criminal Court Administrator. A sample application is set forth herein.

Note—Expedited A.R.D. applies only to DUI cases that meet the following minimum criteria: (1) The BAC must be no greater than .30%; (2) The defendant must have no criminal history exclusive of summary offenses; and (3) The case must not involve a motor vehicle accident.

For Court Use Only DOCKET # _____

APPLICATION FOR DISPOSITION UNDER PROGRAM OF ACCELERATED REHABILITATIVE DISPOSITION / PROBATION WITHOUT VERDICT (ARD/PWOV PROGRAM)

I. IDENTIFICATION	DEFENDANTS NAME _____	MAIDEN NAME: (OTHER MARRIED NAMES) _____	D.O.B. _____
	CURRENT MAILING ADDRESS _____		S.S.# _____
		PREVIOUS ADDRESS, (LAST TEN YEARS) _____	
	PRESENT EMPLOYMENT: _____		
II. PREVIOUS CRIMINAL HISTORY	HAVE YOU EVER BEEN FOUND GUILTY OR PLEADED GUILTY OR NO CONTEST TO ANY CRIMINAL VIOLATION OF ANY KIND, IN ANY COURT, <u>WHETHER IN PENNA. OR ANYWHERE ELSE</u> (THIS DOES NOT INCLUDE SUMMARY OFFENSES) <input type="checkbox"/> NO <input type="checkbox"/> YES EXPLAIN: (GIVE DATE, PLACE, CHARGE(S) and DISPOSITION) _____	DO YOU HAVE ANY OTHER PENDING CRIMINAL CHARGE(S) OR HAVE YOU EVER BEEN PLACED ON ARD OR PWOV? <input type="checkbox"/> NO <input type="checkbox"/> YES EXPLAIN: (GIVE DATES, PLACES, CHARGES(S) & DISPOSITION) _____	
III. EXPLANATION OF OFFENSE	EXPLANATION OF YOUR PRESENT CASE, INCLUDING ALL DETAILS: _____		
IV. CERTIFICATION AND ACKNOWLEDGMENT	<p>THE INFORMATION I HAVE PROVIDED ABOVE IS TRUE AND CORRECT. I UNDERSTAND THAT IF I HAVE PROVIDED FALSE INFORMATION ON THE APPLICATION, THAT REASON ALONE IS SUFFICIENT TO REFUSE THE APPLICATION. IN ADDITION, I UNDERSTAND THAT BY PROVIDING FALSE INFORMATION, I CAN BE PROSECUTED FOR OFFENSES INCLUDING, BUT NOT LIMITED TO, PERJURY, FALSE SWEARING AND/OR UNSWORN FALSIFICATION TO AUTHORITIES. BY APPLYING FOR ARD/PWOV, AND BY SIGNING THIS APPLICATION I ACKNOWLEDGE, CERTIFY AND UNDERSTAND THE ABOVE STATED RESPONSIBILITY AND EACH OF THE RIGHTS STATED ON THE REVERSE OF THIS APPLICATION.</p> <p>DATE: _____ DEFENDANT: _____</p> <p>DATE: _____ ATTY FOR DEFENDANT: _____</p> <p>DATE: _____ *WITNESS (IF NO ATTY.): _____</p>		
V. DATE OF REQUIRED COURT APPEARANCE	<p>FOR COURT USE ONLY:</p> <p>YOUR HEARING TO BE PLACED ON THE ARD PROGRAM WILL BE HELD ON _____, 20__ AT _____</p> <p>BEFORE JUDGE _____</p> <p>IN COURTROOM # _____ AT ERIE COUNTY COURT HOUSE</p> <p>YOU ARE REQUIRED TO BE PRESENT IN COURT AT THAT TIME.</p>		

RULE 570 - Pretrial Conference

A. **Treatment Court.** After the filing of a criminal information, an original application for entry into the Drug Court or Mental Health Court programs shall be filed with the Commonwealth, and a copy shall be filed with the Criminal Court Administrator. The Criminal Court Administrator shall mark the date of filing on the copy. A sample application is set forth herein.

B. **Case Assignments.** All cases bound to Court will be assigned to one of the Judges in the Trial Division by the Court Administrator at or about the time of arraignment or waiver thereof. The assigned judge will hear and resolve all pretrial matters pertaining to the case. If a case proceeds to trial before a judge other than the assigned judge, the trial judge shall entertain motions in limine and any other pretrial motions.

RULE 571 - Arraignment

The defendant and counsel (or a representative of counsel) shall be required to appear at the scheduled time of arraignment unless a waiver is filed. The defendant and counsel may waive appearance at arraignment by the filing of a signed "Waiver of Arraignment and Entry of Appearance" prior to the scheduled date of arraignment. A sample Waiver of Arraignment and Entry of Appearance is set forth herein.

RULE 590 - Pleas and Plea Agreements

A. In all cases disposed of by plea (except post-arraignment pleas), the assigned judge shall be the sentencing judge. However, in any case where the assigned judge is unavailable for sentencing, another judge designated by the President Judge shall conduct the sentencing. A sentencing date shall be set for all cases at the time of plea. Any change requested in this date must be made directly with the assigned sentencing judge and subject to his or her discretion.

1. **Post-Arraignment Pleas.** If a defendant enters a plea before the Court no later than ten (10) days after arraignment or refusal from the ARD/PWOV or Treatment Court programs, the defendant may have the option of assignment to another judge of the trial division, other than the original assigned judge, for purposes of sentencing. The assignment of alternative sentencing judges under this section shall be determined by the President Judge.

B. **Plea Agreements.** A deadline shall exist, after which the Court should not accept a plea to lesser or reduced offenses. This deadline shall be the second business day of the week immediately preceding the first day of the trial term. Said deadline may be extended by the Court upon good cause shown. If a case is called to trial by the Court Administrator after that date, the Commonwealth and defendant shall (1) proceed to trial; (2) enter a plea as charged (summary offenses may be withdrawn at any time); or (3) the Court shall dismiss the case. Notice as to the last date for plea agreements shall be published by the Court in its annual schedule.

RULE 600 - Trial Term

A. **Criminal Trial Calendar.** The Court calendar shall be divided into six (6) two-month sessions, each containing two (2) two-week trial terms.

B. **Separate Trial List.** All DUI cases and certain other cases where the most serious offense involves simple assault, bad checks, or identity theft or as may be necessary to comply with Rule 600 shall be handled as a separate trial list and scheduled during the second month of each session.

C. **Notice.** All cases listed for a trial session shall be subpoenaed by the Court Administrator at least one (1) month prior to the start of the session. Late additions may be made for Rule 600 problem cases or by Order of Court.

RULE 1100 - Trial Term

The Court calendar will be divided into six (6) two-month sessions, each (except for November) containing two (2) two-week trial terms with four (4) presiding judges. All cases listed for a trial session shall be subpoenaed by the Court Administrator at least one (1) month prior to the start of the session. Late additions may be made for Rule 1100 problem cases.

DUI cases will be handled as a separate trial list and scheduled during the second month of each session.

RULE 1102 - Non-Jury Trials

Effective with the September 1992 court term, one judge of the eight scheduled to preside over trials will initially be assigned to hear non-jury criminal trials. For a case to proceed non-jury during the trial session, the non-jury colloquy must take place no later than the Wednesday preceding the start of the trial session. Furthermore, the non-jury trial itself shall take place during the two-month period of the court session. The cases, if necessary, will be prioritized according to the date of the waiver of jury trial. Any cases not reached during the two-month period will be assigned to the judge hearing non-jury cases during the following court session. Any guilty pleas on cases prior to verdict shall be referred back to the assigned judge for sentencing. All rules regarding plea bargaining and continuances will still apply.

RULE 9022 - Motion, Filing of

1. In all court cases a specific judge of the criminal division shall be assigned to each case at or before the time of Common Pleas Court arraignment.

2. Unless otherwise specified within these rules, all pre-trial motions shall be presented to the assigned judge of the criminal division.

3. If the assigned judge is the current criminal duty judge at the time of motion filing, the motion shall be presented in motion court.

4. If the assigned judge is not the current presiding criminal duty judge at the time of motion filing, the motion shall be left with the assigned judge's secretary.

5. A rule to show cause must be attached to all criminal motions unless the motion is not objected to by the opposing party and the authorized original signature of counsel for the opposing party appears indicating the lack of objection thereto.

RULE 9023 - Motion, Service

1. Once a rule to show cause or a final order has been signed by the assigned judge, the original and a copy must be taken to the Criminal Court Administrator where a copy will be left and the original will be stamped as proof of service. A copy will not be accepted without the original.

2. The original should then be time stamped and filed with the Clerk of Courts.

3. Time stamped copies of the rule to show cause or final order should then be served on the opposing party personally or by United States First Class Mail.

[Pa.B. Doc. No. 07-1978. Filed for public inspection October 26, 2007, 9:00 a.m.]

LEHIGH COUNTY

Administrative Order Establishing a Partial Payment Processing Fee for Summary Cases Filed in the District Courts of the Thirty-First Judicial District; No. AD-15-2007**Order**

Now, this 5th day of October, 2007, *It Is Ordered*, that pursuant to the provisions of 42 Pa.C.S. 1725.1(c)(5), relating to unclassified costs, a ten (\$10.00) dollar partial payment processing fee to cover administrative costs related to such processing, be and is hereby imposed for all summary cases within the magisterial district courts of the Thirty-First Judicial District when the defendant in the summary case requests and is permitted to make installment payments as provided in Pa.R.Crim.P. 454 (E)(1), Trial in Summary Cases.

It Is Further Ordered that this fee shall be imposed as to each installment payment plan in effect on, or instituted on or after October 15, 2007.

It Is Further Ordered that all prior orders under this Docket Number are *Vacated*.

By the Court

ALAN M. BLACK,
President Judge

[Pa.B. Doc. No. 07-1979. Filed for public inspection October 26, 2007, 9:00 a.m.]

RULES AND REGULATIONS

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 501, 501a, 503 AND 503a]

Compulsive and Problem Gambling; Self-Exclusion

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1509 and 1516 (relating to compulsive and problem gambling program; and list of persons self excluded from gaming activities), rescinds Chapters 501 and 503 and adopts Chapters 501a and 503a (relating to compulsive and problem gambling requirements; and self-exclusion) to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

Under the authority granted to the Board under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted Chapter 501 at 35 Pa.B. 4543 (August 6, 2005) and Chapter 503 at 36 Pa.B. 2902 (June 10, 2006). Under 4 Pa.C.S. § 1203(b), the temporary regulations expired on July 5, 2007.

The Board is adopting Chapters 501a and 503a to replace the Board's temporary regulations with the permanent regulations.

Explanation of Chapters 501a and 503a

Chapter 501a requires slot machine licensees to file a comprehensive compulsive and problem gaming plan with the Board for Board approval. The regulations list: the specific items that must be included in a plan; the elements that must be included in employee training programs; slot machine licensee reporting requirements; signage requirements; and provisions governing check cashing.

Chapter 503a addresses self-exclusion requirements. It specifies: definitions used in this chapter; how a person may request self-exclusion; maintenance and distribution of the self-exclusion list by the Board; duties and responsibilities of the slot machine licensees and their employees; how a person may request removal from the self-exclusion list; and limited exceptions for individuals on the self-exclusion list whose jobs require them to be on the gaming floor.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 416 (January 27, 2007).

The Board did not receive any public comments during the public comment period. After the close of the public comment period, the Board received comments from the Pennsylvania Chapter of the National Association of Social Workers (NASW-PA) and the Independent Regulatory Review Commission (IRRC) forwarded a copy of a comment it received from Samuel Knapp. On March 22, 2007, Representative Paul Clymer, Republican Chairperson of the House Gaming Oversight Committee, submitted comments on the proposed rulemaking and on March 28, 2007, comments on the proposed rulemaking were received from IRRC.

The Board adopted a final-form version of this rulemaking on June 5, 2007. Subsequent to that adoption,

additional comments were received from IRRC and Representatives Harold James and Paul Clymer, the Chairperson of the House Gaming Oversight Committee. On July 16, 2007, the Board withdrew the June 5 final-form regulations to consider these additional comments.

The comments noted previously were reviewed by the Board and are discussed in detail as follows.

In § 501a.1 (relating to definitions), Representative Clymer, IRRC, NASW-PA and Samuel Knapp all commented that the definition of "qualified treatment professional" was too broad and that more specific requirements should be added.

The Board has deleted the definition of "qualified treatment professional" because the term is no longer used in this chapter. The Board has eliminated the referral provisions that were in § 501a.2(d)(3)(v) (relating to compulsive and program gambling plan) where this term was used.

IRRC also noted a number of sections where similar phrases are used and suggested that the phrase "qualified treatment professional" be used in those sections.

The Board has deleted this term from § 501a.2(d)(3)(v). In the other sections cited by IRRC, the Board intended to use the different terms.

IRRC also suggested that the Board add definitions for the terms "compulsive gambling" and "problem gambling."

The Board has elected not to add definitions of these terms. These terms are used as part of the phrase "compulsive and problem gambling" which is used in the act and is a well understood term in the gaming industry. Adding separate definitions for these terms may create more confusion as to the meaning of "compulsive and problem gambling."

In § 501a.2, IRRC recommended that more detail be included in subsection (a) relating to approval and amendment of compulsive and problem gaming plans.

The review of a compulsive and problem gaming plan has two phases. The initial review phase occurs during the application process during which the Board will review the plan as one component of an application for a slot machine license.

The second phase occurs when a slot machine applicant's application is approved. At that point, the Director of Office of Compulsive and Program Gambling (OCPG) will conduct an in-depth review of the plan and will notify the slot machine applicant of any deficiencies in the plan and work with the applicant to resolve the deficiencies.

Subsection (a) has been split into two subsections to better reflect the actual review process. No specific time frames have been included in the new subsection (b) because the process is an iterative, on-going dialogue between the slot machine applicant and the Director of OCPG and the applicant may not commence operations until its plan has been approved.

IRRC had a number of questions and concerns relating to subsection (d). First, it questioned what would be required to be included in a plan under subsection (d)(3)(iii) to address the "responsibility of patrons with respect to responsible gaming."

The Board has placed a number of duties on slot machine licensees to protect the welfare of their patrons. However, patrons also bear some responsibility for their

own behavior. This provision requires the slot machine licensees to have a statement of policy as to what they view as the responsibilities of patrons.

In subsection (d)(3)(vi), IRRC questioned how the public is protected if a slot machine licensee does not have a duty to refer suspected or known compulsive and problem gamblers to qualified treatment professionals.

The Board has revised the language in subsection (d)(3)(v) and (vi) to limit the responsibility of slot machine licensees to just providing information. In the proposed regulations, the Board had placed a responsibility on slot machine licensees to make referrals and had provided limited liability protection from civil suits that might occur as a result of making or not making referrals. Because those liability provisions have been deleted in the final-form regulation, the Board believes it is unreasonable to require slot machine licensees to be required to make referrals. Instead, slot machine licensees will only be required to provide general information regarding treatment options.

In subsection (d)(12), IRRC asked for clarification of the intent of "outreach programs."

Outreach programs are programs offered to employees and groups other than the slot machine licensee's employees. Examples would include providing speakers to community groups or providing financial support to agencies that deal with compulsive and problem gamblers. This section has been rewritten to more clearly reflect this meaning.

In subsection (d)(13), IRRC asked what process and criteria would be used to approve signs containing gambling treatment referral information.

The phrase "Board-approved" has been deleted from this section and additional language relating to the approval process has been added to § 501a.5 (relating to signage requirements) which is cross-referenced in this paragraph.

In subsection (e), IRRC asked what "other policies and procedures" must be included in the plan and suggested some clarifying language.

The intent of this requirement was to have slot machine licensees submit any additional policies or procedures they intend to use beyond what is included in the minimum requirements in subsection (d). Therefore, the language in this subsection has been split off into a new subsection (e) which also incorporates the clarifying language suggested by IRRC.

In subsection (g), IRRC suggested that the time frames for the review of amendments to the plan be added to the regulation.

In response to IRRC's suggestion, the Board has revised subsection (g) and added new subsections (h) and (i) which lay out the time frames and process for reviewing amendments in greater detail.

In § 501a.3 (relating to employee training program), IRRC had a number of concerns. In subsection (a)(10), IRRC asked what the basis was for the 90-day time period and why this subsection was not cross-referenced in § 503a.4 (relating to duties of slot machine licensees).

The 90-day period was initially selected to allow ample time for a slot machine licensee to modify marketing programs which the slot machine licensee may have contracted out to a third party. However, based on the Board's experience to date, such a long lead time is not necessary. Therefore, the time period for compliance has

been reduced to 5 days and has been tied to the mailing of any advertisement since the slot machine licensee can not control when it is actually received. The Board has also added a cross-reference to this subsection in § 503a.4 as suggested by IRRC.

In subsection (b), IRRC recommended that the timetables for completion of training be included in the regulation.

The Board agrees and has replaced the "timetables" requirement with the requirement that employees receive this training as part of their employee orientation.

In subsection (d), IRRC suggested that a specific time period be established for reinforcement training and that the manner of recording this training be added to the section.

The Board concurs with these suggestions and has added language which requires reinforcement training every year starting with the year following an employee's hiring. The date of completion of this training must be recorded in the employee's personnel file so that compliance can be monitored by the Board.

In subsection (g), IRRC asked how Internet-based training would be reviewed and why in-house programs were not also included in the review process.

Training programs, whether in-house or Internet-based, are reviewed under § 501a.2(d)(5) as part of the plan approval process. The intent of this subsection was to simply allow the use of Internet-based programs as part of a slot machine licensee's training program. Therefore, the last sentence in subsection (g) has been deleted.

In § 501a.5 (relating to liability), IRRC asked what the Board's statutory authority is for this provision and how it is consistent with the legislative intent of 4 Pa.C.S. § 1102(10) (relating to legislative intent). Representatives James and Clymer expressed similar concerns.

The Board proposed these provisions under its general rulemaking authority under 4 Pa.C.S. §§ 1202(b)(30) and 1516. These provisions were intended to encourage slot machine licensees to be more proactive while discouraging frivolous lawsuits against both the Board and slot machine licensees. However, the Board recognizes that the act does not contain language specifically authorizing all of these provisions. For this reason, the Board has deleted § 501a.5 entirely.

In proposed § 501a.6 (relating to signage requirements), IRRC suggested that more detail be added to the regulation regarding the approval of signs that must be posted in a licensed facility and the language that must be included in marketing materials.

The actual text may vary by slot machine licensee; some licensees have proprietary phrases that they have previously developed for use in other jurisdictions. To allow some flexibility, the Board will not require all slot machine licensees to use the same language. To review a slot machine licensee's materials, the approval process for signs and marketing materials will be the same as the process for approval of amendments to the plan. Accordingly a cross-reference to that process has been added to both subsections (a) and (b).

Representative Clymer suggested the Board reduce the 50 foot distance applicable to the location of signs and require a minimum number of signs.

The Board has not adopted either of these suggestions. The suggestion to reduce the 50 foot requirement was not adopted because the 50 foot distance is established by 4

Pa.C.S. § 1509(c). A minimum number of signs was not added as a requirement because licensed facilities will vary significantly in size and design. Therefore, what may be an appropriate number of signs in some facilities may be insufficient for other facilities. Instead, the plan for posting signs will be reviewed under § 501a.2(d)(13) for each individual facility.

In proposed § 501a.7 (relating to check cashing), IRRC questioned how a slot machine licensee would be able to determine if a check was being cashed "to enable the individual to take part in gaming" and suggested that this phrase be deleted or replaced with the phrase "for a patron."

The Board has adopted IRRC's suggested revised language.

In § 503a.2(a) (relating to request for self-exclusion), Representative Clymer and IRRC suggested that applications for self-exclusion be taken at all Board offices and licensed facilities.

Currently, the Board has been accepting walk-in applications at Board offices and licensed facilities whenever a trained Board employee is present. To facilitate this process, the regulation has been amended to allow applicants to schedule an appointment at any Board office or licensed facility. Walk-in applications will continue to be accepted if a trained employee is present, but if a trained employee is not present, the applicant will be able to request that an appointment be set up.

In §§ 503a.2(a) and 503a.4(i) and § 503a.5(b) (relating to removal from self-exclusion list), IRRC suggested that the phrases "form and manner prescribed by the Board" and "form prescribed by the Board" be deleted or additional details be added.

The phrases noted previously have been deleted and more detailed information has been added. For example, in § 503a.4(i) notice of the discovery of a self-excluded person on the gaming floor must be provided to the Director of OCPG within 24 hours.

In subsection (c), IRRC asked how an individual on the self-exclusion list would report changes in their information to the Board.

To provide guidance, this section has been amended by adding the form name, where the form can be obtained and the address to which changes are to be sent.

In subsection (e)(3), IRRC asked why the phrase "problem gambler" is used instead of "compulsive and problem gambler."

The phrase "problem gambler" is used in this provision because that is the term used in 4 Pa.C.S. § 1516(a). Also, the intent of this provision is for the individual to acknowledge that they are a problem gambler irrespective of whether or not they meet the clinical definition of a compulsive gambler.

In subsection (e)(6), IRRC questioned the Board's statutory authority for subparagraphs (iii) and (iv) and how these subparagraphs protect citizens from the negative effects of gambling and encourage them to participate in the self-exclusion program. Representatives James and Clymer expressed similar concerns.

The Board proposed these subparagraphs under the Board's general rulemaking authority under 4 Pa.C.S. § 1202(b)(30). These provisions were intended to encourage slot machine licensees to be more proactive in disseminating information to prevent self-excluded individuals from gambling and to protect the Board and slot

machine licensees from frivolous lawsuits. However, upon further consideration, the Board agrees that the proposed language is too broad. Accordingly, subparagraphs (iii) and (iv) have been deleted.

In § 503a.3 (relating to self-exclusion list), IRRC asked how soon the Board would notify slot machine licensees of additions to or removals from the self-exclusion list and recommended that the notice be made within 24 hours.

The Board has added a provision stating that the notice will be provided to slot machine licensees within 5 days of the verification of the information in the request. While in most cases the Board expects to make the notification very quickly, the 5-day period gives the Board some flexibility.

In subsection (g) (and in § 503a.4(i)), IRRC asked what is meant by "gaming activity" and suggested that this term be defined.

The term "gaming activity" is a well understood term within the gaming industry involving any activities involving or related to the play of slot machines. However, since this chapter is targeted at individuals, as well as slot machine licensees, the Board agrees with IRRC and has added a definition of this term.

In § 503a.4(a)(1)(ii), IRRC asked who the "designated representatives of the Board" would be and how and when they would be notified.

Revisions were made in this subsection to require immediate notice to the BIE agents at the licensed facility. The method of this notice has not been prescribed because the quickest way to provide notice will depend on the circumstances. The Board wants slot machine licensees to use the quickest means available.

In subsection (b), IRRC asked what the process is and the time frames are for approval of the training procedures and materials.

To address these concerns, the Board extensively revised subsections (b) and (c) and added new subsections (d) and (e) to lay out the process for review and approval of procedures and materials and any amendments thereto.

Finally, IRRC asked what the approval process would be or minimum requirements would be for the signs required by subsection (f).

To clarify this process, language was added to subsection (f) to set forth that the process for review of signs would be the same as the process for reviewing procedures and training materials under subsection (b).

In § 503a.6 (relating to exceptions to the prohibition from being on the gaming floor for individuals on the self-exclusion list), Representative Clymer suggested that the words "all of" be inserted before the words "the following apply." The Board agrees that this language will add clarity to this section and has amended this section as suggested.

Additional Revisions

In addition to the revisions discussed previously, the Board has made several additional revisions.

In § 501a.1, a definition of "OCPG" (Office of Compulsive and Problem Gambling) was added.

In §§ 501a.2(d)(3)(ii) and 501a.3(c), (d) and (e), the phrase "Key employees and gaming employees" has been replaced with "Employees" to pull in nongaming and

noncredentialed employees who will be required to receive the training required under this section.

In § 501a.3(e), the last sentence regarding immunity from liability has been deleted.

In § 503a.1, the phrase “or slot system operator” has been added to the definitions of the terms “fully executed gaming transaction” and “winnings” to reflect the fact that the slot system operator, rather than the slot machine licensee, may be responsible for the payout of a wide area progressive jackpot.

In § 503a.2, subsection (a) was deleted because it repeats portions of subsection (b).

In § 503a.3(f), the phrase “operated by affiliated licensed gaming entities” in the last sentence was deleted to clarify that the “limited purpose” language applies to disclosures to affiliated and nonaffiliated entities.

In § 503a.3(h), the phrase “and deposited in the Compulsive and Problem Gambling Treatment Fund” has been replaced with “to support compulsive and problem gambling programs of the Board.” This change will allow the Board to retain these funds to support the Board’s in-house compulsive and problem gambling programs.

In § 503a.4(a)(2), “Immediately” was added to clarify when notice must be provided to the Pennsylvania State Police when a self-excluded individual is found on the gaming floor.

In § 503a.5, details were added relating to where and how requests for removal from the self-exclusion list will be processed.

Affected Parties

This final-form rulemaking imposes requirements on slot machine licensees and persons who are seeking to be added to or removed from the self-exclusion list.

Fiscal Impact

Commonwealth

This final-form rulemaking will impose costs on the Board related to the review of slot machine licensees’ compulsive and problem gaming plans and administration of the self-exclusion program.

Political Subdivisions

This final-form rulemaking will have no significant fiscal impact on political subdivisions of this Commonwealth.

Private Sector

Slot machine licensees will experience costs related to developing compulsive and problem gaming programs, training of employees, posting signs and compliance with the requirements of the self-exclusion program.

General Public

Individuals seeking to be added to or removed from the self-exclusion list will experience some minor costs associated with the application process.

Paperwork requirements

This final-form rulemaking requires slot machine licensees to file a comprehensive compulsive and problem gaming plan with the Board for its approval and to submit amendments to the plan to the Board. A slot machine licensee is also required to submit its procedures for implementing the self-exclusion program.

Individuals seeking to be added to or removed from the self-exclusion list will have to complete the appropriate forms.

Effective Date

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

Contact Person

The contact person for questions about this final-form rulemaking is Richard Sandusky, Director of Regulatory Review, (717) 214-8111.

Regulatory Review

Under sections 5(a) and (f) of the Regulatory Review Act (71 P. S. §§ 745.5(a) and (f)), on January 17, 2007, the Board submitted a copy of the proposed rulemaking, published at 37 Pa.B. 416 (January 27, 2007), and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC). On February 12, 2007, the Board submitted a copy of the proposed rulemaking and a copy of the Regulatory Analysis Form to the Chairpersons of the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development for review and comment.

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), 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 Board has considered all comments received from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 19, 2007, the final-form rulemaking was deemed approved by the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met on September 20, 2007, and approved the final-form rulemaking.

Findings

The Board finds that:

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

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the act.

Order

The Board, acting under the act orders that:

(a) The regulations of the Board, 58 Pa. Code Part VII, are amended by deleting §§ 501.1—501.8 and 503.1—503.6 and by adding §§ 501a.1—501a.6 and 503a.1—503a.6 to read as set forth in Annex A.

(b) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

MARY DIGIACOMO COLINS,
Chairperson

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 5447 (October 6, 2007).)

Fiscal Note: Fiscal Note 125-54 remains valid for the final adoption of the subject regulations.

Annex A
TITLE 58. RECREATION
PART VII. GAMING CONTROL BOARD
Subpart I. COMPULSIVE AND PROBLEM
GAMBLING
CHAPTER 501. (Reserved)

§§ 501.1—501.8. (Reserved).

CHAPTER 501a. COMPULSIVE AND PROBLEM
GAMBLING REQUIREMENTS

Sec.

- 501a.1. Definitions.
- 501a.2. Compulsive and problem gambling plan.
- 501a.3. Employee training program.
- 501a.4. Reports.
- 501a.5. Signage requirements.
- 501a.6. Check cashing.

§ 501a.1. Definitions.

The following term, when used in this chapter, has the following meaning, unless the context clearly indicates otherwise:

OCPG—The Office of Compulsive and Problem Gambling.

§ 501a.2. Compulsive and problem gambling plan.

(a) An applicant for a slot machine license shall submit a compulsive and problem gambling plan to the Board for review at the time of submission of the application. The plan must, at a minimum, contain the elements listed in subsection (d).

(b) The compulsive and problem gambling plan of an applicant for a slot machine license who has been approved to receive a slot machine license must be approved by the Director of OCPG. An applicant for a slot machine license who has been approved to receive a slot machine license will be notified in writing of any deficiencies in the plan and may submit revisions to the plan to the Director of OCPG. A slot machine licensee may not commence operations until the Director of OCPG approves the plan.

(c) Compliance with the plan approved under this chapter will be a condition of license renewal.

(d) A compulsive and problem gambling plan must include the following:

(1) The goals of the plan and procedures and timetables to implement the plan.

(2) The identification of the individual who will be responsible for the implementation and maintenance of the plan.

(3) Policies and procedures including the following:

(i) The commitment of the licensee to train appropriate employees.

(ii) The duties and responsibilities of the employees designated to implement or participate in the plan.

(iii) The responsibility of patrons with respect to responsible gambling.

(iv) Procedures to identify patrons and employees with suspected or known compulsive and problem gambling behavior.

(v) Procedures for providing information to individuals regarding community, public and private treatment services, gamblers anonymous programs and similar treat-

ment or addiction therapy programs designed to prevent, treat, or monitor compulsive and problem gamblers and to counsel family members.

(vi) Procedures for responding to patron requests for information regarding community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat, or monitor compulsive and problem gamblers and to counsel family members. The provisions of this subsection do not create a duty for a slot machine licensee or its employees to refer compulsive and problem gamblers to qualified treatment professionals.

(4) The provision of printed material to educate patrons about compulsive and problem gambling and to inform them about treatment services available to compulsive and problem gamblers and their families. The slot machine licensee shall provide examples of the materials to be used as part of its plan, including signs required under § 501a.5 (relating to signage requirements), brochures and other printed material and a description of how the material will be disseminated.

(5) An employee training program as required under § 501a.3 (relating to employee training program), including training materials to be utilized and a plan for periodic reinforcement training.

(6) A certification process established by the slot machine licensee to verify that each employee has completed the training required by the plan.

(7) An estimation of the cost of development, implementation and administration of the plan.

(8) A list of community, public and private treatment services, gamblers anonymous programs and similar treatment or addiction therapy programs designed to prevent, treat, or monitor compulsive and problem gamblers and to counsel family members.

(9) Procedures to prevent underage gambling as required under § 513a.3(b) (relating to responsibilities of licensees, permittees, registrants and certification holders).

(10) Procedures to prevent excluded persons from gambling.

(11) Procedures to prevent intoxicated patrons from gambling.

(12) Details of outreach programs which the slot machine licensee intends to offer to employees and individuals who are not employees of the slot machine licensee.

(13) The plan for posting signs required under § 501a.5 within the licensed facility, containing gambling treatment information.

(e) A slot machine licensee shall also submit other policies and procedures the slot machine licensee intends to use beyond what is required under subsection (d) to prevent and raise awareness of compulsive and problem gambling.

(f) The Board may provide the plan submitted by the slot machine licensee to the Department of Health for evaluation. The Department of Health may provide comments and recommendations to the Board relating to the plan.

(g) A slot machine licensee shall submit amendments to the compulsive and problem gambling plan to the Director of OCPG for review and approval at least 30 days prior to the intended implementation date of the amendments. The slot machine licensee may implement the amendments on the 30th calendar day following the

filing the amendments unless the slot machine licensee receives a notice under subsection (h) objecting to the amendments.

(h) If during the 30-day review period the Director of OCPG determines that the amendments may not promote the prevention of compulsive and problem gambling or assist in the proper administration of responsible gaming programs, the Director of OCPG may, by written notice to the slot machine licensee, object to the amendments. The objection will:

- (1) Specify the nature of the objection and, when possible, an acceptable alternative.
- (2) Direct that the amendments not be implemented until approved by the Director of OCPG.
- (i) When amendments have been objected to under subsection (h), the slot machine licensee may submit revised amendments within 30 days of receipt of the written notice from the Director of OCPG. The slot machine licensee may implement the revised amendments on the 30th calendar day following the filing of the revision unless it receives written notice under subsection (h) objecting to the amendments.

§ 501a.3. Employee training program.

(a) The employee training program required under § 501a.2(d)(5) (relating to compulsive and problem gambling plan) must include instruction in the following:

- (1) Characteristics and symptoms of compulsive behavior, including compulsive and problem gambling.
- (2) The relationship of compulsive and problem gambling to other addictive behavior.
- (3) The social and economic consequences of compulsive and problem gambling, including debt, treatment costs, suicide, criminal behavior, unemployment and family counseling.
- (4) Techniques to be used when compulsive and problem gambling is suspected or identified.
- (5) Techniques to be used to discuss compulsive and problem gambling with patrons and advise patrons regarding community, public and private treatment services.
- (6) Procedures designed to prevent serving alcohol to visibly intoxicated gaming patrons.
- (7) Procedures designed to prevent persons from gaming after having been determined to be visibly intoxicated.
- (8) Procedures for the dissemination of written materials to patrons explaining the self-exclusion program.
- (9) Procedures for removing an excluded person, an underage individual or a person on the self-exclusion list from a licensed facility including, if necessary, procedures that include obtaining the assistance of appropriate law enforcement personnel.
- (10) Procedures for preventing an excluded person or a person on the self-exclusion list from being mailed any advertisement, promotion or other target mailing no later than 5 business days after receiving notice from the Board that the person has been placed on the excluded person or self-exclusion list.

(11) Procedures for preventing an individual under 21 years of age from receiving any advertisement, promotion or other target mailing.

(12) Procedures to prevent an excluded person, an individual under 21 years of age or a person on the self-exclusion list from having access to or from receiving complimentary services, or other like benefits.

(13) Procedures to prevent an excluded person, an individual under 21 years of age or a person on the self-exclusion list from cashing checks.

(b) Training for employees shall be conducted by a person with specialized knowledge, skill, training and experience in responsible gaming employee training programs as part of the employee's orientation.

(c) Employees who have received training shall be certified by the slot machine licensee under § 501a.2(d)(6) upon completion of the training.

(d) Employees are required to receive periodic reinforcement training at least once every calendar year starting with the year following the year in which the employee was hired. The date of the reinforcement training shall be recorded in the employee's personnel file.

(e) Employees shall report suspected or identified compulsive or problem gamblers to a designated key employee or other supervisory employee.

(f) The identity of an individual suspected of known compulsive or problem gambling shall be confidential except as provided under § 503a.3(f) (relating to self-exclusion list) and section 1516(d) of the act (relating to list of persons self-excluded from gaming activities).

(g) Slot machine licensees may collaborate with a person with specialized knowledge, skill, training and experience in responsible gaming employee training programs to develop an in-house or Internet-based employee training program to provide the training and reinforcement training required by this chapter.

§ 501a.4. Reports.

A slot machine licensee shall submit an annual summary of its compulsive and problem gambling program with its application for renewal of the slot machine license.

§ 501a.5. Signage requirements.

(a) Under section 1509(c) of the act (relating to compulsive and problem gambling program), each slot machine licensee shall post signs that include a statement that is similar to the following: "If you or someone you know has a gambling problem, help is available. Call (toll-free telephone number)." The complete text of the sign shall be submitted for approval to the Director of OCPG utilizing the process contained in § 501a.2(g) (relating to compulsive and problem gambling plan). The signs shall be prominently posted at the following locations:

- (1) Within 50 feet of each entrance and exit of the facility.
- (2) Within 50 feet of each ATM, cash dispensing or change machine in each facility.

(b) Each slot machine and junket licensee shall print a statement related to obtaining compulsive or problem gambling on all marketing or advertising materials that are offered to the general public by a slot machine or junket licensee, including signs, billboards, print, radio or television advertisements. The text and font size of the statement shall be submitted for approval to the Director of OCPG utilizing the process contained in § 501a.2(g).

§ 501a.6. Check cashing.

(a) Except as permitted in subsection (b), holders of a license, certification or registration from the Board or

persons acting on behalf of a holder of a license, certification or registration from the Board, may not cash a check payable to an individual, including Social Security, unemployment insurance, disability payment, public assistance payment or payroll check for a patron.

(b) A holder of a license, certification or registration from the Board or any employee authorized by a holder of a license, certification or registration from the Board may accept a personal check, wire transfer or cash equivalent, such as a recognized traveler's check, cashier's check or money order.

CHAPTER 503. (Reserved)

§§ 503.1—503.6. (Reserved).

CHAPTER 503a. SELF-EXCLUSION

Sec.

503a.1.	Definitions
503a.2.	Request for self-exclusion
503a.3.	Self-exclusion list
503a.4.	Duties of slot machine licensees
503a.5.	Removal from self-exclusion list
503a.6.	Exceptions to the prohibition from being on the gaming floor for individuals on the self-exclusion list.

§ 503a.1. Definitions.

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

Fully executed gaming transaction—An activity involving a slot machine or associated equipment which occurs on the gaming floor of a licensed facility and which results in an individual obtaining any money or thing of value from, or being owed any money or thing of value by, a slot machine licensee or slot system operator.

Gaming activity—An activity involving or related to the play of slot machines including player club memberships or promotional activities.

OCPG—Office of Compulsive and Program Gambling.

Self-excluded person—A person whose name and identifying information is included, at the person's own request, on the self-exclusion list maintained by the Board.

Self-exclusion list—A list of names and identifying information of persons who, under this chapter, have voluntarily agreed to be excluded from the gaming floor and all gaming activities at a licensed facility and to be prohibited from collecting any winnings, recovering any losses or accepting complimentary gifts or services or any other thing of value at a licensed facility.

Winnings—Any money or thing of value received from, or owed by a slot machine licensee or slot system operator as a result of a fully executed gaming transaction.

§ 503a.2. Request for self-exclusion.

(a) A person requesting placement on the self-exclusion list shall submit, in person, a completed Request for Voluntary Self-exclusion from Gaming Activities Form to the Board. The submission may be made by scheduling an appointment at the Board's Harrisburg office, one of the Board's other offices or at a licensed facility. To make an appointment, a person may contact the OCPG at (717) 346-8300.

(b) A request for self-exclusion must include the following identifying information:

- (1) Name, including any aliases or nicknames.
- (2) Date of birth.
- (3) Address of current residence.

(4) Telephone number.

(5) Social Security number, when voluntarily provided in accordance with section 7 of the Privacy Act of 1974 (5 U.S.C. § 552a).

(6) Physical description of the person, including height, weight, gender, hair color, eye color and any other physical characteristic that may assist in the identification of the person.

(c) The information provided in subsection (c) shall be updated by the self-excluded person within 30 days of a change. Updated information shall be submitted on a Change of Information Form to the following address. A copy of the form can be obtained by calling the OCPG at (717) 346-8300 or by writing to:

PENNSYLVANIA GAMING CONTROL BOARD

OFFICE OF COMPULSIVE AND PROBLEM

GAMBLING

P. O. BOX 69060

HARRISBURG, PA 17106-9060

(d) The length of self-exclusion requested by a person must be one of the following:

- (1) One year (12 months).
- (2) Five years.
- (3) Lifetime.

(e) A request for self-exclusion must include a signed release which:

(1) Acknowledges that the request for self-exclusion has been made voluntarily.

(2) Certifies that the information provided in the request for self-exclusion is true and accurate.

(3) Acknowledges that the individual requesting self-exclusion is a problem gambler.

(4) Acknowledges that a person requesting a lifetime exclusion is prohibited from requesting removal from the self-exclusion list and that a person requesting a 1-year or 5-year exclusion will remain on the self-exclusion list until a request for removal under § 503a.5 (relating to removal from self-exclusion list) is approved.

(5) Acknowledges that if the individual is discovered on the gaming floor or engaging in gaming activities at any licensed facility, that the individual will be subject to removal and will be subject to arrest for criminal trespass under 18 Pa.C.S. § 3503 (relating to criminal trespass).

(6) Releases, indemnifies, holds harmless and forever discharges the Commonwealth, the Board, and all slot machine licensees from any claims, damages, losses, expenses or liability arising out of, by reason of or relating to the self-excluded person or to any other party for any harm, monetary or otherwise, which may arise as a result of one or more of the following:

(i) The failure of a slot machine licensee to withhold gaming privileges from or restore gaming privileges to a self-excluded person.

(ii) Otherwise permitting or not permitting a self-excluded person to engage in gaming activity in a licensed facility while on the list of self-excluded persons.

(f) Self-exclusions for 1 or 5 years remain in effect until the self-excluded person requests removal from the Board's self-exclusion list under § 503a.5.

(g) A person submitting a self-exclusion request shall be required to present a government-issued photo identifi-

cation containing the person's signature and photograph when the person submits the request.

(h) A person requesting self-exclusion under this chapter shall be required to have a photograph taken by the Board, or agent thereof, upon the Board's acceptance of the request to be on the list.

§ 503a.3. Self-exclusion list.

(a) The Board will maintain the official self-exclusion list and notify each slot machine licensee of additions to or deletions from the list within 5 business days of the verification of the information received under § 503a.2 (relating to request for self-exclusion) by first class mail or by transmitting the self-exclusion list electronically directly to each slot machine licensee.

(b) The notice provided to slot machine licensees by the Board will include the following information concerning a person who has been added to the self-exclusion list:

- (1) Name, including any aliases or nicknames.
- (2) Date of birth.
- (3) Address of current residence.
- (4) Telephone number.
- (5) Social Security number, when voluntarily provided by the person requesting self-exclusion under section 7 of the Privacy Act of 1974 (5 U.S.C. § 552a).

(6) Physical description of the person, including height, weight, gender, hair color, eye color and other physical characteristic, that may assist in the identification of the person.

(7) A copy of the photograph taken by the Board under § 503a.2(i).

(c) The notice provided to slot machine licensees by the Board concerning a person whose name has been removed from the self-exclusion list will include the name and date of birth of the person.

(d) A slot machine licensee shall maintain a copy of the self-exclusion list and establish procedures to ensure that the copy of the self-exclusion list is updated and that all appropriate employees and agents of the slot machine licensee are notified of any addition to or deletion from the list within 5 business days after the day notice is mailed to each slot machine licensee or transmitted electronically under subsection (a).

(e) Information furnished to or obtained by the Board under this chapter will be deemed confidential and will not be disclosed except in accordance with this chapter.

(f) Slot machine licensees, employees or agents thereof may not disclose the name of, or any information about, a person who has requested self-exclusion to anyone other than employees and agents of the slot machine licensee whose duties and functions require access to the information. Notwithstanding the foregoing, a slot machine licensee may disclose the identity of a self-excluded person to appropriate employees of other slot machine licensees in this Commonwealth or affiliated gaming entities in other jurisdictions for the limited purpose of assisting in the proper administration of responsible gaming programs.

(g) A self-excluded person may not collect in any manner or in any proceeding any winnings or recover any losses arising as a result of any gaming activity for the entire period of time that the person is on the Board's self-exclusion list.

(h) Winnings incurred by a self-excluded person shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

(i) For the purposes of this section, winnings issued to, found on or about, or redeemed by a self-excluded person shall be presumed to constitute winnings subject to remittance to the Board.

§ 503a.4. Duties of slot machine licensees.

(a) A slot machine licensee shall train its employees and establish procedures that are designed to:

(1) Identify a self-excluded person when present in a licensed facility and, upon identification, immediately notify the following persons:

(i) Employees of the slot machine licensee whose duties include the identification and removal of self-excluded persons.

(ii) BIE agents at the licensed facility.

(2) Immediately notify the Pennsylvania State Police when a self-excluded person is discovered on the gaming floor or engaging in gaming activities.

(3) Refuse wagers from and deny gaming privileges to a self-excluded person.

(4) Deny check cashing privileges, player club membership, complimentary goods and services, junket participation and other similar privileges and benefits to a self-excluded person.

(5) Ensure that self-excluded persons do not receive, either from the slot machine licensee or any agent thereof, junket solicitations, targeted mailings, telemarketing promotions, player club materials or other promotional materials relating to gaming activities at its licensed facility as required under § 501a.3(a)(10) (relating to employee training program).

(6) Comply with § 503a.3(d) (relating to self-exclusion list).

(7) Disseminate written materials to patrons explaining the self-exclusion program.

(b) A slot machine licensee shall submit a copy of its procedures and training materials established under subsection (a) to the Director of OCPG for review and approval at least 30 days prior to initiation of gaming activities at the licensed facility. The slot machine licensee will be notified in writing of any deficiencies in the procedures and training materials and may submit revisions to the procedures and training materials to the Director of OCPG. A slot machine licensee may not commence operations until the Director of OCPG approves the procedures and training.

(c) A slot machine licensee shall submit amendments to the procedures and training materials required under subsection (b) to the Director of OCPG for review and approval at least 30 days prior to the intended implementation date of the amendments. The slot machine licensee may implement the amendments on the 30th calendar day following the filing of the amendments unless the slot machine licensee receives a notice under subsection (d) objecting to the amendments.

(d) If during the 30-day review period the Director of OCPG determines that the amendments to the procedures and training materials may not promote the prevention of gaming by self-excluded individuals or assist in the proper administration of the self-exclusion program, the

Director of OCPG may, by written notice to the slot machine licensee, object to the amendments. The objection will:

(1) Specify the nature of the objection and, when possible, an acceptable alternative.

(2) Direct that the amendments not be implemented until approved by the Director of OCPG.

(e) When the amendments to the procedures and training materials have been objected to under subsection (d), the slot machine licensee may submit revised amendments within 30 days of receipt of the written notice from the Director of OCPG. The slot machine licensee may implement the amendments on the 30th calendar day following the filing of the revisions unless it receives written notice under subsection (d) objecting to the amendments.

(f) A slot machine licensee shall post signs at all entrances to a licensed facility indicating that a person who is on the self-exclusion list will be subject to arrest for trespassing under 18 Pa.C.S. § 3503 (relating to criminal trespass) if the person is on the gaming floor or engaging in gaming activities. The text and font size of the signs shall be submitted for approval to the Director of OCPG under the procedures specified in subsection (b).

(g) The list of self-excluded persons is confidential, and any distribution of the list to an unauthorized source constitutes a violation of the act.

(h) Under section 1516 of the act (relating to list of persons self excluded from gaming activities), slot machine licensees and employees thereof may not be liable for damages in any civil action, which is based on the following:

(1) Failure to withhold gaming privileges from or restore gaming privileges to a self-excluded person.

(2) Permitting or not permitting a self-excluded person to gamble.

(3) Good faith disclosure of the identity of a self-excluded person to someone, other than those authorized by this chapter, for the purpose of complying with this chapter.

(i) A slot machine licensee shall report the discovery of a self-excluded person on the gaming floor or engaging in gaming activities to the Director of OCPG within 24 hours.

§ 503a.5. Removal from self-exclusion list.

(a) A self-excluded person may, upon the expiration of the period of self-exclusion, request removal of the person's name from the self-exclusion list by submitting a completed request for removal as required by subsections (b) and (c). The submission may be made by scheduling an appointment at the Board's Harrisburg office or one of the Board's other offices. To make an appointment, a person may contact the OCPG at (717) 346-8300.

(b) A request for removal from the self-exclusion list must include:

(i) The identifying information specified in § 503a.2(b)(1)—(6) (relating to request for self-exclusion).

(ii) The signature of the person requesting removal from the self-exclusion list indicating acknowledgment of the following statement:

"I certify that the information that I have provided above is true and accurate. I am aware that my signature below constitutes a revocation of my previ-

ous request for self-exclusion, and I authorize the Board to permit all slot machine licensees of the Commonwealth of Pennsylvania to reinstate my gaming privileges at licensed facilities."

(c) A person submitting a request for removal from the self-exclusion list shall be required to present a valid government-issued photo identification containing the person's signature when the request is submitted. No sooner than 5 business days after the request is submitted, the person submitting the request shall:

(1) Return to the Board office where the request was filed.

(2) Present a valid government-issued photo identification containing the person's signature.

(3) Sign the request a second time.

(d) Within 5 business days after the request is signed for a second time, the Board will delete the name of the person requesting removal from the self-exclusion list and notify each slot machine licensee of the removal.

§ 503a.6. Exceptions to the prohibition from being on the gaming floor for individuals on the self-exclusion list.

The prohibition against allowing self-excluded persons to be on the gaming floor does not apply to an individual who is on the self-exclusion list if all of the following apply:

(1) The individual is carrying out the duties of employment or incidental activities related to employment.

(2) The slot machine licensee's security department and the Board's office located at the licensed facility have received prior notice.

(3) Access to the gaming floor is limited to the time necessary to complete the individual's assigned duties.

(4) The individual does not otherwise engage in any gaming activities.

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PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 421, 421a, 423, 423a, 425, 425a, 427, 427a, 431, 431a, 436, 436a, 438, 438a, 439, 439a, 440 AND 440a]

General Provisions; Applications; Licensed Entity Representatives; Manufacturer Licenses; Supplier Licenses; Horsemen's Organizations; Labor Organizations; Junket Enterprises; Management Companies

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1202(b)(9), (13)—(20) and (23), 1202.1(b) and (e), 1205, 1311.1, 1311.2, 1317, 1317.1, 1319, 1321(a)(1) and (2), 1325, 1326, 1331 and 1406, rescinds Chapters 421, 423, 425, 427, 431, 436, 438, 439 and 440 and adds Chapters 421a, 423a, 425a, 427a, 431a, 436a, 438a, 439a and 440a to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

Under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted temporary regulations in Chapters 421, 423, 427 and 431 at 35 Pa.B. 4045 (July 16, 2005), Chapter 425 at 37 Pa.B. 21 (January 5, 2007), Chapter 436 at 36 Pa.B. 3409 (July 1, 2006), Chapter 438 at 36 Pa.B. 3951 (July 22, 2006), Chapter 439 at 35 Pa.B. 6619 (December 3, 2005) and Chapter 440 at 36 Pa.B. 679 (February 4, 2006). Under 4 Pa.C.S. § 1203(b), the temporary regulations expired on July 5, 2007.

The Board is adopting Chapters 421a, 423a, 425a, 427a, 431a, 436a, 438a, 439a and 440a to replace the Board's temporary regulations with the permanent regulations.

Explanation of Chapters 421a, 423a, 425a, 427a, 431a, 436a, 438a, 439a and 440a.

Chapter 421a (relating to general provisions) contains general requirements that apply to all applicants. It also contains criteria the Board may use to deny an initial or renewal application or suspend or revoke a license, permit, certification or registration; provides that the Board may make inquiries or conduct investigations of applicants for or holders of a license, permit, certification or registration; outlines the procedures for conducting presuitability determinations of potential purchasers of an applicant for or holder of a license; and articulates how the Board will implement 4 Pa.C.S. § 1102(5) (relating to legislative intent) to prevent undue concentration of economic opportunities and control in gaming.

Chapter 423a (relating to applications) contains general provisions that apply to applications generally; outlines the process for preliminary review of applications and the general process that will apply to the review of applications after they have been accepted for filing. It also addresses how deficient applications will be handled; specifies how withdrawals of applications will be processed; provides that the Board may require a Statement of Conditions; imposes restrictions on reapplications by an applicant whose application was denied or by the holder of a license, permit, certification or registration if their license, permit, certification or registration was revoked.

Chapter 425a (relating to licensed entity representatives) requires licensed entity representatives to file a Licensed Entity Representative Registration Form and update their information on an ongoing basis. It also provides that the Board will maintain a list of licensed entity representatives which will be available at its offices and on the Board's website.

Chapter 427a (relating to manufacturers) provides general requirements pertaining to manufacturers; specifies what is required from an applicant for a manufacturer's license; specifies the term of a manufacturer's license and the renewal process; lays out the process for an alternative review of a manufacturer's license application based on the applicant's licensure in another jurisdiction; and sets forth the responsibilities of licensed manufacturers.

Chapter 431a (relating to supplier licenses) provides general requirements pertaining to suppliers; lists what is required from an applicant for a supplier's license; specifies the term of a supplier's license and the renewal process; contains supplier responsibilities; and requires suppliers to maintain a log book to register all individuals who enter the supplier's principal place of business and any facility where slot machines are stored.

Chapter 436a (relating to horsemen's organizations) contains definitions of terms that are only used in this

chapter; requires each horsemen's organization to file a Horsemen's Organization Registration Statement; requires each officer, director or representative to file a Horsemen's Permit Application Form; outlines the responsibilities of horsemen's organizations and officers, directors or representatives; specifies fiduciaries' responsibilities; and requires that all health and benefit plan contracts must be submitted to and approved by the Board.

Chapter 438a (relating to labor organizations) contains definitions of terms that are only used in this chapter; requires each labor organization to file a Labor Organization Form; and requires every labor organization officer, agent, and management employee to file a Labor Organization Permit Application Form.

Chapter 439a (relating to junket enterprises) contains definitions of terms that are only used in this chapter; contains general provisions applicable to junket enterprises and application requirements; specifies the term of a junket enterprise license and the renewal process; requires junket representatives to be registered and delineates application requirements; requires junket schedules and changes thereto to be submitted to the Bureau of Corporate Compliance and Internal Controls; requires the preparation of junket arrival reports; requires preparation of junket final reports; requires the preparation of monthly junket reports; requires the preparation of a report pertaining to the purchase of patron lists; and lists activities that junket enterprises and representatives may not participate in.

Chapter 440a (relating to management companies) contains general requirements pertaining to management companies; lists what is required from an applicant for a management company license; specifies the term of a management company license and the renewal process; states that a management company will be deemed to be an agent of the slot machine licensee for any violations and that the management company will be jointly and severally liable for violations of the slot machine licensee; and specifies that all management contracts and amendments must be submitted to and approved by the Board before they can go into effect.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 2197 (May 12, 2007).

The Board received comments from Downs Racing, LP (Downs), Greenwood Gaming and Entertainment, Inc. (Greenwood) and Keystone Gaming Technologies, Inc. (KGT) during the public comment period. On July 11, 2007, comments on the proposed rulemaking were received from the Independent Regulatory Review Commission (IRRC). On July 12, 2007, comments on the proposed rulemaking were received from Representative Paul Clymer, Republican Chairperson of the House Gaming Oversight Committee. These comments were reviewed by the Board and are discussed in detail as follows.

Both Greenwood and Downs filed general comments pertaining to the renewal process. Both slot machine licensees strongly recommend that they only be required to file material updates of information contained in their initial application. They argue that this would be consistent with the language of 4 Pa.C.S. § 1326 (relating to license renewals) which states "The application renewal shall include an update of the information contained in the initial and any prior renewal applications . . .". They also suggest that the Board define the term "material" as "updates which could have an effect on a continuing finding of suitability."

The renewal of slot machine licenses is addressed in Chapter 441a (relating to slot machine licenses) published at 37 Pa.B. 2695 (June 16, 2007). However, the concerns raised are valid for all renewals. It is the Board's intent for all licensees and permittees to use renewal application forms which are essentially the same as the initial application forms. But the Board agrees there is no need to resubmit information that has not changed. Licensees and permittees will only be required to provide information that has changed; everything else can be marked "No Update." This will substantially reduce the amount of time required to complete the renewal forms.

The Board is also considering requiring a full submission periodically, perhaps every 5 years. This would be done to insure that no significant information has inadvertently not been provided to the Board. Comments from licensees and permittees on this type of requirement and an appropriate frequency for these complete submissions are invited.

The Board has not added a definition of "material" because the Board wants all of the information that has changed. It is the responsibility of the Board to review anything that has changed and determine whether or not it could have an effect on a continuing finding of suitability.

Greenwood and Downs both suggest that Chapters 421a and 423a should contain more specific details on renewals and that renewals should only be required for licenses and permits.

The Board does not concur with either of these suggestions. Chapters 421a and 423a are general requirements that apply to all applicants for and holders of licenses, permits, certifications and registrations. They are not intended to provide the specific requirements for a particular entity. Specific requirements are addressed in the specific chapters for each type of applicant for and holder of a license, permit, certification and registration.

Greenwood and Downs are correct that 4 Pa.C.S. § 1326 only applies to licensees and permittees, but 4 Pa.C.S. § 1326 is silent on and therefore does not apply to other entities regulated by the Board. It is under its general authority and 4 Pa.C.S. § 1321 (relating to additional licenses and permits and approval of agreements) that the Board has adopted regulations to regulate other entities. For example, the Board established certification and registration requirements for vendors. These certifications and registrations are good for 4 years before they must be renewed. The argument that 4 Pa.C.S. § 1326 somehow bars the Board from establishing renewal requirements for other entities that the Board regulates is not persuasive.

Greenwood and Downs final two general comments suggested that the Board send a notice to all licensees 120 days prior to the expiration of their license and that renewal applications be deemed approved unless expressly denied by the Board.

The Board has not adopted either of these suggestions. Sending a notice to all licensees would create a significant administrative burden on the Board which licensees would end up having to pay for. However, because the date a license is approved and the date it is issued can differ, the Board understands and agrees that there can be some uncertainty concerning when a license is due to expire. To remove this uncertainty, the Board will be adding the license expiration date to the listing of licensees which is available on the Board's website. This

will allow licensees to easily verify the expiration date of their license so they will know when their renewal applications are due.

The Board is not adopting the suggestion that applications be deemed approved because it conflicts with the statute and is unnecessary. Section 1326 of 4 Pa.C.S. states "A permit or license for which a completed renewal application and fee, if required, has been received by the board will continue in effect unless and until the board sends written notification to the holder of the permit or license that the board has denied the renewal of such permit or license." This is the language that the Board has carried over into the renewal requirements for various entities in this regulation. The interests of licensees or permittees are protected because filing the required renewal materials "extends" the term of their current license or permit, so there is no need for a deemed approval provision.

IRRC offered two general comments. First, IRRC suggested that the Board add a reference to the Board's website wherever the regulations require payment of a fee.

The Board has adopted this suggestion and has added a reference to the Board's website where payment of a fee is required in Chapters 427a, 431a, 436a, 438a, 439a and 440a.

Second, IRRC noted that the term "entity" is used throughout the regulations but is not defined in the act or regulations.

The term "entity" refers to anything other than a natural person. This is consistent with its common usage and its usage has not been a source of confusion. Therefore, the Board has not added a definition for this term.

In § 421a.1 (relating to general requirements), IRRC had two comments. In subsection (a), IRRC stated that the last sentence, which reads "No person holding a license, permit, certification or registration, renewal or other approval is deemed to have any property rights." is overly broad.

The Board intended that this provision only apply to the "license, permit, certification or registration, renewal or other approval." Language has been added to this subsection to clarify its scope.

In subsection (c), IRRC asked the Board to explain the statutory authority for and need for applicants to agree to the extensive waiver.

The authority for this provision is contained in the Board's general rulemaking authority in 4 Pa.C.S. § 1202(30) and 4 Pa.C.S. § 1308 (relating to applications for a license or permit) and is consistent with the doctrine of sovereign immunity. These provisions were added to eliminate frivolous lawsuits from applicants relating to the disclosure of information obtained during investigations that is not willfully unlawful.

In § 421a.1(c)(2), Representative Clymer asked if this provision was in conflict with 4 Pa.C.S. § 1206(f) (relating to Board minutes and records).

The Board does not believe that there is a conflict. Section 1206(f) of 4 Pa.C.S. bars the Board from requiring an applicant to waive confidentiality related to personal information supplied to determine the applicant's character. Subsection (c)(2) addresses the liability of the Board, the Pennsylvania State Police and other Commonwealth agencies if any of that information is disclosed. Therefore,

these provisions deal with different aspects of the confidentiality of this information.

In § 421a.1(f), Representative Clymer suggested that applicants should be required to notify the Board of any changes in information.

The obligation imposed in this provision has two components. The first requires notification of any changes in information supplied and the second requires notice of changes in circumstances which would not have been included in information previously supplied. To clarify these duties, this sentence has been split into two sentences.

In § 421a.1(i), Representative Clymer asked if this subsection referred to monetary or administrative liability and how fines would be assessed and collected.

It could be either or both. Whether a violation would result in a fine or a suspension or revocation will depend on the nature of the violation. How fines might be assessed will also depend on the facts surrounding the violation.

In § 421a.2 (relating to disqualification criteria), IRRC suggested that in subsection (a)(5) the Board replace the phrase "applicable Federal and state laws or regulations" with references to the specific applicable laws and regulations or delete this provision.

This reference was intended to be broad, not limited to specific statutes or regulations. To clarify the Board's intent the word "applicable" has been deleted.

In § 421a.3 (relating to investigations; supplementary information), IRRC asked if the "phrase" or at anytime "thereafter" meant that the Board would conduct investigations after an application has been approved. If so, IRRC suggested that this language should be placed in another section of the Board's regulations.

This provision does apply after an application has been approved. The Board has a continuing obligation to insure the integrity of gaming and may conduct investigations that could result in fines, suspension or revocation of a successful applicant's license, permit, certification or registration. Investigations are addressed in Chapter 405a (relating to Bureau of Investigations and Enforcement), but having this provision in this chapter as well makes it clear to applicants that they will have a continuing obligation, both as applicants for and holders of a license, permit, certification or registration, to cooperate in investigations.

In § 421a.4(b) (relating to presuitability determination), Representative Clymer noted that the phrase "upon request of the Board" could imply that reimbursement for the cost of an investigation is discretionary and suggested that this phrase be deleted.

The Board agrees with this suggestion and has deleted "upon request of the Board."

In § 421a.5(c)(11) (relating to undue concentration of economic opportunities and control), IRRC noted that the phrase "Other evidence deemed relevant by the Board" is vague and suggested that the Board amend this provision to indicate what the evidence should pertain to.

The Board agrees with this suggestion and has revised the language to be more specific.

In § 423a.1 (relating to general requirements), IRRC suggested that the phrase "in a form prescribed by the Board" in subsection (e) should be replaced with the name of the form and information on how to obtain the form should be added.

Because of the variation that exists in applications, the Board does not believe it is reasonable to try to use one form to submit changes in information. Accordingly, the Board has deleted this phrase to allow applicants to supply the information in the form that is the most convenient for them.

In § 423a.1(h), Representative Clymer opined that a summary would be unacceptable because it may not contain all of the pertinent information.

The Board disagrees. For some documents a summary may be all that is needed. Since the Board has the discretion to require a full translation or a summary, no revisions were made to the substance of this subsection. However, the second sentence was moved to the end of the section to clarify that the translator's verification of accuracy applies to both full translations and summaries.

In §§ 423a.2 and 423a.3 (relating to preliminary submission review; and application processing), IRRC recommended that specific time frames be added for the preliminary submission review and the review of applications.

The Board has not adopted this recommendation because this chapter covers applications for licenses that can be hundreds of pages as well as one page registrations. For example, a simple registration may take only a day to process while an application for a slot machine license will take several months. For this reason, establishing fixed time frames for these reviews is not feasible.

In § 423a.2(a)(2), IRRC asked what "additional information and accompanying documentation required by the act or the Board's regulations . . ." is to be included with an application.

The additional information will vary depending on what type of license, permit, certification or registration is being sought. For example, the act and the Board's regulations require much more information from an applicant for a slot machine license than is required from an applicant for a gaming permit. Specific information relating to what is required is contained in the instructions for each application.

In § 423a.2(c), IRRC asked how would the Board set "the time period set by the Board" and how an applicant would be notified of the time period.

The time period will vary depending on what the deficiency is. When a deficiency is noted, the Board will send a letter to the applicant that will give the applicant a reasonable period of time to cure the deficiency. For something like a missing signature it could be a few days; if a major item is missing, the time period to supply the item could be weeks.

In § 423a.4 (relating to deficient applications), Representative Clymer suggested that there should be an upper limit on the time allowed to cure deficiencies under subsection (a) to avoid indefinite suspension of the process. Also on this section, IRRC had two concerns. In subsection (a), IRRC asked how the Board would set "the time period set by the Board" and how the applicant would be notified of the time period.

The Board has not set a time period or established a maximum time limit because the time allowed to cure a deficiency will vary depending on what the deficiency is. When a deficiency is noted, the Board will send a letter to the applicant that will give the applicant a reasonable period of time to cure the deficiency. For something like a missing signature it could be a few days; if a major item is missing, the time period allotted to supply the item could be weeks.

In subsection (b), IRRC suggested that if the Board intended a failure to cure deficiencies to result in a denial of the application, the language in this subsection should be similar to the language used in subsection (a).

The Board agrees with this suggestion and amended the language in subsection (b) to be similar to what appears in subsection (a).

On § 423a.5 (relating to application withdrawal), IRRC raised four questions. First IRRC asked why a petition is necessary as opposed to allowing the applicant to just withdraw the application by sending the Board a letter.

There are several reasons why the Board has elected to use the more formal petition process as opposed to allowing the applicant to just send a letter. First, the review of an application is a time intensive activity that should not be taken lightly by an applicant. Second, applicants have an obligation to pay investigative costs. These costs must be paid before a withdrawal will be considered. Additionally, a withdrawal may be with or without prejudice which can affect when the applicant may file another application.

Next, IRRC asked when, under subsection (d), would a request for withdrawal be denied.

There may be instances when an applicant, based on what the Board has uncovered in its investigation, anticipates that the Board will deny its application. In this case, an applicant may attempt to withdraw the application to avoid the 5-year restriction on reapplication. Depending on the specific fact situation, the Board may want to deny the application as opposed to approving the withdrawal with prejudice.

IRRC also asked what criteria the Board will use to determine whether or not to impose restrictions on an applicant whose petition for withdrawal has been granted without prejudice.

The decision as to whether or not to impose restrictions will be based upon the results of the review of the application and the results of any investigations that have been completed at the time of the petition for withdrawal. If there are problems, the Board may impose a restriction on reapplication that would be sufficient to allow the applicant to rectify the problem.

Finally, IRRC asked why the Board had not established a time frame for the review of withdrawal petitions.

Again, because this chapter covers applications that can vary substantially both in length and complexity, establishing a fixed time frame for the review of petitions for withdrawal is not feasible.

In § 423a.5(e), Representative Clymer suggested that the Board add "at the request of the applicant."

This provision was not intended to be triggered by a request from an applicant. An applicant may file a petition for withdrawal for any reason under subsection (a). The intent of this provision is to allow the Board to treat a deficient application as an application that has been withdrawn rather than disapproving the application. This would allow an applicant to avoid being subject to the 5-year bar on reapplication that comes with a disapproval. The language has been revised to clarify this intent.

In § 423a.7 (relating to restriction on application after denial or revocation), IRRC asked what the bases are for the 5 and 2-year provisions. Additionally, IRRC asked if

two different time periods and the petition process are necessary. If they aren't, IRRC suggested that the Board just use 2 years.

The application process can be extremely time intensive and costly for both the Board and applicants. The 5-year ban is designed to provide a strong incentive for unqualified applicants to not apply and for successful applicants to comply with the Board's regulations to avoid a revocation. In many cases the reason for a denial or revocation would be serious enough that it is unlikely that a 2-year restriction would provide enough time for the applicant to satisfactorily address the reason for the denial or revocation. Additionally, a 5-year ban is also what is commonly used in other gaming jurisdictions.

Allowing an applicant to file a petition after 2 years provides an opportunity for a person whose application was denied or license, permit, certification or registration was revoked, to seek permission to reapply before 5 years expire if they can demonstrate that they have addressed the reason for the denial or revocation. This gives the Board some latitude to tailor the length of the reapplication bar to the seriousness of the circumstances that caused the denial or revocation and the subsequent corrective actions of the applicant. This provision is also used in some other gaming jurisdictions.

In § 423a.7, Representative Clymer asked why subsection (c) doesn't also apply to applicants' whose applications were withdrawn with prejudice.

An application may be denied for a variety of reasons, some much more serious than others. By contrast, a withdrawal with prejudice is rarely used and is only used when the problems with an application are extremely serious. In these cases, the Board believes that the full 5-year restriction on filing a new application should apply.

In § 427a.2 (relating to manufacturer license applications and standards), Representative Clymer noted that it was unclear as to whether the phrase "as determined by the Board" in subsection (a)(4) referred to who must submit an application or to what information must be supplied.

This phrase is intended to mean other persons the Board determines should be licensed as key employees or principals. To clarify this point, the phrase "and other persons" has been inserted before "as determined by the Board."

Also in § 427a.2, Representative Clymer asked what would happen under subsection (a)(7)(vii) if the divorce action is withdrawn or if the applicant receives a prohibited interest as part of the property settlement.

In either case, the applicant would have to notify the Board of this change under § 421a.1(f) and the individual would no longer be eligible to apply for a manufacturer license.

In § 427a.2, KGT recommended deletion of subsection (b)(3) which requires an applicant to demonstrate it "has the ability to manufacture, build, rebuild, repair, . . . or otherwise make modifications" to slot machines or associated equipment. IRRC also questioned the need for this provision.

This provision paraphrases the statutory definition of a "manufacturer" which is a person who "manufactures, builds, rebuilds, fabricates, assembles, produces, programs, designs or otherwise makes modifications . . ." Additionally, 4 Pa.C.S. § 1317.1(b)(5) (relating to manufacturer licenses) requires that applications include the "types of slot machines or associated equipment to be

manufactured or repaired.” Therefore this provision is consistent with the mandates of the act.

The Board does not agree that this requirement poses an undue burden on new companies that want to become manufacturers. The act makes it clear that there can be no limitation on the number of manufacturer licenses issued by the Board. Furthermore, the Board has approved every application for a manufacturer license that it has received from applicants that meet the standards set forth in the act. For these reasons, subsection (b)(3) remains in the final-form regulation.

In § 427a.5(a)(2), Representative Clymer suggested that a manufacturer licensee should be required to report any changes in circumstances and allow the Board to determine how each change might affect the license.

The Board disagrees with this suggestion. This would impose an excessive reporting requirement on licensees that is not needed given the other reporting requirements and the fact that detailed renewal applications must be filed annually.

In § 427a.5(c), Greenwood suggested that the Board delete the requirement that a slot machine licensee must have a written agreement with a manufacturer before the slot machine licensee can service or repair slot machines or associated equipment purchased from that manufacturer. IRRC also questioned the need for this provision.

Given the amendments to the act contained in Act 135 of 2006, the Board agrees that there is no need for this requirement and has deleted the language requiring a written agreement in this subsection and in § 431a.4(f). The phrase “a slot machine licensee or” in § 427a.1(d) has also been deleted to conform to this change.

In § 427a.5(d), IRRC asked what the need was for this provision and why it is in this section.

This provision was put in this chapter to make it clear to manufacturers (as well as slot machine licensees) that manufacturers do not have the sole authority to perform these functions.

Also in § 427a.5(d), Representative Clymer suggested adding semicolons to provide greater clarity in the list.

The Board agrees with this suggestion and has inserted semicolons where appropriate.

In § 431a.2 (relating to supplier license applications and standards), Representative Clymer noted that it was unclear as to whether the phrase “as determined by the Board” in subsection (a)(4) referred to who must submit an application or to what information must be supplied.

This phrase is intended to mean other persons the Board determines should be licensed as key employees or principals. To clarify this point, the phrase “and other persons” has been inserted before “as determined by the Board.”

Also in § 431a.2, Representative Clymer asked what would happen under subsection (a)(7)(vii) if the divorce action is withdrawn or if the applicant receives a prohibited interest as part of the property settlement.

In either case, the applicant would have to notify the Board of this change under § 421a.1(f) and the individual would no longer be eligible to apply for a supplier license.

In § 431.4(d)(2) (relating to supplier license term and renewal), Representative Clymer suggested that a supplier licensee should be required to report any changes in circumstances and allow the Board to determine how each change might affect the license.

The Board disagrees with this suggestion. This would impose an excessive reporting requirement on licensees that is not needed given the other reporting requirements and the fact that detailed renewal applications must be filed annually.

In § 431a.4 (relating to responsibilities of a supplier), IRRC questioned the need for subsections (g) and (h) and why are they in this section.

These subsections are in this section to make it clear to suppliers (as well as to slot machine and manufacturer licensees) that suppliers do not have the sole authority to perform these functions.

Also in § 431a.4(g), Representative Clymer suggested adding semicolons to provide greater clarity in the list.

The Board agrees with this suggestion and has inserted semicolons where appropriate.

In § 431a.5 (relating to supplier log books), IRRC had two questions. The first question was why log books are needed and why the log books must be made available to the Department of Revenue and the Pennsylvania State Police.

Generally, no one without a gaming permit is allowed to have any contact with slot machines. Because suppliers would have slot machines on their premises there is a need to control access to make sure no one without a license or permit has access to the slot machines. The log book provides a method for monitoring compliance.

Because of the Department of Revenue's responsibilities for the central computer system and the possibility of criminal behavior that would be investigated by the Pennsylvania State Police, the Board believes both of these agencies should have access to the log books.

In Chapter 436a (relating to horsemen's organizations), IRRC questioned the need for horsemen's organizations to register and for officers, directors and representatives to obtain permits. IRRC also asked what the statutory authority was for these requirements.

The Board's authority for these regulations is derived from the Board's general authority under 4 Pa.C.S. § 1202(30) and from 4 Pa.C.S. § 1406. Section 1406(a)(1)(iii) of 4 Pa.C.S. requires that 4% of the distributions from the Pennsylvania Race Horse Development Fund be used for benefits for members of horsemen's organizations. The registration requirement is needed to identify the horsemen's organizations at each of the Category 1 licensed facilities that will be administering these funds. Requiring permits for the individuals who will be responsible for the disbursement of these funds allows the Board to review the backgrounds of these individuals to minimize the potential for misuse of these funds and to insure compliance with 4 Pa.C.S. § 1406.

In § 436a.1 (relating to definitions), IRRC asked why the definition of “horsemen” in this chapter is different from the definition of “Horsemen of this Commonwealth” in the act.

The term “Horsemen of this Commonwealth” in the act is a general term which includes horsemen and trainers and employees of trainers. The definition of “horsemen” in this chapter is intended to be more narrow, including just the horsemen and trainers. This also reflects how the term is commonly used in the industry.

In Chapter 438a (relating to labor organizations), IRRC questioned the need for labor organizations to file a Labor Organization Notification Form and for officers, agents

and management employees to obtain permits. IIRC also asked what the statutory authority was for these requirements.

The Board's authority for these regulations is derived from the Board's general authority under 4 Pa.C.S. § 1202(30). Labor organizations can have a substantial impact on the operations of a licensed facility. For this reason, the Board needs to know what labor organizations represent employees at each of the licensed facilities and which groups of employees they represent. The Labor Organization Notification Form provides this information. The requirement for permits applies to those individuals in the labor organization who are directly involved with the licensed facilities. Because of this direct relationship and the potential impact it can have on the operations of a licensed facility, background checks on these individuals are need to insure the integrity of gaming operations.

In § 439a.1 (relating to definitions), IIRC noted that there were substantive provisions in the definition of "junket" related to the selection or approval of a person to participate in a junket. IIRC recommended that these provisions be deleted from the definition and moved to another section in this chapter.

The Board agrees with this suggestion and has moved the substantive provisions from the definition of "junket" to § 439a.2 (relating to junket enterprise general requirements).

In § 440a.4(b) (relating to management company responsibilities), Downs suggested that the Board limit the scope of the joint and several liability to acts that are within the purview of the contract or direct operation of the casino. IIRC also questioned the reasonableness of this requirement and the legal basis for it.

The Board agrees that it would be unreasonable to impose an absolute liability standard on a management company for acts over which it clearly has no ability to control. However, the relationship between a management company and a slot machine licensee is one where each entity must be vigilant concerning the actions of the other party to the contract. Accordingly, the Board has replaced the word "shall" with "may." This will allow the Board to determine, based on the specific facts of a given situation, if the management company should be liable for actions of the slot machine licensee. The legal basis for this provision is the Board's general authority in 4 Pa.C.S. §§ 1202(30), 1321 and 1325.

Additional Revisions

In addition to the revisions discussed previously, the Board has made several additional revisions.

In § 423a.5(a), the Board replaced the phrase "at any time prior to issuance by the Board of its determination with respect to the application" with "at any time prior to the Board taking action on the application" to clarify when a request to withdraw an application may be filed.

In § 423a.5(d)(2), the Board clarified the language indicating that it may impose restrictions on new applications from an applicant whose petition to withdraw has been granted without prejudice.

In § 427a.2(a), the Board added a new paragraph (5) requiring the filing of a Gaming Employee Application and Disclosure Information Form for each of the manufacturer's known gaming employees to mirror the current requirement in the Manufacturer Application and Disclosure Information Form.

Section 427a.2(a)(7) has been revised to better conform with the requirements in the act.

To improve clarity in § 427a.3(b) (relating to manufacturer license term and renewal), the Board has inserted the name of the renewal form manufacturers are required to use which is the Manufacturer License Renewal Application Form.

In § 427a.4(a) (relating to alternative manufacturer licensing standards), the Board replaced the phrase "written request" with the name of the form to be used by a manufacturer seeking to use alternate licensing standards which is the Manufacturer Application and Disclosure Information Form Addendum 1.

To improve clarity in § 431a.2(a), the Board added a new paragraph (5) requiring the filing of a Gaming Employee Application and Disclosure Information Form for each of the supplier's known gaming employees to mirror the current requirement in the Supplier Application and Disclosure Information Form.

In § 431a.3(b) (relating to supplier license term and renewal), the Board has inserted the name of the renewal form suppliers are required to use which is the Supplier License Renewal Application Form.

In § 431a.4, the Board replaced an incorrect citation to § 427a.2(a)(5).

The material in §§ 436a.2(d) and 436a.3(d) (relating to horsemen's organization registration; and permitting of officers, directors, representatives and fiduciaries) relating to terms and renewals of registrations and permits have both been split into three separate subsections to improve clarity.

In § 438a.1 (relating to definitions), the definition of "labor organization" has been amended by inserting "who are required to obtain a license, permit or registration from the Board" after "employees" to clarify which labor organizations must comply with this chapter. Additionally, the definition of "labor organization officer" has been revised to clarify who must obtain a permit under § 438a.3.

In § 438a.2 (relating to labor organization officers, agents and management employees), clarifying language has been added requiring the initial and any revisions to the Labor Organization Notification Form to be filed with the Bureau of Licensing.

In § 438a.3(d), the material relating to terms and renewals of permits has been split into three separate subsections to improve clarity.

Additionally, minor wording changes have been made throughout the chapter to improve clarity.

Finally, the Board is renumbering the statement of policy at Chapter 436a (relating to use of funds allocated to horsemen's organizations—statement of policy). The current numbering will be changed to Chapter 436b (relating to use of funds allocated to horsemen's organizations).

Affected Parties

This final-form rulemaking imposes requirements on applicants for and holders of slot machine licenses, licensed entity representative registrations, manufacturer licenses, supplier licenses, horsemen permits and registrations, labor organization permits, and junket enterprise licenses, junket representative registrations and management company licenses.

Fiscal Impact

Commonwealth

This final-form rulemaking will impose costs on the Board related to processing initial applications and renewals, conducting investigations and issuing licenses, permits and registrations. When applicable, the Pennsylvania State Police will also experience costs associated with investigations of applicants.

Political Subdivisions

This final-form rulemaking will have no fiscal impact on political subdivisions of the Commonwealth.

Private Sector

Applicants for the various licenses, permits and registrations will incur costs to complete the applicable applications and pay the applicable application fees and additional costs associated with investigations.

General Public

This final-form rulemaking will have no significant fiscal impact on the general public.

Paperwork requirements

Applicants for and holders of licensed entity representative registrations, manufacturer licenses, supplier licenses, horsemen permits and registrations, labor organization permits, junket enterprise licenses, junket representative registrations and management company licenses will be required to complete the applicable initial application and renewal forms.

Effective Date

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

Contact Person

The contact person for questions about this final-form rulemaking is Richard Sandusky, Director of Regulatory Review, (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 26, 2007, the Board submitted a copy of the proposed rulemaking, published at 37 Pa.B. 2197 (May 12, 2007), and a copy of the Regulatory Analysis Form to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development.

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), 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 Board has considered all comments received 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 September 19, 2007, the final-form rulemaking was deemed approved by the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met on September 20, 2007, and approved the final-form rulemaking.

Findings

The Board finds that:

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

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II the Pennsylvania Race Horse Development and Gaming Act.

Order

The Board, acting under the 4 Pa.C.S. §§ 1101—1904, orders that:

(a) The regulations of the Board, 58 Pa. Code Part VII, are amended by deleting §§ 421.1—421.5, 423.1—423.8, 425.1, 427.1—427.5, 431.1—431.5, 436.1—436.7, 438.1—438.4, 439.1—439.11 and 440.1—440.4 and by adding final regulations in §§ 421a.1—421a.5, 423a.1—423a.7, 425a.1, 427a.1—427a.5, 431a.1—431a.5, 436a.1—436a.6, 438a.1—438a.3, 439a.1—439a.12 and 440a.1—440a.5 to read as set forth in Annex A.

(b) The statement of policy in §§ 436a.1—436a.6 is renumbered as §§ 436b.1—436b.6.

(c) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

MARY DIGIACOMO COLINS,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 5447 (October 6, 2007).)

Fiscal Note: Fiscal Note 125-61 remains valid for the final adoption of the subject regulations.

Annex A

TITLE. 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 421. (Reserved)

§§ 421.1—421.5. (Reserved).

CHAPTER 421a. GENERAL PROVISIONS

Sec.	
421a.1.	General requirements.
421a.2.	Disqualification criteria.
421a.3.	Investigations; supplementary information.
421a.4.	Presuitability determination.
421a.5.	Undue concentration of economic opportunities and control.

§ 421a.1. General requirements.

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

(b) By filing an application with the Board, an applicant consents to an investigation of the applicant's general suitability, financial suitability, character, integrity and ability to engage in, or be associated with, gaming activity in this Commonwealth to the extent deemed

appropriate by the Board. The investigation may include a background investigation of the applicant, employees of the applicant, all persons having a controlling interest in the applicant and other persons as determined by the Board.

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

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

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

(3) Execute all releases requested by the Board.

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

(e) An applicant for or holder of a license, permit, certification or registration shall have a duty to inform the Bureau of an action which the applicant for or holder of a license, permit, certification or registration believes would constitute a violation of the act. A person who so informs the Bureau may not be discriminated against by an applicant for or holder of a license, permit, certification or registration for supplying the information.

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

(g) An applicant for a license, permit, certification or registration shall have a continuing duty to promptly provide information requested by the Board relating to its application or regulation and cooperate with the Board in investigations, hearings, and enforcement and disciplinary actions.

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

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

(j) The Board will maintain lists of applicants for licenses, permits, certifications or registrations under this part as well as a record of the actions taken with respect

to each applicant. The lists will be posted on the Board's website (www.pgcb.state.pa.us).

§ 421a.2. Disqualification criteria.

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

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

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

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

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

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

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

§ 421a.3. Investigations; supplementary information.

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

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

§ 421a.4. Presuitability determination.

(a) Upon request from an eligible applicant for or holder of a license and upon receipt of an application and appropriate fees, the Board will make an inquiry or investigation of a potential purchaser of an applicant for or holder of a license, certification or registration as if the purchaser were an eligible applicant. The eligible applicant for or holder of a license may petition the Board, on behalf of the purchaser, for a Statement of Investigation under § 493a.4 (relating to petitions generally).

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

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

§ 421a.5. Undue concentration of economic opportunities and control.

(a) In accordance with section 1102(5) of the act (relating to legislative intent), a slot machine license, manage-

ment company license or other license may not be issued to or held by a person if the Board determines that the issuance or holding will result in the undue concentration of economic opportunities and control of the licensed gaming facilities in this Commonwealth by that person.

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

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

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

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

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

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

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

(ii) Total gaming floor square footage.

(iii) Number of slot machines.

(iv) Gross terminal revenue.

(v) Net terminal revenue.

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

(vii) Number of persons employed by the licensee.

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

(3) The relative position of other persons who hold licenses, as evidenced by the market share of each person in the categories in paragraph (1).

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

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

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

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

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

(9) Whether the issuance or holding of the license by the person will adversely impact consumer interests, or whether the issuance or holding is likely to result in enhancing the quality and customer appeal of products

and services offered by slot machine licensees to maintain or increase their respective market shares.

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

(11) Other evidence related to concentration of economic opportunities and control of the licensed gaming facilities in this Commonwealth.

CHAPTER 423. (Reserved)

§§ 423.1—423.8. (Reserved).

CHAPTER 423a. APPLICATIONS

Sec.	
423a.1.	General requirements.
423a.2.	Preliminary submission review.
423a.3.	Application processing.
423a.4.	Deficient applications.
423a.5.	Application withdrawal.
423a.6.	License, permit, registration and certification issuance and statement of conditions.
423a.7.	Restriction on application after denial or revocation.

§ 423a.1. General requirements.

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

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

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

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

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

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

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

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

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

§ 423a.2. Preliminary submission review.

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

- (1) The applicable application fee.
- (2) The applicable application forms and additional information and accompanying documentation required by the act or the Board's regulations governing the specific type of application.
- (3) Completed authorization forms for release of information from Federal and state agencies required for the specific type of application.
- (4) For slot machine license applications only, a bond or letter of credit as required by section 1313(c) of the act (relating to slot machine license application financial fitness requirements).

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

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

§ 423a.3. Application processing.

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

- (1) Accept the application for filing.
- (2) Notify the applicant or the applicant's attorney, if any, in writing of the fact that the application has been accepted for filing and the date of the acceptance for filing. The Board will also notify the applicant that the acceptance for filing of the application will not constitute evidence that any requirement of the act has been satisfied.
- (3) Obtain and evaluate information as may be necessary to determine the qualifications of the applicant and any matter relating to the application.
- (4) Request the Bureau to promptly conduct an investigation and provide the information necessary to determine the qualifications of the applicant and any matter relating to the application.
- (5) Request the Pennsylvania State Police to provide a criminal history background investigation report, determine employee eligibility consistent with § 435.1 (relating to general provisions), conduct fingerprinting, photograph applicants and perform other related duties in accordance with the act.
- (6) Request the Department to promptly conduct a tax clearance review.
- (7) Request the Department of Labor and Industry to perform an Unemployment Compensation Tax clearance review and a Workers Compensation Tax clearance review.

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

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

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

§ 423a.4. Deficient applications.

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

(b) Refusal to provide the information necessary to cure the deficiencies required under subsection (a) may result in the immediate denial of the application.

§ 423a.5. Application withdrawal.

(a) A request for withdrawal of an application for a license, permit, certification or registration may be made by petition to the Board filed at any time prior to the Board taking action on the application.

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

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

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

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

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

(e) The Board may convert an application with deficiencies that an applicant fails to cure under § 423a.4(a) (relating to deficient applications) to a petition for withdrawal.

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

§ 423a.6. License, permit, registration and certification issuance and statement of conditions.

(a) *Issuance criteria.*

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

- (i) The applicant has paid all applicable fees.

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

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

(b) *Statement of conditions.*

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

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

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

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

(5) Failure to fully comply with any provision contained in an executed Statement of Conditions constitutes a violation of the Statement of Conditions and may result in the imposition of Board-imposed administrative sanctions, up to and including revocation, against the individual to whom the license, permit, certification or registration was issued, and, in the case of an entity, against the entity and its executive officer or other designee under paragraph (3).

§ 423a.7. Restriction on application after denial or revocation.

(a) A person whose application has been denied or whose license, permit, registration or certification has

been revoked, may not apply for a license, permit, certification or registration for 5 years from the date that the application was denied or the license, permit, certification or registration was revoked.

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

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

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

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

(d) A petition filed under subsection (c) shall be filed in accordance with § 493a.4 (relating to petitions generally).

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

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

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

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

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

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

(iii) The date of the offense or conduct.

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

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

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

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

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

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

CHAPTER 425. (Reserved)**§ 425.1. (Reserved).****CHAPTER 425a. LICENSED ENTITY REPRESENTATIVES**

Sec.

425a.1. Registration

§ 425a.1. Registration.

(a) A licensed entity representative shall file a completed Licensed Entity Representation Registration Form with the Bureau of Licensing, which includes the individual's name, employer or firm, address, telephone number and the licensed entity being represented.

(b) A licensed entity representative shall update its registration information on an ongoing basis.

(c) The Board will maintain a list of licensed entity representatives. The registration list will be available for public inspection at the offices of the Board and on the Board's website (www.pgcb.state.pa.us).

CHAPTER 427. (Reserved)**§§ 427.1—427.5. (Reserved).****CHAPTER 427a. MANUFACTURERS**

Sec.

427a.1. Manufacturer general requirements.
 427a.2. Manufacturer license applications and standards.
 427a.3. Manufacturer license term and renewal.
 427a.4. Alternative manufacturer licensing standards.
 427a.5. Responsibilities of a manufacturer.

§ 427a.1. Manufacturer general requirements.

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

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

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

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

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

§ 427a.2. Manufacturer license applications and standards.

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

(1) An original and three copies of the Manufacturer Application and Disclosure Information Form.

(2) The nonrefundable application fee posted on the Board's website (pgcb.state.pa.us).

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

(4) An application from every key employee under § 435.3 (relating to key employee license) and principal under Chapter 433 (relating to principal licenses) as

specified by the Manufacturer Application and Disclosure Information Form and other persons as determined by the Board.

(5) A Gaming Employee Application and Disclosure Information Form for each of the manufacturer's known gaming employees.

(6) If applicable, copies of all filings required by the SEC during the 2 immediately preceding fiscal years, including annual reports filed with the SEC, under section 13 or 15D of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78m and 78o-6), quarterly reports filed with the SEC, under section 13 or 15D of the Securities Exchange Act of 1934, current reports filed with the SEC, under section 13 or 15D of the Securities Exchange Act of 1934, and proxy statements issued by the applicant.

(7) An affirmation that neither the applicant nor any of its affiliates, intermediaries, subsidiaries or holding companies is a slot machine licensee; and that the applicant has neither applied for nor holds a supplier license. In applying this provision to an applicant for a manufacturer license, the Board will not include interests that are held by individuals in any of the following manners:

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

(ii) Through defined benefit pension plans.

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

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

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

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

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

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

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

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

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

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

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

(ii) Are needed to conduct an authorized game.

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

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

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

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

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

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

(3) The integrity of all financial backers.

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

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

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

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

§ 427a.3. Manufacturer license term and renewal.

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

(b) A Manufacturer License Renewal Application Form and renewal fee shall be filed at least 6 months prior to the expiration of the current license.

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

§ 427a.4. Alternative manufacturer licensing standards.

(a) If an applicant for a manufacturer license holds a similar license in another jurisdiction in the United States, the applicant may submit a Manufacturer Application and Disclosure Information Form Addendum 1 with its application required under § 427a.2(a) (relating to manufacturer license applications and standards) for the Board to adopt an abbreviated licensing process under section 1319 of the act (relating to alternative manufacturer licensing standards) to review a manufacturer license application.

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

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

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

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

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

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

§ 427a.5. Responsibilities of a manufacturer.

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

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

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

(3) Provide a copy of all SEC filings listed in § 427a.2(a)(6) (relating to manufacturer license applications and standards) that are filed after the date of issuance of its license. The copy shall be submitted no later than 30 days after the date of filing with the SEC.

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

(c) A slot machine licensee may service or repair slot machines or associated equipment at its licensed facility.

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

CHAPTER 431. (Reserved)

§§ 431.1—431.5. (Reserved).

CHAPTER 431a. SUPPLIER LICENSES

- Sec.
- 431a.1. Supplier general requirements.
- 431a.2. Supplier license applications and standards.
- 431a.3. Supplier license term and renewal.
- 431a.4. Responsibilities of a supplier.
- 431a.5. Supplier log books.

§ 431a.1. Supplier general requirements.

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

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

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

§ 431a.2. Supplier license applications and standards.

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

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

(2) The nonrefundable application fee posted on the Board's website (pgcb.state.pa.us).

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

(4) An application from every key employee under § 435.3 (relating to key employee license) and principal under Chapter 433 (relating to principal licenses) as specified by the Supplier Application and Disclosure Information Form and other persons as determined by the Board

(5) A Gaming Employee Application and Disclosure Information Form for each of the supplier's known gaming employees.

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

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

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

(ii) Through defined benefit pension plans.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The integrity of financial backers.

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

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

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

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

§ 431a.3. Supplier license term and renewal.

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

(b) A Supplier License Renewal Application Form and renewal fee shall be filed at least 2 months prior to the expiration of the current license.

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

§ 431a.4. Responsibilities of a supplier.

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

(b) At the time of licensure, a supplier shall have assets or available lines of credit to support the sale, financing, servicing or repair of all slot machines to be placed in service or repaired by the supplier. The assets and available lines of credit shall be from a source independent of slot machine manufacturers and licensed gaming entities. Notwithstanding the forgoing, a licensed manufacturer may extend financing or payment terms to a licensed supplier, at prevailing market rates and terms, for the acquisition or leasing of slot machines, to be secured by the slot machines sold, leased or transferred.

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

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

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

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

(3) Provide a copy of the SEC filings listed in § 431a.2(a)(6) (relating to supplier license applications and standards) that are filed after the date of issuance of its license. The copy shall be submitted within 30 days after the date of filing with the SEC.

(e) An employee of a licensed supplier whose duties of employment or incidental activities related to employment allow the employee access to slot machines or associated equipment or require the employee to be on the gaming floor or in a restricted area shall be required to obtain an occupation permit under § 435.3 (relating to occupation permit).

(f) A slot machine licensee may service or repair slot machines or associated equipment at its licensed facility.

(g) A slot machine licensee may perform routine maintenance directly related to the availability of slot machines for play, customer service or a clean and gracious playing environment. The routine maintenance includes installation or replacement of the following: batteries; hardware, including hinges, screws, bolts and custom handles; light bulbs; locks on slot machines and slot cash storage boxes, including the rekeying of the locks; printers, exclusive of printer software; and paper stock. Routine maintenance also includes external cleaning and the

clearing of paper, bill and coin jams which do not require removal or dismantling of the mechanisms.

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

§ 431a.5. Supplier log books.

(a) A supplier licensee shall maintain a log book to register the individuals who enter the supplier licensee's principal place of business and each physical facility utilized by the supplier licensee to house inventory, replacement parts, supplies, transportation or delivery equipment.

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

(1) The date, entrance time and departure time of each individual.

(2) The name of each individual entering the place of business or physical facility and who they represent.

(3) The signature of each individual.

(4) The purpose for the visit.

(5) If applicable, the individual's Board license, permit, certification or registration number.

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

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

CHAPTER 436. (Reserved)

§§ 436.1—436.7. (Reserved).

CHAPTER 436a. HORSEMEN'S ORGANIZATIONS

Sec.	
436a.1.	Definitions.
436a.2.	Horsemen's organization registration.
436a.3.	Permitting of officers, directors, representatives and fiduciaries.
436a.4.	Responsibilities of horsemen's organizations, officers, directors, representatives and fiduciaries.
436a.5.	Fiduciaries.
436a.6.	Health and pension benefit plans.

§ 436a.1. Definitions.

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

Fiduciary—A person who is entrusted by a horsemen's organization or its members to hold or manage funds received for horsemen under section 1406 of the act (relating to distributions from Pennsylvania Race Horse Development Fund) or who exercises control or discretionary authority over selection or management of a health or pension benefit plan, disposition of its assets or distribution of its funds.

Health benefits—A plan, fund or program which is maintained by a horsemen's organization and that provides healthcare benefits to horsemen at licensed racetracks, their families and employees, and others designated by the rules and eligibility requirements of the organization consistent with the act.

Horsemen—A thoroughbred or standardbred horse owner or trainer who enters and runs a horse at a licensed racing entity in the current or prior calendar

year and meets the membership requirements of a horsemen's organization to participate in the receipt of benefits there from.

Horsemen's organization—A trade association which represents the majority of horsemen at a licensed racetrack and which exists for the purpose, in whole or in part, of negotiating a horsemen's contract and resolving grievances, disputes or other matters with management of a licensed racing entity, as defined by section 1103 of the act (relating to definitions).

Horsemen's organization officer—An officer or person authorized to perform the functions of president, vice president, secretary/treasurer or other executive function of a horsemen's organization, and any member of its board of directors or similar governing body.

Horsemen's organization representative—A person, compensated or not, who is authorized to represent a horsemen's organization or members thereof in matters relating to horsemen's agreements with a licensed racing entity, or who undertakes on behalf of a horsemen's organization or members thereof to promote, facilitate or otherwise influence the relations between a horsemen's organization and a licensed racing entity.

Pension benefits—Any plan, fund or program which is maintained by a horsemen's organization and that funds a program which provides retirement income to horsemen at licensed racetracks, their families and employees, and any others so designated by the rules and eligibility requirements of the organization consistent with the act.

§ 436a.2. Horsemen's organization registration.

(a) Each horsemen's organization or affiliate representing horsemen shall register with the Board in accordance with this section.

(b) Each horsemen's organization shall file a completed Horsemen's Organization Registration Statement with the registration fee posted on the Board's website (pgcb.state.pa.us).

(c) Horsemen's organization applicants and registrants shall be subject to the general application requirements of Chapters 421a and 423a (relating to general provisions; and applications).

(d) Horsemen's organization registrations will be valid for 4 years from the date on which the registration is approved by the Board.

(e) Renewals will be valid for 4 years and shall be filed no later than 120 days prior to the expiration of the current registration period.

(f) A registration for which a completed renewal application and fee has been received by the Board will continue in effect until the Board sends written notification to the horsemen's organization that the Board has approved or denied the renewal of the registration.

§ 436a.3. Permitting of officers, directors, representatives and fiduciaries.

(a) Every officer, director or representative of a horsemen's organization who is currently elected or appointed and authorized to act on behalf of the horsemen's organization, or any individual authorized to act in a fiduciary capacity on behalf of horsemen shall be permitted in accordance with this section.

(b) Every officer, director or representative of a horsemen's organization who is currently elected or appointed and authorized to act on behalf of the horsemen's organization, or any individual authorized to act in a fiduciary

capacity on behalf of horsemen shall file a completed Horsemen's Permit Application Form with the permit fee posted on the Board's website (pgcb.state.pa.us).

(c) Applicants and permittees under this section shall be subject to the general application requirements of Chapters 421a and 423a (relating to general provisions; and applications).

(d) Permits issued under this section will be valid for 1 year from the date on which the permit is approved by the Board.

(e) Renewals will be valid for 1 year and shall be filed at least 60 days prior to the expiration of the current permit.

(f) A permit for which a completed renewal application and fee has been received by the Board will continue in effect until the Board sends written notification to the permittee that the Board has approved or denied the renewal of the permit.

(g) If a current officer, director or representative of a horsemen's organization is denied a permit required by this section, that officer, director or representative shall be precluded from engaging in any activity of the horsemen's organization involving gaming funds allocated to, received by, or distributed from the horsemen's organization.

(h) A person who is a third-party provider of a health or pension benefit plan to a horsemen's organization shall be exempt from the requirements of this section. A licensed attorney or accountant representing a horsemen's organization who does not meet the conditions in subsection (a) shall also be exempt under this section.

§ 436a.4. Responsibilities of horsemen's organizations, officers, directors, representatives and fiduciaries.

(a) Horsemen's organizations, officers, directors, representatives and fiduciaries shall ensure that the funds allocated to the horsemen and horsemen's organizations are used for the benefit of all horsemen of this Commonwealth.

(b) Funds allocated to horsemen's organizations for benevolent programs are not to be used for the personal benefit of any officer, director, representative or fiduciary of a horsemen's organization except to the extent that the officer, director, representative or fiduciary of the horsemen's organization is a participant in the benevolent programs on the same basis as other eligible program participants.

(c) Horsemen's organizations shall maintain adequate records of receipts and distributions of the funds allocated to them under the act.

(d) By March 30 of each calendar year, each horsemen's organization shall file with the Board two copies of its audited financial statements together with any management letters or reports written thereon as prepared by its independent auditor. These filings will be available for public inspection during the normal operating hours of the Board at its Harrisburg office.

§ 436a.5. Fiduciaries.

Fiduciaries shall:

(1) Ensure that the funds received for the benefit of the horsemen are distributed pursuant to the act.

(2) Manage all health and pension benefit plans for the exclusive benefit of participants and beneficiaries.

(3) Carry out their duties in a prudent manner and refrain from conflict-of-interest transactions.

(4) Comply with limitations on certain plans' investments in particular securities and properties.

(5) Fund benefits in accordance with applicable law and plan rules.

(6) File quarterly reports with the Board within 20 days of the end of each calendar quarter. The reports must detail the expenditure of funds designated by the act for the benefit of horsemen and be in a format and manner designated by the Board.

(7) Provide documents to the Board as may be requested in the conduct of investigations or to ensure compliance with the act and this chapter.

§ 436a.6. Health and pension benefit plans.

(a) Contracts for health and pension benefit plans established for the benefit of members of a horsemen's organization must:

(1) Be submitted to the Board for review at least 90 days prior to the proposed effective date of the contract.

(2) Not be effective until approved by the Board.

(b) Administrative and overhead costs incurred by the horsemen's organization for the administration of health and pension benefit plans must be reasonable. Administrative costs that do not exceed 15% of the statutory allocation are considered reasonable.

CHAPTER 436a. (Reserved)

§§ 436a.1—436a.6. (Reserved).

CHAPTER 436b. USE OF FUNDS ALLOCATED TO HORSEMEN'S ORGANIZATIONS—STATEMENT OF POLICY

Sec.	
436b.1.	Scope.
436b.2.	Definitions.
436b.3.	Responsibilities of horsemen's organizations.
436b.4.	Audits of horsemen's organizations.
436b.5.	Reports.
436b.6.	Responsibilities of Category 1 licensees.

§ 436b.1. Scope.

The act requires the Board to:

(1) Establish guidelines that ensure that funds distributed from the Fund and which are allocated to horsemen's organizations, as defined by the act, are used to finance programs that benefit the horsemen of this Commonwealth. (See 4 Pa.C.S. § 1406(b) (relating to distributions from Pennsylvania Race Horse Development Fund).)

(2) Ensure that funds allocated to the horsemen's organizations are used to finance programs which benefit the horsemen of this Commonwealth. (See 4 Pa.C.S. § 1406(c).)

(3) Ensure that no more than 15% of funds available annually for benevolent programs, including pension, health and insurance plans, are used to administer the programs.

(4) Ensure that the horsemen's organizations that receive funds from the Fund file an annual audit prepared by a certified public accountant. (See 4 Pa.C.S. § 1406(e).)

(5) Approve the health and pension benefit contracts entered into by the horsemen's organizations. (See 4 Pa.C.S. § 1406(f).)

§ 436b.2. Definitions.

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

Fund—The Pennsylvania Race Horse Development Fund.

Registered horsemen's organization—A horsemen's organization that receives funds from the Fund and which shall register with the Board under § 436a.2 (relating to horsemen's organization registration).

§ 436b.3. Responsibilities of horsemen's organizations.

(a) A horsemen's organization shall register with the Board under § 436a.2 (relating to horsemen's organization registration).

(b) Registered horsemen's organizations shall ensure that funds received from the Fund are used to benefit all horsemen and are kept apart from funds acquired from other sources. Funds that are allocated to horsemen's organizations for benevolent programs are not to be used for the personal benefit of any officer, director, representative or fiduciary of the horsemen's organization.

(c) Registered horsemen's organizations shall ensure that administrative costs are reasonable as required by 4 Pa.C.S. § 1406(d) (relating to distributions from Pennsylvania Race Horse Development Fund). Costs that do not exceed 15% of the annual total statutory allocation are deemed reasonable.

(d) Registered horsemen's organizations shall ensure that health and pension benefits contracts entered into by the horsemen's organizations are approved by the Board.

(e) The officers, directors, fiduciaries and representatives of a registered horsemen's organization shall file an application for a permit with the Board under § 436a.3 (relating to permitting of officers, directors, representatives and fiduciaries).

(f) The officers, directors, fiduciaries and representatives of a registered horsemen's organization shall comply with §§ 436a.4 and 436a.5 (relating to responsibilities of horsemen's organizations, officers, directors, representatives and fiduciaries; and fiduciaries) relative to the responsibilities of the horsemen's organizations and their officers, directors, representatives and fiduciaries.

§ 436b.4. Audits of horsemen's organizations.

(a) Registered horsemen's organizations that receive funds from the Fund shall file annually, with the appropriate racing commission and the Board, an audit prepared by a certified public accountant of the funds received under 4 Pa.C.S. § 1406(e) (relating to distributions from Pennsylvania Race Horse Development Fund). Audits shall be available for public review.

(b) Audits submitted to the Board must reflect all funds received from the Fund which are used or intended to be used for purse supplements under 4 Pa.C.S. § 1406(a)(1)(i) and health and pension benefits under 4 Pa.C.S. § 1406(a)(1)(iii).

(c) Audits shall be mailed to the Pennsylvania Gaming Control Board, Attn: Director, Racetrack Gaming, P. O. Box 69060, Harrisburg, Pennsylvania 17106-9060 in sufficient time to be received no later than March 30th of each calendar year.

§ 436b.5. Reports.

(a) Registered horsemen's organizations shall file with the Board no later than the 20th day of the month following the end of each calendar quarter the following reports:

(1) Quarterly report of funds received from the Fund through the Category 1 licensee conducting live racing into the account established by and for the benefit of the horsemen under 4 Pa.C.S. § 1406(1)(a)(i) (relating to distributions from Pennsylvania Race Horse Development Fund).

(2) Quarterly report of funds distributed for purse supplements from the account established by and for the benefit of the horsemen under 4 Pa.C.S. § 1406(1)(a)(i).

(3) Quarterly report of funds received for health and pension benefits health and pension benefits under 4 Pa.C.S. § 1406(1)(a)(iii).

(b) Horsemen's organizations shall ensure that funds allocated for thoroughbred jockeys and standardbred drivers are paid as required by 4 Pa.C.S. § 1406(a)(1)(iii) and that the distribution of these proceeds is reflected in the annual audit required by 4 Pa.C.S. § 1406(e).

§ 436b.6. Responsibilities of Category 1 licensees.

Category 1 licensees conducting live racing and who receive distributions from the Fund for distribution to purses shall file with the Board no later than the 20th day of the month following the end of each calendar quarter the following reports:

(1) Quarterly report of funds received from the Fund.

(2) Quarterly report of funds deposited into a separate, interest-bearing purse account established by and for the benefit of the horsemen under 4 Pa.C.S. § 1406(a)(1)(i) (relating to distributions from Pennsylvania Race Horse Development Fund) and § 441.9(b)(3)(reserved) (relating to responsibilities of licensed organizations).

(3) Quarterly report of funds distributed to the horsemen's organization representing the owners and trainers at the racetrack at which the licensed racing entity operates for health and pension benefits under 4 Pa.C.S. § 1406(a)(1)(iii) and § 441.9(b)(3)(ii).

(4) Quarterly report of expenditures for backside improvements in conformity with 4 Pa.C.S. § 1404 (relating to distributions from licensee's revenue receipts).

CHAPTER 438. (Reserved)**§§ 438.1—438.4. (Reserved).****CHAPTER 438a. LABOR ORGANIZATIONS**

Sec.

- 438a.1. Definitions.
438a.2. Labor organization notification.
438a.3. Permitting of labor organization officers, agents and management employees.

§ 438a.1. Definitions.

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

Labor organization—An organization, union, agency, employee representation committee, group, association or plan in which employees who are required to obtain a license, permit or registration from the Board participate which exists for the purpose, in whole or in part, of dealing with a slot machine licensee or licensed management company concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of

employment, including any conference, general committee, joint or systems board or international labor organization.

Labor organization agent—A person, compensated or not, who is authorized to represent a labor organization in an employment matter relating to employees who are employed by a slot machine licensee or licensed management company, or who undertakes on behalf of the labor organization to promote, facilitate or otherwise influence the relations between the labor organization and a slot machine licensee or licensed management company.

Labor organization officer—An officer or person authorized to perform the functions of an officer who exercises authority, discretion or influence with regard to matters relating to employees who are employed at a licensed facility.

Labor organization management employee—An employee of a labor organization who serves in a management, supervisory or policy making position, who exercises authority, discretion or influence with regard to matters relating to employees who are employed at a licensed facility.

§ 438a.2. Labor organization notification.

(a) Each labor organization shall file a completed Labor Organization Notification Form with the Bureau of Licensing.

(b) Labor organizations shall file an updated version of the Labor Organization Notification Form with the Bureau of Licensing within 30 days of a change in the information contained on the form.

§ 438a.3. Permitting of labor organization officers, agents and management employees.

(a) Every labor organization officer, agent and management employee shall be permitted in accordance with this section.

(b) Every labor organization officer, agent and management employee shall file a completed Labor Organization Permit Application Form with the permit fee posted on the Board's website (pgcb.state.pa.us).

(c) Applicants and permittees under this section shall be subject to the general application requirements of Chapters 421a and 423a (relating to general provisions; and applications).

(d) Permits issued under this section will be valid for 1 year from the date on which the permit is approved by the Board.

(e) Renewals will be valid for 1 year and shall be filed no later than 60 days prior to the expiration of the current permit.

(f) A permit for which a completed renewal application and fee has been received by the Board will continue in effect until the Board sends written notification to the permittee that the Board has approved or denied the renewal of the permit.

CHAPTER 439. (Reserved)**§§ 439.1—439.11. (Reserved).****CHAPTER 439a. JUNKET ENTERPRISES**

Sec.

- 439a.1. Definitions.
439a.2. Junket enterprise general requirements.
439a.3. Junket enterprise license applications.
439a.4. Junket enterprise license term and renewal.
439a.5. Junket representative general requirements.
439a.6. Junket representative registration.

- 439a.7. Junket schedules.
- 439a.8. Junket arrival reports.
- 439a.9. Junket final reports.
- 439a.10. Monthly junket reports.
- 439a.11. Purchase of patron lists.
- 439a.12. Junket enterprise and representative prohibitions.

§ 439a.1. Definitions.

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

Junket—An arrangement made between a slot machine licensee and a junket enterprise or a junket representative, the purpose of which is to induce a person, selected or approved, to come to a licensed facility for the purpose of gambling and pursuant to which, and as consideration for which, some or all of the cost of transportation, food, lodging and entertainment for that person is directly or indirectly paid by a slot machine licensee.

Junket enterprise—A person, other than a slot machine licensee, who employs or otherwise engages the services of a junket representative in connection with a junket to a licensed facility, regardless of whether or not the activities occur within this Commonwealth.

Junket representative—

(i) A natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in a junket to a licensed facility, regardless of whether or not those activities occur within this Commonwealth.

(ii) A gaming employee of a slot machine licensee who performs the duties and functions listed in subparagraph (i) for the licensed facility is not a junket representative.

§ 439a.2. Junket enterprise general requirements.

(a) A slot machine licensee seeking to conduct business with a junket enterprise or a junket enterprise seeking to conduct business with a slot machine licensee shall file a Junket Enterprise License Form with the Board.

(b) A junket enterprise shall be licensed as a junket enterprise prior to a slot machine licensee permitting a junket involving that junket enterprise to arrive at its licensed facility. A junket enterprise shall be considered “involved” in a junket to a licensed facility if it receives any compensation whatsoever from any person as a result of the conduct of the junket. A slot machine licensee may not engage the services of any junket enterprise which has not been licensed.

(c) A junket enterprise may not employ or otherwise engage the services of a junket representative except in accordance with § 439a.5 (relating to junket representative general requirements).

(d) A person may be selected or approved to participate in a junket on the basis of one or more of the following:

(1) The ability to satisfy a financial qualification obligation related to the person’s ability or willingness to gamble, which shall be deemed to occur whenever a person, as an element of the arrangement is required to perform one or more of the following:

- (i) Establish a customer deposit with a slot machine licensee.
- (ii) Demonstrate to a slot machine licensee the availability of a specified amount of cash or cash equivalent.
- (iii) Gamble to a predetermined level at the licensed facility.
- (iv) Comply with any similar obligation.

(2) The propensity to gamble, which shall be deemed to occur whenever a person has been selected or approved on the basis of one or more of the following:

(i) The previous satisfaction of a financial qualification obligation in accordance with the provisions of paragraph (1).

(ii) An evaluation that the person has a tendency to participate in gambling activities as the result of:

(A) An inquiry concerning the person’s tendency to gamble.

(B) Use of other means of determining that the person has a tendency to participate in gambling activities.

(e) A rebuttable presumption that a person has been selected or approved for participation in an arrangement on a basis related to the person’s propensity to gamble shall be created whenever the person is provided, as part of the arrangement, with one or more of the following:

- (1) Complimentary accommodations.
- (2) Complimentary food, entertainment or transportation which has a value of \$200 or more.

§ 439a.3. Junket enterprise license applications.

(a) A Junket Enterprise License Form shall be submitted by a slot machine licensee or junket enterprise applicant with a verification provided by the slot machine licensee that the junket enterprise’s services will be utilized at the licensed facility.

(b) In addition to the Junket Enterprise License Form, an applicant for a junket enterprise license shall submit:

(1) The nonrefundable application fee posted on the Board’s website (pgcb.state.pa.us).

(2) A Junket Enterprise License Form for any principal that is an entity, and for each affiliate, intermediary, subsidiary and holding company of the applicant.

(3) A Junket Enterprise Representative Registration for each principal who is a natural person and for each key employee.

(c) In addition to the materials required under subsections (a) and (b), an applicant for a junket enterprise license shall:

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

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

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

§ 439a.4. Junket enterprise license term and renewal.

(a) A junket enterprise license issued under this chapter will be valid for 1 year from the date of Board approval.

(b) A renewal application shall be submitted to the Board at least 60 days prior to the expiration of a junket enterprise license.

(c) A junket enterprise license for which a completed renewal application and fee has been received by the

Board will continue in effect until the Board sends written notification to the holder of the junket enterprise license that the Board has approved or denied the junket enterprise license.

§ 439a.5. Junket representative general requirements.

(a) A person may not act as a junket representative in connection with a junket to a licensed facility unless the person has been registered as a junket representative and is employed by a junket enterprise that is licensed by the Board.

(b) A junket representative may only be employed by one junket enterprise at a time. For the purposes of this section, to qualify as an employee of a junket enterprise, a junket representative shall:

(1) Receive all compensation for his services as a junket representative within this Commonwealth through the payroll account of the junket enterprise.

(2) Exhibit other appropriate indicia of genuine employment, including Federal and State taxation withholdings.

§ 439a.6. Junket representative registration.

(a) A natural person applying for a junket representative registration shall submit:

(1) A Junket Representative Registration Form.

(2) The nonrefundable application fee posted on the Board's website (pgcb.state.pa.us).

(b) In addition to the materials required under subsection (a), an applicant for a junket representative registration shall:

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

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

(c) After review of the information submitted under subsections (a) and (b), including a background investigation, the Board may issue a junket representative registration if the individual has proven that he is a person of good character, honesty and integrity and is qualified to hold a junket representative registration.

(d) An individual who wishes to receive a junket representative registration under this chapter may provide the junket enterprise with written authorization to file an application on the individual's behalf.

(e) A junket representative registration issued under this section does not require renewal and is nontransferable.

§ 439a.7. Junket schedules.

(a) A junket schedule shall be prepared by a slot machine licensee for each junket that is arranged through a junket enterprise or its junket representative.

(b) A junket schedule shall be filed with the Bureau of Corporate Compliance and Internal Controls by a slot machine licensee by the 15th day of the month preceding the month in which the junket is scheduled. If a junket is arranged after the 15th day of the month preceding the arrival of the junket, an amended junket schedule shall be filed with the Bureau of Corporate Compliance and

Internal Controls by the slot machine licensee by the close of the next business day.

(c) Junket schedules shall be certified by an employee of the slot machine licensee and include the following:

(1) The origin of the junket.

(2) The number of participants in the junket.

(3) The arrival time and date of the junket.

(4) The departure time and date of the junket.

(5) The name and registration number of all junket representatives and the name and license number of all junket enterprises involved in the junket.

(d) Changes in the information which occur after the filing of a junket schedule or amended junket schedule with the Bureau of Corporate Compliance and Internal Controls shall be reported in writing to the Bureau of Corporate Compliance and Internal Controls by the slot machine licensee by the close of the next business day. These changes, plus any other material change in the information provided in a junket schedule, shall also be noted on the arrival report.

§ 439a.8. Junket arrival reports.

(a) A junket arrival report shall be prepared by a slot machine licensee for each junket arranged through a junket enterprise or its junket representative with whom the slot machine licensee does business.

(b) Junket arrival reports must:

(1) Include a junket guest manifest listing the names and addresses of the junket participants.

(2) Include information required under § 439a.7 (relating to junket schedules) that has not been previously provided to the Bureau of Corporate Compliance and Internal Controls in a junket schedule pertaining to the particular junket, or an amendment thereto.

(3) Be certified by an employee of the slot machine licensee.

(c) Junket arrival reports shall be prepared by a slot machine licensee in compliance with the following:

(1) A junket arrival report involving complimentary accommodations shall be prepared within 12 hours of the arrival of the junket participant.

(2) A junket arrival report involving complementary services that does not involve complimentary accommodations shall be filed by 5 p.m. of the next business day following arrival. A junket arrival which occurs after 12 a.m. but before the end of the gaming day shall be deemed to have occurred on the preceding calendar day.

(3) Junket arrival reports shall be maintained on the premises of the licensed facility and made available to the Board for inspection during normal business hours.

§ 439a.9. Junket final reports.

(a) A junket final report shall be prepared by a slot machine licensee for each junket for which the slot machine licensee was required to prepare either a junket schedule or a junket arrival report.

(b) A junket final report must include the actual amount of complimentary services provided to each junket participant.

(c) A junket final report shall be:

(1) Prepared within 7 days of the completion of the junket.

(2) Maintained on the premises of its licensed facility and made available to the Board for inspection during normal business hours.

§ 439a.10. Monthly junket reports.

(a) Each slot machine licensee shall, on or before the 15th day of the month, prepare and file with the Bureau of Corporate Compliance and Internal Controls a monthly junket report listing the name and registration number of each person who performed the services of a junket representative during the preceding month.

(b) Copies of the monthly junket reports shall be maintained by the slot machine licensee on the premises of its licensed facility and made available to the Board for inspection during normal business hours.

§ 439a.11. Purchase of patron lists.

(a) Each slot machine licensee, junket representative and junket enterprise shall prepare and maintain a report with respect to each list of names of junket patrons or potential junket patrons purchased from or for which compensation was provided to any source whatsoever.

(b) The report required by subsection (a) must include:

- (1) The name and address of the person or enterprise selling the list.
- (2) The purchase price paid for the list or any other terms of compensation related to the transaction.
- (3) The date of purchase of the list.
- (c) The report required by subsection (a) shall be filed with the Bureau of Corporate Compliance and Internal Controls, no later than 7 days after the receipt of the list by the purchaser.

§ 439a.12. Junket enterprise and representative prohibitions.

A junket enterprise or junket representative may not:

- (1) Engage in collection efforts.
- (2) Individually receive or retain a fee from a patron for the privilege of participating in a junket.
- (3) Pay for services, including transportation or other items of value, provided to or for the benefit of any patron participating in a junket, unless otherwise disclosed to and approved by the Board.
- (4) Extend credit to or on behalf of a patron participating in a junket.

CHAPTER 440. (Reserved)

§§ 440.1—440.4. (Reserved)

CHAPTER 440a. MANAGEMENT COMPANIES

Sec.
 440a.1. General requirements.
 440a.2. Applications.
 440a.3. Management company license term and renewal.
 440a.4. Management company responsibilities.
 440a.5. Management contracts.

§ 440a.1. General requirements.

(a) A management company shall be required to obtain a management company license from the Board prior to providing any service to a slot machine applicant or licensee under this chapter.

(b) An applicant for or holder of a management company license or any of the applicant's or holder's affiliates, intermediaries, subsidiaries or holding companies, may not apply for or hold a manufacturer or supplier license.

§ 440a.2. Applications.

(a) An applicant for a management company license shall file:

(1) A completed applicable Category 1, Category 2 or Category 3 slot machine license application and disclosure information forms with the applicable appendices as if the management company license applicant were an affiliated entity of the slot machine applicant or licensee.

(2) The nonrefundable application fee posted on the Board's website (pgcb.state.pa.us).

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

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

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

§ 440a.3. Management company license and term and renewal.

(a) A management company license issued under this chapter will be valid for 1 year from the date of Board approval.

(b) A renewal application shall be submitted to the Board at least 60 days prior to the expiration of a management company license.

(c) A management company license for which a completed renewal application and fee has been received by the Board will continue in effect until the Board sends written notification to the holder of the management company license that the Board has approved or denied the management company license.

§ 440a.4. Management company responsibilities.

(a) Notwithstanding any provision to the contrary in a management contract, a management company will be deemed to be an agent of the slot machine licensee for purposes of imposing liability for any act or omission of the management company in violation of the act or this part.

(b) Notwithstanding any provision to the contrary in a management contract, a management company may be jointly and severally liable for any act or omission by the slot machine licensee in violation of the act or this part regardless of actual knowledge by the management company of the act or omission.

§ 440a.5. Management contracts.

(a) A management contract between a slot machine applicant or licensee and management company licensee may not become effective until the Board has reviewed and approved the terms and conditions of the management contract.

(b) A management company licensee shall submit any amendment to a management contract 30 days prior to the effective date of the proposed amendment. The amendment may not become effective until the Board has reviewed and approved the terms and conditions of the amendment.

(c) A management contract or amendment will not be approved by the Board unless the management company proves by clear and convincing evidence that the approval of the contract would not create a monopoly on the

control of licensed gaming facilities in this Commonwealth. A management company that seeks Board approval of a management contract shall disclose its financial interests in the slot machine licensee or applicant and, if applicable, proposed or contemplated changes in ownership or control of a slot machine licensee

(d) Requests for approval of a management contract must include a business plan which sets forth the parties' goals and objectives for the term of the management contract.

(e) A management contract, submitted to the Board for approval, must contain the following:

(1) A provision that provides the grounds and mechanisms for modifying or terminating the contract.

(2) A provision that states that the contract will not be effective unless it is approved by the Board.

(3) A provision that describes with particularity the method of compensating and reimbursing the management company.

(4) Provisions that contain a mechanism to resolve patron disputes and disputes between the slot machine licensee and the management company.

(5) A provision that indicates whether and to what extent contract assignments and subcontracting are permissible.

(6) A provision that specifies the duration of the management contract. A management contract may not contain a provision that provides for the automatic renewal of the management contract.

(f) A management contract submitted for Board review and approval must enumerate with specificity the responsibilities of the slot machine applicant or licensee and management company under the terms and conditions of the management contract. At a minimum, the terms should address whether, and to what extent, the management company is involved in the following:

(1) Operation of the following departments:

(i) Information technology.

(ii) Internal audit.

(iii) Slot accounting.

(iv) Slot management.

(v) Security.

(vi) Surveillance.

(2) Design, construction, improvement or maintenance, or both, of the licensed facility.

(3) Provision of operating capital and financing for the development of the licensed facility.

(4) Payment of the slot machine license fee.

(5) Purchase or lease of slot machines or associated equipment.

(6) Design, implementation or amendment, or both, of the system of internal controls required under section 1322 of the act (relating to slot machine accounting controls and audits) and this part including the financial reporting requirements.

(7) Hiring, terminating, training and promoting of employees and the employment practices attendant thereto.

(8) The payment of local, State and Federal taxes and slot machine license deposit required pursuant to the act and this part and any penalties imposed by the Board for violations thereof.

(9) Advertising, player incentive or marketing programs.

(10) Compliance with section 1325(b)(1) of the act (relating to license or permit issuance).

(11) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage.

(12) Procurement of vendors and junkets.

(13) Selection of the licensed facility's independent auditor.

(g) Notwithstanding subsections (a)—(f), a slot machine licensee and licensed management company may not contract for the delegation of any benefits, duties or obligations specifically granted to or imposed upon the slot machine licensee by the act.

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PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 491a, 493, 493a, 494, 494a, 495, 495a, 497, 497a, 499 AND 499a]

General Rules of Practice; Pleadings; Hearing Procedure; Documentary Filings; Time; Representation Before the Board

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 1205 (relating to license or permit application hearing process), rescinds Chapters 493, 494, 495, 497 and 499, amends Chapter 491a (relating to general rules of practice) and adds Chapters 493a, 494a, 495a, 497a and 499a to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

Under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted temporary regulations in Chapters 493 and 494 at 36 Pa.B. 1578 (April 1, 2006) and in Chapters 495, 497 and 499 at 35 Pa.B. 4045 (July 16, 2005). Under 4 Pa.C.S. § 1203(b), the temporary regulations expired on July 5, 2007.

The Board is adopting Chapters 493a, 494a, 495a, 497a and 499a to replace the Board's temporary regulations with the permanent regulations.

Explanation of Chapters 491a, 493a, 494a, 495a, 497a and 499a.

Chapter 491a contains general rules of practice and procedure that apply to persons appearing before the Board in a hearing. These regulations provide defined terms, general guidance as to the function of the Office of the Clerk, general requirements for filing pleadings and other documents with the Board, service requirements, procedure for hearings and prehearing conferences and the duties of hearing and presiding officers.

Chapter 493a (relating to pleadings) contains general rules pertaining to the filing of pleadings with the Board. These regulations provide guidance as to the form and

filing of pleadings, including motions, complaints, answers and other pleadings, service, time requirements, the content of the pleadings, discovery and intervention.

Chapter 494a (relating to hearing procedure) contains general rules regarding hearing procedure before the Board. These provisions discuss the scheduling of hearings and the rules for oral and documentary hearings. These regulations also provide guidance as to the procedure for hearings including the report or recommendation of the hearing officer, Board review, the procedure for reopening the record, filing exceptions, rehearing or reconsideration, briefs and oral argument, reports of compliance and the appeal process.

Chapter 495a (relating to documentary filings) lists the form requirements for documentary filings with the Board. This chapter includes rules on incorporation by reference in a documentary filing, execution of documents, and verification and affidavit forms. This chapter also notifies parties of the number of copies that are required to be submitted to the Board.

Chapter 497a (relating to time) provides guidance as to the Board's method of calculation of time for the purpose of filing pleadings and other documents with the Board. This chapter also provides guidance as to the commencement of the appeal period.

Chapter 499a (relating to representation before the Board) contains rules pertaining to representation before the Board. This chapter includes the form and procedure by which an individual may file a notice of appearance with the Board. Also included in this chapter are prohibitions on contemptuous conduct and the Board's ability to deny the privilege of appearance before the Board.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 2298 (May 19, 2007).

The Board did not receive any public comments during the public comment period. On July 18, 2007, comments on the proposed rulemaking were received from the Independent Regulatory Review Commission (IRRC). These comments were reviewed by the Board and are discussed in detail as follows.

In § 495a.3 (relating to documentary filings), IRRC suggested that the Board clarify whether this section supplements or supersedes 1 Pa. Code § 33.3 (relating to single pleading or submittal covering more than one matter).

The Board intended for § 495a.3 to supersede 1 Pa. Code § 33.3. However, due to the large size of the record in many of the Board's proceedings and limitations on filing space, it is not feasible to allow parties to reference documents from all other Board proceedings because they are not readily available. Therefore this section has been deleted in its entirety. Incorporation of documents is addressed in § 495a.1(b) (relating to form of documentary filings generally) and subsection (f) has been amended to include that this section supersedes 1 Pa. Code § 33.3.

Additional Revisions

In addition to the revision discussed previously, the Board has made several additional revisions.

In rulemaking No. 125-53, which was adopted by the Board on June 5, 2007, IRRC suggested that the phrase "unless otherwise provided by the Board, as provided in § 494a.1(a) (relating to generally)" be deleted from

§ 491a.7(b)(1) (relating to presiding officers) because Chapter 494a had not yet been adopted as a final-form regulations.

Now that final-form regulations adopting Chapter 494a are being adopted, this phrase is being added back to § 491a.7(b)(1).

In § 493a.4(a), the Bureau of Investigations and Enforcement has been added to the list of entities that may file petitions with the Board. This was done because there may be instances when it is more appropriate for the Office of Enforcement Counsel to file a petition rather than a complaint.

In § 493a.10 (relating to motions for summary judgment and judgment and on the pleadings), the last sentence in subsection (a) has been deleted. It is not needed because subsection (c) establishes the time period for filing answers to motions.

Section § 493a.11 (relating to discovery), has been expanded to provide greater detail on discovery procedures.

In § 494a.7 (relating to amendments and withdrawal of pleadings), subsection (a) has been amended to allow 15 days to file exceptions instead of 10. This change was made to insure that parties would have sufficient time to receive and review the report or recommendation. Also in § 494a.7, subsection (c) has been deleted entirely. The Board does not believe that there is a need to file a brief with exceptions. The exceptions themselves should fully address any matters that are being objected to and filing briefs would be redundant. Other references to briefs in renumbered subsections (c) and (e) have also been deleted.

In § 494a.11 (relating to discovery), subsection (c) has been deleted. Once an appeal is filed, the Board no longer has jurisdiction over the party filing the appeal.

In § 495a.1 (relating to form of documentary filings generally), the Board has revised the scope of subsection (b) to limit the ability to reference (as opposed to attaching) documents to documents filed in the ongoing proceeding. Due to the large size of many of the Board's proceedings and limitations on filing space, it is not feasible to make all of these documents readily available to parties.

In § 497a.5 (relating to extensions of time and continuance), subsection (a)(3) has been revised to allow requests for a continuance to be made orally as well as in writing. In many application denial proceedings for gaming and nongaming employees, the applicant is representing themselves. Allowing these individuals the opportunity to orally request a continuance will be more convenient for them and may speed up the process. The phrase "to the presiding officer" was also added to this subsection to clarify to whom the request must be made.

Finally, the Board has made a number of minor wording changes to a number of sections of these regulations to improve the clarity of the regulations.

Affected Parties

This final-form rulemaking imposes requirements on individuals and attorneys appearing before the Board in a hearing.

Fiscal Impact

Commonwealth

This final-form rulemaking will impose costs on the Board for the administration of a uniform filing, docket-

ing, and system of hearings and appeals, including compliance with practice and procedure requirements.

Political Subdivisions

This final-form rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

Private Sector

Entities appearing before the Board in a hearing will experience some costs to comply with the filing and procedural requirements in these chapters and the filing fees published by the Board.

General Public

Individuals appearing before the Board in a hearing will experience some costs to comply with the procedural requirements in these chapters and the filing fees published by the Board.

Paperwork Requirements

This final-form rulemaking does not impose new reporting or paperwork requirements on the affected parties under the Board's jurisdiction. This final-form rulemaking clarifies the procedural and form requirements for filings that are submitted to the Board by parties.

Effective Date

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

Contact Person

The contact person for questions about this final-form rulemaking is Richard Sandusky, Director of Regulatory Review, (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 9, 2007, the Board submitted a copy of the proposed rulemaking published at 37 Pa.B. 2298 (May 19, 2007), and a copy of the Regulatory Analysis Form to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development.

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), 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 Board has considered all comments received 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 September 19, 2007, the final-form rulemaking was deemed approved by the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met on September 20, 2007, and approved the final-form rulemaking.

Findings

The Board finds that:

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

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the act.

Order

The Board, acting under the act, orders that:

(a) The regulations of the Board, 58 Pa. Code Part VII, are amended by deleting §§ 493.1—493.14, 494.1—494.11, 495.1—495.7, 497.1—497.5 and 499.1—499.7; by adding §§ 493a.1—493a.13, 494a.1—494a.11, 495a.1—495a.6, 497a.1—497a.5 and 499a.1—499a.7; and by amending § 491a.7 and to read as set forth in Annex A.

(b) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

MARY DIGIACOMO COLINS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 37 Pa.B. 5447 (October 6, 2007).)

Fiscal Note: Fiscal Note 125-56 remains valid for the final adoption of the subject regulations.

Annex A

TITLE. 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart H. PRACTICE AND PROCEDURE

CHAPTER 491a. GENERAL RULES OF PRACTICE

§ 491a.7. Presiding officers.

(a) When evidence is to be taken in a hearing, the Board or a presiding officer may conduct the hearing.

(b) The Board and presiding officers shall have the power and authority to:

(1) Regulate the course of hearings, including the scheduling thereof, and the recessing, reconvening and the adjournment thereof, unless otherwise provided by the Board, as provided in § 494a.1(a) (relating to generally).

(2) Administer oaths and affirmations.

(3) Issue subpoenas.

(4) Rule upon offers of proof and receive evidence.

(5) Preside over or cause depositions to be taken.

(6) Hold conferences before or during hearings.

(7) Dispose of procedural matters, but not before a proposed report, if any, to dispose of motions made during hearings to dismiss proceedings or other motions which involve final determination of proceedings has been submitted to the Board.

(8) Certify any question to the Board for consideration and disposition, within the presiding officer's discretion, or upon direction of the Board.

(9) Submit proposed reports in accordance with this subpart.

(10) Take other action appropriate to the discharge of their duties as may be designated by the Board and authorized by the act.

(c) Except as authorized by law and by this subpart, a presiding officer may not, in a proceeding, consult with a person or party on a fact in issue unless notice and opportunity for parties to participate has been given.

(d) Presiding officers will conduct fair and impartial hearings and maintain order. Disregard by parties or counsel of rulings of the presiding officer on matters of order and procedure will be noted on the record, and if the presiding officer deems necessary, it will be made the subject of a special written report to the Board.

(e) If parties or counsel engage in disrespectful, disorderly or contumacious language or conduct in connection with any hearing, the presiding officer may immediately submit to the Board a report thereon, together with recommendations, and, in the presiding officer's discretion, suspend the hearing.

(f) Rulings of presiding officers may not be appealed during the course of a hearing or conference except in extraordinary circumstances when a prompt decision by the Board is necessary. In this instance, the matter will be immediately referred by the presiding officer to the Board for determination.

(1) An offer of proof made in connection with an objection to a ruling of the presiding officer rejecting or excluding oral testimony must be a statement of the substance of the evidence which counsel contends would be adduced by the testimony. If the rejected or excluded evidence is in documentary or written form, a copy of the evidence shall be marked for identification and shall constitute the offer of proof.

(2) Unless the Board acts upon a question referred by a presiding officer for determination within 30 days, the referral will be deemed to have been denied.

(g) This section supersedes 1 Pa. Code §§ 35.185—35.190 (relating to presiding officers).

CHAPTER 493. (Reserved)

§§ 493.1—493.14. (Reserved).

CHAPTER 493a. PLEADINGS

Sec.	
493a.1.	Generally.
493a.2.	Complaints.
493a.3.	Satisfaction of complaints.
493a.4.	Petitions generally.
493a.5.	Answers.
493a.6.	Consolidation.
493a.7.	Amendments and withdrawal of pleadings.
493a.8.	Motions generally.
493a.9.	Preliminary motions.
493a.10.	Motions for summary judgment and judgment on the pleadings.
493a.11.	Discovery.
493a.12.	Intervention.
493a.13.	Consent agreements.

§ 493a.1. Generally.

(a) Pleadings permitted are as follows:

- (1) Complaints.
- (2) Petitions.
- (3) Motions.
- (4) Answers to pleadings.
- (5) Exceptions.
- (6) Appeals.
- (7) Formal notices.

(b) Filing fees for pleadings, copies and other administrative requests will be in accordance with a fee schedule published by the Board in the *Pennsylvania Bulletin*, available on the Board's website, and in the Office of the Clerk.

(c) Pleadings shall be filed with the Clerk and contain a docket number. The Clerk will assign a docket number if one has not been assigned.

(d) This section supplements 1 Pa. Code §§ 35.1 and 35.2 and 35.9—35.11 (relating to applications; and formal complaints).

§ 493a.2. Complaints.

(a) The procedures for filing complaints shall be in accordance with 1 Pa. Code §§ 35.9—35.11 (relating to formal complaints) as supplemented by this chapter.

(b) Complaints may be filed by the Bureau and other persons authorized by the Board.

(c) A proceeding against a licensee, permittee, persons registered or certified by the Board or employee of a licensee or persons registered or certified by the Board shall be initiated by written complaint filed by the complainant, which must include a statement setting forth in ordinary and concise language the matter complained of and the facts supporting the complaint.

(d) Complaints will be served in accordance with § 491a.5 (relating to service by the Board).

(e) Within 20 days of service of the complaint filed by the complainant, the respondent may file with the Clerk a notice of defense, in which the respondent may:

- (1) Request a hearing.
- (2) Admit the matter complained of and the alleged facts in whole or in part.
- (3) Present new matter or explanation by way of defense.
- (4) State any legal objection to the complaint.
- (5) Present affirmative defenses.

(f) The respondent may be entitled to a hearing on the merits if the respondent files the required notice of defense within the time allowed by subsection (e). The notice of defense will be deemed a specific denial of all parts of the complaint not expressly admitted.

(g) Failure to timely file the required notice of defense or to appear at the hearing constitutes an admission of all matters and facts contained in the complaint and a waiver of the respondent's rights to a hearing. The Board may conduct a hearing despite a respondent's failure to timely file the required notice of defense or to appear at the hearing.

(h) Affirmative defenses shall be specifically stated, and unless objection is taken as provided in subsection (e)(4), objections to the form of the complaint shall be deemed waived.

(i) The Clerk will deliver or send by mail a notice of the hearing date to all parties at least 10 days prior to a hearing.

(j) Applicants, licensees, permittees, persons registered or certified and other persons authorized by the Board may request a hearing on any matter by filing a written petition for special relief in accordance with § 493a.4 (relating to petitions generally).

(k) The complainant has the burden to demonstrate, by a preponderance of the evidence, that the respondent has failed to comply with the act or this part.

(l) This section supplements 1 Pa. Code §§ 35.9—35.11 and 35.14 (relating to formal complaints; and orders to show cause).

§ 493a.3. Satisfaction of complaints.

(a) If the respondent satisfies a complaint either before or after a hearing, a statement to that effect signed by the complainant shall be filed with the Clerk setting forth

that the complaint has been satisfied and requesting dismissal or withdrawal of the complaint. Except when requested by the parties, the Board will not be required to render a final order upon the satisfaction of a complaint.

(b) This section supersedes 1 Pa. Code § 35.41 (relating to satisfaction of complaints).

§ 493a.4. Petitions generally.

(a) Petitions may be filed by BIE, parties, applicants, licensees, permittees, persons registered or certified by the Board, and other persons authorized by the Board.

(b) Petitions must be in writing, state clearly and concisely the grounds for the petition, the interest of the petitioner in the subject matter, the facts relied upon and the relief sought.

(c) The procedure for petitions shall be in accordance with 1 Pa. Code §§ 35.17 and 35.18 (relating to petitions generally; and petitions for issuance, amendment, waiver or deletion of regulations). Petitions must conform to § 491a.4 (relating to filing generally) and Chapters 495a and 497a (relating to documentary filings; and time), and be served on all persons directly affected.

(d) Copies shall also be served in accordance with the Board's direction.

(e) This section supplements 1 Pa. Code §§ 35.17 and 35.18.

§ 493a.5. Answers.

(a) Answers shall be filed with the Clerk and other parties within 20 days after the date of service of a complaint, petition, motion or other pleading, unless a different time is prescribed by the Board or presiding officer.

(b) The procedures in 1 Pa. Code §§ 35.35—35.40 apply.

(c) This section supplements 1 Pa. Code §§ 35.35—35.40.

§ 493a.6. Consolidation.

(a) The Board or presiding officer, with or without motion, may consolidate proceedings involving a common question of law or fact.

(b) The section supersedes 1 Pa. Code § 35.45 (relating to consolidation).

§ 493a.7. Amendments and withdrawal of pleadings.

Amendments and withdrawal of pleadings shall be in accordance with 1 Pa. Code §§ 35.48—35.51 (relating to amendment and withdrawal of pleadings).

§ 493a.8. Motions generally.

The procedures for motions shall be in accordance with 1 Pa. Code §§ 35.177—35.180 (relating to motions).

§ 493a.9. Preliminary motions.

(a) A preliminary motion may be filed by a party. The preliminary motion must state the specific grounds relied upon, and be limited to the following:

- (1) A motion questioning the jurisdiction of the Board or the presiding officer.
- (2) A motion to strike a pleading that is insufficient as to form.
- (3) A motion for a more specific pleading.

(b) Except when a motion for a more specific pleading is filed, an answer to a preliminary motion may be filed within the time period prescribed for answers to complaints, petitions and motions. All preliminary motions filed by a party shall be raised at the same time.

(c) If a motion for more specific pleading is filed, an answer may not be filed until further directed by the Board or presiding officer.

(d) A preliminary motion will be decided by the Board or presiding officer within 30 days of the filing of the preliminary motion.

(e) If a preliminary motion to strike is granted, the party who submitted the stricken pleading may file an amended pleading within 10 days of service of the order granting the motion to strike.

(f) This section supplements 1 Pa. Code §§ 35.177—35.180 (relating to motions).

§ 493a.10. Motions for summary judgment and judgment on the pleadings.

(a) *Motion for judgment on the pleadings.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings.

(b) *Motion for summary judgment.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for summary judgment based on the pleadings and depositions, answers to interrogatories, admissions and supporting affidavits.

(c) *Answers to motions.* An answer to a motion for summary judgment or a motion for judgment on the pleadings, including an opposing affidavit to a motion for summary judgment, may be filed within 10 days of the date of service of the motion. An answer to a motion for summary judgment may be supplemented by pleadings and depositions, answers to interrogatories or further affidavits and admissions.

(d) *Decisions on motions.* If a motion is granted in whole or in part by a presiding officer, it will be in the form of a report or recommendation. The Board will make a final ruling on a motion for judgment on the pleadings or a motion for summary judgment.

(e) *Supplementation.* This section supplements 1 Pa. Code Chapter 35, Subchapter D (relating to motions).

§ 493a.11. Discovery.

(a) A party may, upon written motion to the Board or a presiding officer, request a prehearing conference solely for the purpose of discussing discovery procedures as the nature of the matter and facts of the proceedings require.

(1) At the prehearing conference, the presiding officer may grant any requests for discovery which serve to facilitate an efficient and expeditious hearing process, do not unduly prejudice and burden the responding party and as may be required in the interests of justice.

(2) A party may request discovery by one or more of the following methods:

- (i) Written interrogatories.
- (ii) Depositions.
- (iii) Affidavits.
- (iv) Production of documents or things.
- (v) Requests for admissions.

(3) With the approval of the presiding officer, the parties may enter into a binding discovery plan at the prehearing conference.

(b) Upon written request from a party in a proceeding served upon another party in the proceeding, the requesting party shall be entitled to the name and address of any witness who may be called to testify on behalf of the responding party and all documents or other material in the possession or control of the responding party which the responding party reasonably expects will be introduced into evidence. The responding party shall be under a continuing duty to update its response to this request.

(c) The presiding officer may, upon request of a party, permit the testimony of a witness or the introduction of other evidence not disclosed pursuant to a request made under subsection (b), if following proffer by the party seeking to present the evidence, the presiding officer determines that justice so requires.

(d) Confidential information furnished to or obtained by the Board or the Bureau from any source will not be discoverable under this subsection. If a request for discovery involves confidential information, a party may file a motion for a protective order and the presiding officer will make a determination as to what is deemed confidential.

(e) If a party fails to respond to a discovery request or fails to adhere to the time limits set forth in the discovery plan, the opposing party may file a motion to compel discovery. The presiding officer may grant or deny the motion, as the circumstances of the proceeding require.

(f) Depositions will be conducted in accordance with 1 Pa. Code §§ 35.145—35.152 (relating to depositions).

§ 493a.12. Intervention.

(a) The decision to grant a petition to intervene in a proceeding before the Board or a presiding officer is within the sole discretion of the Board.

(b) A person wishing to intervene in a proceeding may file a petition with the Clerk which shall be served on all named parties to the underlying proceeding. When a petition to intervene is filed with the Clerk, it will be referred to the Board which will issue a determination as soon as practicable.

(c) The Board may grant a petition to intervene if it determines:

(1) The person has an interest in the proceeding which is substantial, direct and immediate.

(2) The interest is not adequately represented by a party to the proceeding.

(3) The person may be bound by the action of the Board in the proceeding.

(d) Petitions to intervene may be filed at any time following the filing of an application, petition, complaint or other document seeking Board action, but no later than 30 days prior to the date set for a hearing unless, in extraordinary circumstances for good cause shown, the Board authorizes a later filing.

(e) Petitions to intervene must be in writing and set out clearly and concisely the facts demonstrating the nature of the alleged right or interest of the petitioner, the grounds of the proposed intervention, and the position of the petitioner in the proceeding. The petitioner shall fully advise the parties and the Board of the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law

asserted in the petition or complaint initiating the proceeding, and citing by appropriate reference provisions or other authority relied on.

(f) A party may file an answer to a petition to intervene, and in default thereof, will be deemed to have waived any objection to the granting of the petition. Answers shall be filed within 10 days after the date of service of the petition, unless for cause the Board prescribes a different time.

(g) Except when the Board determines that it is necessary to develop a comprehensive evidentiary record, the participation of a person granted the right to intervene in a proceeding will be limited to the presentation of evidence through the submission of written statements attested to under oath. The written statements shall be part of the evidentiary record.

(h) Notwithstanding the provisions of this section, petitions to intervene in licensing hearings for slot machine licenses shall be governed by § 441.19(x) (relating to licensing hearing for slot machine licenses).

(i) This section supersedes 1 Pa. Code §§ 35.27—35.32 and 35.36 (relating to intervention; and answers to petitions to intervene).

§ 493a.13. Consent agreements.

(a) Parties may propose consent agreements at any time prior to the entry of a final order.

(b) Consent agreements must be in writing, signed by all parties and accurately reflect the terms of the consent agreement, including the facts agreed to by the parties constituting the grounds for the action proposed in the consent agreement.

(c) If the consent agreement is proposed in a matter that is the subject of a proceeding before a presiding officer, the proposal of the consent agreement will stay the proceeding until the consent agreement is acted upon by the Board.

(d) The consent agreement shall be presented to the Board for its approval or disapproval. If the Board approves the consent agreement, it will become the final order of the Board. If the Board disapproves the consent agreement, the parties will be notified and the consent agreement and any documents solely relating to the consent agreement will not constitute part of the record.

CHAPTER 494. (Reserved)

§§ 494.1—494.11. (Reserved).

CHAPTER 494a. HEARING PROCEDURE

Sec.	
494a.1.	Generally.
494a.2.	Oral hearings.
494a.3.	Documentary hearings.
494a.4.	Report or recommendation of the presiding officer.
494a.5.	Review.
494a.6.	Reopening of record.
494a.7.	Exceptions.
494a.8.	Rehearing or reconsideration.
494a.9.	Briefs and oral arguments.
494a.10.	Reports of compliance.
494a.11.	Appeals.

§ 494a.1. Generally.

(a) A hearing calendar of all matters set for hearing will be maintained by the Clerk and will be in order of assignment as far as practicable. All matters will be heard in Harrisburg, unless a different site is designated by the Board or the presiding officer. The Board or the presiding officer, in its discretion with or without motion,

for cause may at any time with due notice to the parties advance or postpone any proceeding on the hearing calendar.

(b) Hearings will be held before the Board or presiding officer, and all appearances, including staff counsel participating, will be entered upon the record, with a notation on whose behalf each appearance is made. A notation will be made in the record of the names of the members of the staff of the Board participating, including accountants, and other experts, who are assisting in the investigation of the matter. This section supersedes 1 Pa. Code §§ 35.123 and 35.124 (relating to conduct of hearings; and order of procedure).

(c) In oral and documentary hearings, neither the Board nor the presiding officer will be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received. Reasonable examination and cross-examination will be permitted at all oral hearings. If a party does not testify on his own behalf, the party may be called and examined as if under cross-examination.

(d) Subsection (a) supersedes 1 Pa. Code § 35.102 (relating to hearing calendar).

§ 494a.2. Oral hearings.

Oral hearings will be conducted in accordance with 1 Pa. Code §§ 35.121—35.126 and Subchapter C (relating to evidence and witnesses).

§ 494a.3. Documentary hearings.

(a) Documentary hearings will be held before the Board or a presiding officer.

(b) The parties will be notified at least 15 days prior to the date set for a hearing, and the evidentiary record will be closed 5 days prior to the date set for the hearing.

(c) Parties may introduce documents and other evidence, except that witnesses may not testify. Depositions and interrogatories may be taken at any time prior to the close of the evidentiary record, and may be introduced for consideration by the Board or presiding officer.

§ 494a.4. Report or recommendation of the presiding officer.

(a) A report or recommendation of the presiding officer may be required by the Board, in both oral and documentary hearings, except that recommendations will not be made in proceedings involving the issuance, approval, renewal, revocation, suspension or conditioning of a license.

(b) The presiding officer will file with the Clerk and certify to the Board a verbatim record of any oral hearing, all documents submitted for consideration, and a report or recommendation, when required, as soon as practicable after the conclusion of the hearing and expiration of the time for filing of briefs.

(c) The presiding officer's report or recommendation will include a statement of:

(1) Findings and conclusions, as well as the reasons or basis therefore, for all the material issues of fact, law or discretion presented on the record.

(2) The appropriate statutory provision, regulation, order, sanction, relief, or denial thereof.

(3) Facts officially noticed under 1 Pa. Code § 35.173 (relating to official notice of facts), relied upon in the decision.

(d) The report or recommendation will be in writing, provided to all parties, and will be part of the public record, except for matters and materials designated as confidential by the Board. Service will be in accordance with § 491a.5(d) (relating to service by the Board).

(e) This section supplements 1 Pa. Code §§ 35.201—35.206 (relating to proposed reports generally).

§ 494a.5. Review.

(a) The Clerk will transmit the record of the hearing to the Board and will make it available to all parties.

(b) The Board will review the record of the hearing and the report or recommendation of the presiding officer. The Board may adopt some or all of the recommendations, conduct a full or partial de novo hearing, or remand all or part of the matter to a presiding officer for the taking of additional evidence or clarification of issues, or make an adjudication based on the record.

§ 494a.6. Reopening of record.

(a) After the conclusion of the hearing, a party in a proceeding may file with the presiding officer, prior to the issuance of a report or recommendation, a petition to reopen the proceeding for the purpose of taking additional evidence. The petition must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or law alleged to have occurred since the hearing was concluded.

(b) After the issuance of a report or recommendation by a presiding officer and before the Board issues its final order, a party in a proceeding may file with the Board, a petition to reopen the proceeding for the purpose of taking additional evidence. The petition must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or law alleged to have occurred since the issuance of a report or recommendation.

(c) Answers may be filed within 10 days of service of the petition. If no answers are filed, objections to the granting of the petition are waived.

(d) After the filing of the petition and answer, the Board or presiding officer will grant or deny the petition.

(e) Prior to filing a report or recommendation, the presiding officer, after notice to the parties, may reopen the proceedings for the receipt of further evidence on his own motion, if the presiding officer has reason to believe that the facts or law have changed as to require, or that the public interest requires, the reopening of the proceedings.

(f) Prior to the issuance of a final order, the Board, after notice to the parties, may reopen the proceeding for the receipt of further evidence, if the Board has reason to believe that the facts or law have changed as to require, or that the public interest requires, the reopening of the proceeding.

(g) This section supersedes 1 Pa. Code §§ 35.231—35.233 (relating to reopening of record).

§ 494a.7. Exceptions.

(a) A party may file exceptions to the report or recommendation of the presiding officer within 15 days of the date of the report or recommendation, unless the time is extended upon good cause shown.

(b) Exceptions must be in writing, filed with the Clerk, and state with particularity the matter objected to, including the portion of the record where the basis of the objection may be found and any supporting legal argument.

(c) Failure to file exceptions within the time allowed shall constitute a waiver of all objections to the report or recommendations. Exceptions to any part of the report or recommendations may not thereafter be raised before the Board in oral argument, if an oral argument is permitted, or in an application for rehearing or reconsideration, and shall be deemed to be waived. The Board may refuse to consider exceptions to a ruling admitting or excluding evidence unless there was an objection at the time the ruling was made or within an extension of time prescribed by the presiding officer.

(d) Exceptions will be considered by the Board and will be limited to the record established during the hearing. The Board may permit evidence not already established in the record if compelling reasons are shown for its submission, the party requesting its admission did not previously know of its existence and its existence could not have been discovered with the exercise of reasonable diligence.

(e) The Board will conduct a documentary hearing on the exceptions within 30 days of receipt of the exceptions, unless exigent circumstances require a longer period of time. The Board may grant or deny the exceptions in whole or in part.

(f) The Board will issue its final order in consideration of the presiding officer's report or recommendation and any filed exceptions, and notify all parties by regular mail.

(g) This section supplements 1 Pa. Code §§ 35.211—35.214 (relating to exceptions to proposed reports).

§ 494a.8. Rehearing or reconsideration.

(a) A party to a proceeding may file an application for rehearing or reconsideration by filing a petition within 15 days after the final order of the Board.

(b) The petition must state concisely the alleged errors in the adjudication or other order of the Board. If a final order or other order of the Board is sought to be vacated, reversed or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from compliance therewith, the matters relied upon by the petitioner must be set forth in the petition.

(c) Answers to petitions for rehearing or reconsideration will not be entertained by the Board. If the Board grants the rehearing or reconsideration, an answer may be filed by a participant within 15 days after the issuance of the order granting rehearing or reconsideration. The response will be confined to the issues upon which rehearing or reconsideration has been granted.

(d) If the Board does not act upon the petition for rehearing or reconsideration within 30 days after it is filed, the petition will be deemed to have been denied.

(e) This section does not apply to proceedings resulting in any final order, determination or decision of the Board involving the approval, issuance, denial or conditioning of licensed entity applications which are subject to the appellate requirements of 4 Pa.C.S. § 1204 (relating to licensed gaming entity application appeals from board).

(f) This section supersedes 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

§ 494a.9. Briefs and oral argument.

(a) All parties shall be afforded an opportunity to submit briefs prior to a final order of the Board. Briefs shall be filed with the Clerk. If a matter has previously

been assigned to a presiding officer, a copy of the brief shall be submitted to the presiding officer.

(b) Oral argument may be heard at the discretion of the Board or presiding officer.

§ 494a.10. Reports of compliance.

(a) When a person subject to the jurisdiction of the Board is required to do or perform an act by a Board order, permit or license provision, the person shall file, with the Clerk within 30 days following the date when the requirement becomes effective, a notice stating that the requirement has or has not been met or complied with, unless the Board specifies an alternate means to demonstrate compliance or proof of compliance.

(b) This section supersedes 1 Pa. Code § 35.251 (relating to reports of compliance).

§ 494a.11. Appeals.

(a) A party may appeal final orders of the Board in accordance with the act, in the form prescribed in the Pennsylvania Rules of Appellate Procedure (See 210 Pa. Code).

(b) The filing of an appeal will not stay enforcement of the decision or final order of the Board unless a stay is obtained from the court upon application in accordance with the Rules of Appellate Procedure, or the Board grants a stay prior to the filing of the appeal.

CHAPTER 495. (Reserved)

§§ 495.1—495.7. (Reserved).

CHAPTER 495a. DOCUMENTARY FILINGS

Sec.	
495a.1.	Form of documentary filings generally.
495a.2.	Form of documents.
495a.3.	Single pleading covering more than one matter.
495a.4.	Execution of documents.
495a.5.	Verification.
495a.6.	Number of copies.

§ 495a.1. Form of documentary filings generally.

(a) Pleadings or other documents shall be divided into numbered paragraphs.

(b) Copies of contracts, agreements, permits or other writings referred to in pleadings or other documents may be attached as exhibits. Copies of writings or orders already of record with the Board in the proceeding need not be attached.

(c) Pleadings or other documents filed with the Board in a proceeding must clearly show the docket number or similar identifying symbols, if any, and title of the proceeding before the Board. They must also show, in the title of a particular pleading or other document filed, the name of the person on whose behalf the filing is made. If more than one person is involved, a single name only need be included in the title.

(d) Pleadings or other documents must include an address and phone number where papers may be served in connection with the proceedings. Use of a fax number constitutes agreement to accept papers connected with the proceeding by fax.

(e) Notation of counsel's current Supreme Court identification number issued by the Court Administrator of Pennsylvania constitutes proof of the right to practice in this Commonwealth.

(f) Subsections (a)—(c) supersede 1 Pa. Code §§ 31.5 and 33.3 (relating to communications and filings generally; and incorporation by reference).

§ 495a.2. Form of documents.

(a) The method of receipt and transmission of information will be under a policy published by the Board.

(b) Subsection (a) supersedes 1 Pa. Code § 33.2 (relating to form).

§ 495a.3. Single pleading covering more than one matter.

(a) Except as otherwise provided under this chapter (relating to formal proceedings), a single pleading may be accepted for filing with respect to a particular transaction and one or more related transactions and shall be deemed to be a single filing for purposes of the computation of fees under Chapter 471a (relating to schedule of fees payable to the Board).

(b) If, upon review, the Board determines that the transactions are not closely related or otherwise properly joined, the Board will direct that the single pleading be refiled as two or more separate pleadings. Each pleading will be subject to a separate filing fee.

(c) Subsection (a) supersedes 1 Pa. Code § 33.4 (relating to single pleading or submittal covering more than one matter).

§ 495a.4. Execution of documents.

(a) *Signature.* Except as may be otherwise ordered or requested by the Board, the original and all copies of a pleading, or other documents shall be signed in ink by the party in interest, or by his attorney, as required by subsection (b), and show the office and post office address of the party or attorney.

(b) *Subscription.*

(1) A pleading or other document filed with the Board shall be subscribed by one of the following:

(i) The persons filing the documents.

(ii) An officer if it is a corporation, trust, association or other organized group.

(iii) An officer or authorized employee thereof if it is another agency, a political subdivision, or other governmental authority, agency or instrumentality.

(iv) An attorney authorized to subscribe on behalf of the client.

(2) A document filed by a corporation, trust, association or other organized group, may be required to be supplemented by appropriate evidence of the authority of the officer or attorney subscribing the documents.

(c) *Effect.*

(1) The signature of the person subscribing a document filed with the Board constitutes a certificate by the individual that:

(i) The person has read the document being subscribed and filed, and knows the contents thereof.

(ii) The document has been subscribed and executed in the capacity specified upon the document with full power and authority to do so, if executed in a representative capacity.

(iii) The document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, to the best of the person's knowledge, information and belief formed after reasonable inquiry.

(iv) The document is not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a document is signed in violation of this subsection, the Board, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include striking the document, dismissal of the proceeding or the imposition of civil penalties under 4 Pa.C.S. § 1518 (relating to prohibited acts; penalties).

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code § 33.11 (relating to execution).

§ 495a.5. Verification.

(a) Pleadings or other documents containing an averment of fact not appearing of record in the action or containing a denial of fact shall be personally verified by a party thereto or by an authorized officer of the party if a corporation or association. Verification means a signed, written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). If verification is required, notarization is not necessary.

(b) The verification form should comply substantially with the following:

VERIFICATION

I, _____, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief). I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: _____

(Signature)

(c) When an affidavit is used, the form should comply substantially with the following:

AFFIDAVIT

I, _____ (Affiant) being duly sworn (affirmed) according to law, depose and say that (I am authorized to make this affidavit on behalf of _____ corporation, being the holder of the office of _____ with that corporation,) and that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief).

(Signature of affiant)

Sworn and subscribed before me this _____ day of _____, 20_____.

(Signature of official administering oath)

(d) An individual who executes a pleading or other document knowing that it contains a false statement and who causes it to be filed with the Board shall be subject to prosecution of a misdemeanor of the second degree in violation of 18 Pa.C.S. § 4904(a).

(e) Subsections (a)—(d) supersede 1 Pa. Code § 33.12 (relating to verification).

§ 495a.6. Number of copies.

(a) An original and three copies of pleadings or documents other than correspondence shall be furnished to the Board at the time of filing, except as may be otherwise ordered or requested by the Board.

(b) In the case of complaints or petitions, when more than one respondent is named, an additional copy of the complaint or petition shall be filed for each additional respondent.

(c) Subsections (a)—(b) supersede 1 Pa. Code § 33.15 (relating to number of copies).

CHAPTER 497. (Reserved)

§§ 497.1—497.5. (Reserved).

CHAPTER 497a. TIME

Sec.	
497a.1.	Date of filing.
497a.2.	Computation of time.
497a.3.	Issuance of Board orders.
497a.4.	Effective dates of Board orders.
497a.5.	Extensions of time and continuances.

§ 497a.1. Date of filing.

(a) Whenever a pleading or other document is required or permitted to be filed under this part or by statute, it will be deemed to be filed on one of the following dates:

(1) On the date actually received in the Office of the Clerk.

(2) On the date deposited with an overnight express package delivery service as shown on the express delivery receipt attached to or included within the envelope containing the document.

(3) On the date deposited in the United States mail as shown by the United States Postal Service stamp on the envelope or on a United States Postal Service Form 3817 certificate of mailing. A mailing envelope stamped by an in-house postage meter does not constitute proof of the date of mailing.

(b) Failure to include a legible delivery receipt with the document may result in an untimely filing.

(c) Except as otherwise permitted by the Board, a document transmitted by facsimile or electronically to the Board will not be accepted for filing within the meaning of this section.

(d) Subsections (a)—(c) supersede 1 Pa. Code § 31.11 (relating to timely filing required).

§ 497a.2. Computation of time.

(a) In computing a period of time prescribed or allowed by the act or this part, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is included, unless it is Saturday, Sunday or a legal holiday in this Commonwealth, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or holiday. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation.

(b) In computing a period of time prescribed or allowed by the act or this part which is measured by counting a specified number of days backward from a scheduled future act, event or default, the day of the scheduled future act, event or default is not included. The day on which the prescribed or allowed action is to occur shall be included, unless it is a Saturday, Sunday or a legal holiday in this Commonwealth, in which event the day of the prescribed or allowed action shall run until the next preceding day which is neither a Saturday, Sunday or holiday. A part-day holiday shall be considered as a holiday. Intermediate Saturdays, Sundays and legal holidays are included in the computation.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.12 (relating to computation of time).

§ 497a.3. Issuance of Board orders.

(a) In computing a period of time involving the date of the issuance of an order by the Board, the day of issuance of an order will be the date the Clerk enters the order. An order will not be made public prior to its entry except when, in the Board's judgment, the public interest so requires. The date of entry of an order may or may not be the day of its adoption by the Board. The Clerk will clearly indicate on each order the date of its adoption by the Board and the date of its entry.

(b) The date of entry of an order which is subject to review by the Supreme Court of Pennsylvania is governed by 2 Pa.C.S. Chapter 7, Subchapter A (relating to judicial review of Commonwealth agency action). The date of issuance of an order shall be deemed to be the date of entry for the purposes of computing the time for appeal under an applicable statute relating to judicial review of Board action.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 31.13 (relating to issuance of agency orders).

§ 497a.4. Effective dates of Board orders.

(a) An order of the Board promulgating regulations will be effective upon publication in the *Pennsylvania Bulletin* unless otherwise specially provided in the order.

(b) Except as provided in subsection (a), an order of the Board will be effective as of the date of entry unless otherwise specially provided in the order.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 31.14 (relating to effective dates of agency orders).

§ 497a.5. Extensions of time and continuances.

(a) Extensions of time will be governed by the following:

(1) Whenever under this part or by order of the Board, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may be extended by the Board, for good cause, upon a motion made before expiration of the period originally prescribed or as previously extended. Upon a motion made after the expiration of the specified period, the time period within which the act may be permitted to be done may be extended when reasonable grounds are shown for the failure to act.

(2) Requests for an extension of time in which to file briefs shall be filed at least 5 days before the time fixed for filing the briefs unless the Board or presiding officer, for good cause shown allows a shorter time.

(3) Requests for a continuance of a hearing shall be made orally or in writing to the presiding officer, stating the facts on which the request rests. Requests for continuance will be considered only for good cause shown.

(b) Subsection (a) supersedes 1 Pa. Code § 31.15 (relating to extensions of time).

CHAPTER 499. (Reserved)

§§ 499.1—499.7. (Reserved).

CHAPTER 499a. REPRESENTATION BEFORE THE BOARD

Sec.	
499a.1.	Appearance in person.
499a.2.	Appearance by attorney.
499a.3.	Other representation prohibited at hearings.
499a.4.	Notice of appearance or withdrawal.
499a.5.	Form of notice of appearance.
499a.6.	Contemptuous conduct.
499a.7.	Suspension and disbarment.

§ 499a.1. Appearance in person.

(a) An individual who is a party in a proceeding before the Board may represent himself before the Board.

(b) A party, other than an individual appearing on his own behalf, in an adversary proceeding before the Board shall be represented by an attorney authorized to appear before the Board in accordance with § 499a.2 (relating to appearance by attorney).

(c) This section supersedes 1 Pa. Code § 31.21 (relating to appearance in person).

§ 499a.2. Appearance by attorney.

(a) A party in a proceeding before the Board who elects to be represented by an attorney in the proceeding, or who is required by § 499a.1 (relating to appearance in person) to be represented by an attorney in the proceeding, shall be represented by:

(1) An attorney at law admitted to practice before the Pennsylvania Supreme Court.

(2) An attorney admitted to practice before the highest court of a jurisdiction other than this Commonwealth which permits attorneys licensed in this Commonwealth to practice before its courts and agencies.

(3) An attorney authorized in accordance with subsection (b) to appear in connection with the proceeding.

(b) An attorney admitted to practice before the highest court of a jurisdiction other than this Commonwealth which does not permit attorneys licensed in this Commonwealth to appear before its courts and agencies may, at the discretion of the Board, be authorized to appear in connection with a particular proceeding. The Board will determine whether to grant the authorization upon the filing of a motion with the Clerk by an attorney admitted to practice law before the Pennsylvania Supreme Court and in good standing therewith, which contains the information required to satisfy the written notice provision of Pa.B.A.R. 301 (relating to admission pro hac vice), and provided that the attorney filing the motion shall be and remain the attorney of record in the proceeding and further provided that both the attorney of record and the attorney admitted under this subsection shall both sign all documents submitted or filed in connection with the proceeding.

(c) Subsection (a) supersedes 1 Pa. Code § 31.22 (relating to appearance by attorney).

§ 499a.3. Other representation prohibited at hearings.

(a) Participants, individuals, partnerships, associations, corporations or governmental entities may not be represented at a hearing before the Board except:

(1) As stated in §§ 499a.1 and 499a.2 (relating to appearance in person; and appearance by attorney).

(2) As otherwise permitted by the Board in a specific case.

(b) Subsection (a) supersedes 1 Pa. Code § 31.23 (relating to other representation prohibited at hearings).

§ 499a.4. Notice of appearance or withdrawal.

(a) An individual appearing without representation before the Board shall file with the Office of the Clerk an address for service of a notice or other written communication. A change in address which occurs during the course of the proceeding shall be reported to the Office of the Clerk within 3 business days.

(b) An attorney whose name and address appear in a representative capacity on an initial pleading filed with the Office of the Clerk shall be considered to have entered an appearance in that proceeding. An attorney who enters the matter at a later stage of the proceeding shall file with the Office of the Clerk a written notice of the appearance as required under § 499a.5 (relating to form of notice of appearance). The notice shall be served on the other parties in the proceeding. A change in address which occurs during the course of the proceeding shall be reported to the Office of the Clerk within 3 business days.

(c) A person appearing or practicing before the Board in a representative capacity may be required to file a power of attorney with the Board showing his authority to act in that capacity.

(d) Except as provided in subsection (e), an attorney may not withdraw his appearance without leave of the Board or presiding officer. An attorney may request leave to withdraw his appearance through petition to the Board or presiding officer. Copies of the petition shall be served on all parties. The attorney requesting withdrawal shall immediately notify the party previously represented by ordinary mail of an order granting leave to withdraw.

(e) An attorney may withdraw his appearance without leave of the Board or presiding officer if one of the following occurs:

(1) Another attorney has previously entered his appearance on behalf of the party.

(2) Another attorney is simultaneously entering an appearance on behalf of the party, and the change of attorneys does not delay any stage of the litigation.

(f) An attorney who wishes to withdraw an appearance under subsection (d) shall file with the Office of the Clerk. The notice shall be served on the other parties.

(g) Subsections (a) and (d) supersede 1 Pa. Code § 31.24 (relating to notice of appearance).

§ 499a.5. Form of notice of appearance.

(a) The form of notice of appearance is as follows:

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA GAMING
CONTROL BOARD

In the Matter of:

[File, Docket or Other Identifying No.:]

NOTICE OF APPEARANCE

Please enter my appearance in the above designated matter on behalf of _____.

I am authorized to accept service on behalf of said participant in this matter.

[CHECK ONE]

On the basis of this notice, I request a copy of each document hereafter issued by the Board in this matter.

I am already receiving or have access to a copy of each document issued by the Board in this matter and do not on the basis of this notice require an additional copy.

Signature

Attorney Identification Number

Name (Printed)

P. O. address

City, state and zip code

Telephone number (including area code)

Fax Number (including area code)

Email address

(b) Subsection (a) supersedes 1 Pa. Code § 31.25 (relating to form of notice of appearance).

§ 499a.6. Contemptuous conduct.

(a) Contemptuous conduct at a hearing before the Board will be grounds for exclusion from the hearing and for summary suspension without a hearing for the duration of the hearing.

(b) Subsection (a) is identical to 1 Pa. Code § 31.27 (relating to contemptuous conduct).

§ 499a.7. Suspension and disbarment.

(a) The Board may deny, temporarily or permanently, the privilege of appearing or practicing before the Board to a person who is found by the Board, after notice and opportunity for hearing in the matter, to have done one or more of the following:

- (1) Lacked the requisite qualifications to represent others.
- (2) Engaged in unethical, contemptuous or improper conduct before the Board.
- (3) Repeatedly failed to follow Board directives.

(b) For the purpose of subsection (a), practicing before the Board includes the following:

- (1) Transacting business with the Board.
- (2) The preparation of a statement, opinion or other paper by an attorney, accountant, engineer or other expert, filed with the Board in a pleading or other document with the consent of the attorney, accountant, engineer or other expert.
- (3) Appearances at a hearing before the Board.

(c) Subsections (a) and (b) are identical to 1 Pa. Code § 31.28 (relating to suspension and disbarment).

[Pa.B. Doc. No. 07-1982. Filed for public inspection October 26, 2007, 9:00 a.m.]

**PENNSYLVANIA GAMING CONTROL BOARD
[58 PA. CODE CHS. 511, 511a, 513 AND 513a]**

Persons Required to be Excluded; Underage Gaming

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1207(8), 1514, 1515 and 1518, rescinds Chapters 511 and 513 and adds Chapters 511a and 513a (relating to persons required to be excluded; and underage gaming) to read as set forth in Annex A.

Purpose of the Final-Form Rulemaking

Under 4 Pa.C.S. § 1203 (relating to temporary regulations), the Board initially adopted temporary regulations in Chapter 511 at 36 Pa.B. 2905 (June 10, 2006) and Chapter 513 at 36 Pa.B. 3441 (July 1, 2006). Under 4 Pa.C.S. § 1203(b), the temporary regulations expire on July 5, 2007.

The Board is adopting Chapters 511a and 513a to replace the Board's temporary regulations with the permanent regulations.

Explanation of Chapters 511a and 513a

Section 511a.1 (relating to definitions) defines the terms used in this chapter.

Section 511a.2 (relating to maintenance and distribution of the exclusion list) states that the Board will maintain a list of excluded persons, specifies that the exclusion list will be available to the public, both at the Board's offices and on the Board's website, and lists the information the Board will provide to slot machine licensees and the public about individuals on the exclusion list.

Sections 511a.3, 511a.4 and 511a.5 (relating to criteria for exclusion; duties of the Bureau; and placement on the exclusion list) list the criteria the Board will use when determining whether or not an individual should be placed on the exclusion list; the duties of the Bureau of Investigations and Enforcement relating to the exclusion process; the process to be used to place a person on the exclusion list; and the consequences of being placed on the exclusion list including remission to the Board of any winnings by excluded persons.

Sections 511a.6 and 511a.7 (relating to demand for hearing on the placement of a person on the exclusion list; and Board review) address a person's right to a hearing if they are placed on the exclusion list; the conduct of the hearings; and the Board's review of placements.

Section 511a.8 (relating to duties of slot machine licensees) requires slot machine licensees to develop procedures to prevent violations of this chapter; to exclude or eject individuals who are on, or meet the criteria to be on, the exclusion list; to notify the Board if an excluded person is found in or attempts to enter a licensed facility; and to notify the Board about any individual the slot machine licensee believes meets the criteria for exclusion

Finally, § 511a.9 (relating to petition to remove name from the exclusion list) outlines the petition process that an individual who is on the exclusion list can use to request removal from the exclusion list.

Section 513a.1 (relating to definitions) defines the terms used in this chapter.

Section 513a.2 (relating to exclusion requirements) specifies who is excluded from the gaming floor or from engaging in gaming activities based on age and that any winnings by underage individuals will be remitted to the Board.

Section 513a.3 (relating to responsibilities of licensees, permittees, registrants and certification holders) addresses the responsibilities of licensees, permittees, registrants and certification holders related to underage gaming.

Section 513a.4 (relating to signage requirements) mandates posting signs that state that individuals under 21 can not engage in gaming activities, will be removed if found gaming, and may be subject to arrest for trespass.

Section 513a.5 (relating to enforcement) specifies the defenses that may not be used in enforcement actions related to underage gaming.

Comment and Response Summary

Notice of proposed rulemaking was published at 37 Pa.B. 1490 (April 7, 2007).

The Board did not receive any public comments during the public comment period. On May 22, 2007, Representatives Harold James and Paul Clymer, Chairpersons of the House Gaming Oversight Committee, and Representative James individually, submitted comments on the proposed rulemaking. On June 6, 2007, comments on the proposed rulemaking were received from the Independent Regulatory Review Commission (IRRC).

The Board adopted a final-form version of this rulemaking on June 21, 2007. Subsequent to that adoption, comments were filed on the final-form version of this rulemaking by Down's Racing, LP (Downs) and Greenwood Gaming and Entertainment, Inc. (Greenwood). Additionally, comments were received from IRRC and Representatives Harold James and Paul Clymer, the Chairpersons of the House Gaming Oversight Committee on the final-form version of Chapters 501a and 503a (relating to compulsive and problem gambling requirements; and self-exclusion) which were adopted by the Board on June 5, 2007. Because these regulations contain similar provisions to those that were the subject of IRRC's and the House Chairpersons's concerns with Chapters 501a and 503a, the Board withdrew both of these final-form rulemakings on July 16, 2007, to consider these additional comments.

Comments were reviewed by the Board and are discussed in detail as follows.

In § 511a.1, Representatives James and Clymer suggested that the definition of "excluded person" be expanded to state that it does not include self-excluded persons.

The Board elected not to revise this definition because self-excluded persons are defined in and governed by Chapter 503a. Therefore, additional clarification is not needed.

In § 511a.2, IRRC noted that the preamble indicated that the exclusion list will be available on the Board's website but the regulation does not indicate that the exclusion list will be available on the Board's website. IRRC also asked for an explanation of the need to make the excluded persons list public.

To address IRRC's first concern, the Board has added "posted on the Board's website" to subsection (b). In response to IRRC's second concern, the information concerning who is on the excluded person list is being made public because it may be useful to State and local law enforcement agencies and regulatory agencies in other jurisdictions.

Also in § 511a.2, Representatives James and Clymer suggested that all of the information in subsection (c) not be included on the list of excluded persons made available to the public to avoid the potential for identity theft.

The Board agrees with this suggestion and has added a new subsection (d) which contains the identifying information that will be included on the excluded persons list that will be made available to the public.

In § 511a.3, Representatives James and Clymer expressed concern that subsection (a)(4)(v) could be used to put individuals who engage in legitimate, constitutionally

protected expression, such as union organizers or gaming opponents, on the excluded person list.

The Board never intended that this provision be used to exclude individuals who engage in legal activities. Instead, it is targeted at individuals whose actions could threaten the integrity of gaming operations. To clarify this point, this subsection has been revised to only apply to disruptions which occur "within the facility."

In § 511a.3, Representative James recommended deletion of subsection (a)(4)(vii) because of due process concerns.

The Board has elected to retain this provision. A person who has been charged or is under indictment for a crime related to gaming who is placed on the excluded person list is entitled to a hearing under § 511a.6 and may appeal placement on the excluded person list to Commonwealth Court. Therefore, the Board believes the person's right to due process is protected. Additionally, this is only a factor that "may" result in an individual being placed on the exclusion list; the Board will use its discretion to determine if the offense is serious enough to warrant placement on the exclusion list.

IRRC also had a number of concerns with § 511a.3. First, IRRC asked why the Board used the phrases "inimical to the interest of the Commonwealth or a slot machine licensee, or both" and "inimical to the interest of the Commonwealth or licensed gaming therein" rather than just one phrase throughout. Next, IRRC asked how the Board would use its discretion to include or not include an individual who met one or more of the criteria in § 511a.3 on the excluded person list. IRRC voiced the same concern about § 511a.5(a). IRRC also requested the Board add language to clarify who is an "associate" in subsection (a)(2), what constitutes "moral turpitude" in subsection (a)(3) and if the revocation language in subsection (a)(4)(iii) applies only to permits, licenses and other approvals issued by the Board. IRRC also suggested that the phrase "notorious or unsavory" in subsection (a)(4)(ix) be deleted. Finally, IRRC suggested that subsections (b) and (c), which both address criteria for determining inimicality, be combined.

In response to IRRC's first concern, the Board has revised this section to use the phrase "inimical to the interest of the Commonwealth or of licensed gaming therein, or both" which is the phrase used in 4 Pa.C.S. § 1514(a) (relating to regulation requiring exclusion of certain persons) of the act.

In response to IRRC's second concern, the Board does not intend to automatically add individuals to the excluded persons list if they meet one of the criteria in § 511a.3. Having hundreds of individuals on the list would make it difficult for slot machine licensees to insure that individuals on the list are excluded from their facilities. Each case will be evaluated individually to determine how much of a threat an individual could pose to the integrity of gaming in this Commonwealth. For example, a cheat who lives or who has been known to enter or try to enter gaming facilities in adjacent states would be a likely person to be included on the Commonwealth's list. However, a cheat who only has been identified at gaming facilities in western states might not be put on the Commonwealth's list.

To address IRRC's clarity suggestions, the Board has replaced the phrase "associate of" with the phrase "individual with a known relationship or connection with." To clarify subsection (a)(4)(iii) the word "Board" has been inserted before "permits."

The Board has not added a definition of “moral turpitude” in subsection (a)(3) because it is a well-established term that is used, but not defined, in many statutes and regulations.

The Board has not elected to delete the phrase “notorious or unsavory” in subsection (a)(4)(ix). These characteristics accurately describe the type of reputation that could be used as the basis for adding a person to the exclusion list.

The Board has also chosen not to combine subsections (b) and (c). Both subsections address what may be considered to be inimical, but for somewhat different purposes. Subsection (b) is intended to provide a broad description of criteria the Board will look at when examining a person’s character and background while subsection (c) lists more specific criteria which might be used in a petition for or order of exclusion.

In § 511a.4, Representatives James and Clymer noted that the citation to “section 1515 of the act” included in subsection (b) may be incorrect because “section 1515 of the act” applies to the rights of licensed gaming entities to exclude individuals, not the Board. The same comment also applies to § 511a.6(c).

The Board agrees and has deleted the references to “section 1515 of the act” in §§ 511a.4(b) and 511a.6(c).

In § 511a.5, Representatives James and Clymer and IRRC questioned the Board’s authority for the forfeiture of winnings incurred by an excluded person under subsection (c). The same comment also applies to § 511a.8(f)(1).

While 4 Pa.C.S. § 1514 (relating to regulation requiring exclusion of certain persons) does not include language similar to what appears in 4 Pa.C.S. § 1516(a) (relating to list of persons self excluded from gaming activities) pertaining to the collection of winnings, 4 Pa.C.S. § 1202(b)(30) gives the Board broad authority to adopt regulations that are necessary for the administration and enforcement of the act. Allowing excluded persons to keep any winnings would provide an incentive for cheats or other excluded persons to try to gain access to licensed facilities which is contrary to the purpose and intent of 4 Pa.C.S. § 1514.

In § 511a.5, Representatives James and Clymer and IRRC also questioned, in subsections (d) and (e), how forfeited winnings could be used since they are not a statutorily permitted deduction from gross terminal revenue.

Winnings are cash or cash equivalents that are paid out to a patron and therefore not included in the definition of gross terminal revenue. If the patron is on the excluded person list, the winnings are forfeited by the individual, not the licensed gaming entity. Because these winnings are not part of gross terminal revenue, the allocation of these forfeited funds does not fall under 4 Pa.C.S. Chapter 14 (relating to revenues).

In § 511a.8(d)(2), Downs and Greenwood questioned why written notification to the Director of Office of Compulsive and Problem Gambling (OCPG) is required. They believe it is not necessary because of the notice given to the onsite Bureau of Investigations and Enforcement (BIE) agents and Pennsylvania State Police.

The Director of OCPG, who is not part of BIE, needs this information because they are responsible for evaluating compliance with a licensed facility’s compulsive gaming plan, one component of which is the procedures for detecting and removing excluded persons. Furthermore, most licensed facilities have some form of an incident

report which they would complete for their records; submitting a copy of that report would meet this requirement. Therefore, the Board does not believe that this requirement imposes an unreasonable reporting burden on slot machine licensees.

In § 511a.8, IRRC had two areas of concern. In subsection (d), IRRC recommended that the “procedures set forth by the Board” be spelled out in the regulation. In proposed subsection (e), IRRC questioned the authority for this subsection and how this provision is consistent with the legislative intent of the act.

The Board has deleted the language in subsection (d) pertaining to “procedures set forth by the Board” and added language requiring immediate notice to the BIE agents at the facility and written notice to the Director of the Office of Compulsive and Problem Gambling within 24 hours. The means of notice to the BIE agents at the facility has not been specified to give facilities the flexibility to use the fastest means available, which may be through direct verbal communication or by telephone.

The Board had proposed the provisions in subsection (e) under its general authority under 4 Pa.C.S. § 1202(b)(30). These provisions were intended to discouraging frivolous lawsuits against both the Board and slot machine licensees but in no way relieve a slot machine licensee of its responsibility to comply with the requirements of this chapter. However, the Board recognizes that the act does not contain language specifically authorizing these provisions and for this reason, the Board has deleted proposed § 511a.8(e).

In § 511a.9, Representatives James and Clymer questioned if subsection (g)(2) could create a conflict with a court order or terms of probation.

If a court excludes an individual from licensed facilities as part of a court order or as a condition of parole, being on the Board’s excluded person list would subject the individual to additional sanctions (forfeiture of winnings) but would not conflict with the terms of the court order. Satisfaction of the court order or successful completion of the period of parole would not, however, automatically result in removal from the Board’s excluded person list. It would just be one of the factors the Board would consider when it reviews a petition for early consideration of a petition for removal from the excluded persons list.

In § 513a.2, Representatives James and Clymer and IRRC questioned the Board’s authority for the forfeiture of winnings incurred by an individual under 21 years of age under subsections (d)—(f). The same comment also applies to § 513a.3(a) and (c).

While 4 Pa.C.S. § 1207(8) (relating to regulatory authority of board) does not include language similar to what appears in 4 Pa.C.S. § 1516(a) pertaining to the collection of winnings, 4 Pa.C.S. § 1202(b)(30) gives the Board broad authority to adopt regulations that are necessary for the administration and enforcement of the act. Allowing an individual under 21 years of age to keep any winnings would provide an incentive for underage persons to engage in gaming activities at licensed facilities which is contrary to the purpose and intent of 4 Pa.C.S. § 1207(8).

In § 513a.3, IRRC noted that the language pertaining to the use of winnings remitted to the Board in subsection (c) differs from the language in § 513a.2(e).

In § 513a.3(c), the phrase “and deposited into the Compulsive and Problem Gambling Treatment Fund” has been replaced with “to support compulsive and problem

gambling programs of the Board” to match the language used in §§ 513a.2(e) and 511a.5(d).

In § 513a.4, IRRC asked if different text would be allowed on signs and how facilities would know what text is acceptable.

The Board will give facilities some flexibility on the exact wording to be used on their signs. The review of that language has been addressed by adding language to this section which requires the text that is to be used to be submitted as part of the procedures required under § 513a.3(b).

Additional Revisions

In addition to the revisions discussed previously, the Board has made several additional revisions.

A definition for “OCPG,” has been added to Chapters 511a and 513a.

In § 511.2(c), a new paragraph (8) was added which will list the reason for the person’s placement on the self-exclusion list. This information will help slot machine licensees be aware of the type of threat an individual who is on the excluded person list may pose to a licensed facility.

In §§ 511a.5(d), 513a.2(e) and 513a.3(c), the phrase “of the Board” has been added to the end of these sections to make it clear that any winnings remitted to the Board will be used to support the Board’s compulsive and problem gambling programs.

In § 511a.8, a new subsection (a) has been added which requires slot machine licensees to establish procedures that are designed to prevent violations of this chapter and submit a copy of the procedures to the Director of OCPG for approval 30 days prior to initiation of gaming activities at the licensed facility. This insures that adequate procedures will be in place prior to the commencement of gaming at all licensed facilities.

Also in § 511a.8, the words “the appropriate” were inserted before “employees” in subsection (b) to clarify that the exclusion list is only to be distributed to employees who would be responsible identifying or removing excluded persons.

In § 513a.3(b), more detail has been added to describe the process for reviewing the procedures slot machine licensees must submit for approval relating to their procedures to prevent underage gaming.

Finally, minor wording changes have been made throughout the chapter to improve clarity.

Affected Parties

This final-form rulemaking imposes requirements on slot machine licensees, persons who are placed on the excluded persons list and individuals who are not old enough to engage in gaming (under 21 years of age) or are too young to be on the gaming floor (under 18 years of age).

Fiscal Impact

Commonwealth

This final-form rulemaking will impose costs on the Board related to placing individuals on the exclusion list, maintenance and distribution of the excluded persons list and enforcement of the provisions related to exclusion and underage gaming.

Political Subdivisions

This final-form rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

Private Sector

Slot machine licensees will experience costs related to training employees, signage requirements and compliance with the requirements of the exclusion and underage gaming provisions.

General Public

Individuals seeking to dispute placement on or seeking removal from the exclusion list will experience some minor costs associated with the hearing and petition processes.

Paperwork requirements

This final-form rulemaking requires slot machine licensees to maintain, update and disseminate information on excluded persons. A slot machine licensee is also required to submit the names of any individuals it believes meet the criteria for placement on the excluded persons list.

Individuals demanding a hearing will have to file a response to the notice served by the clerk. Individuals seeking to be removed from the exclusion list will have to file a petition specifying the grounds for removal.

Effective Date

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

Contact Person

The contact person for questions about this final-form rulemaking is Richard Sandusky, Director of Regulatory Review, (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 28, 2007, the Board submitted a copy of the proposed rulemaking, published at 37 Pa.B. 1490 and a copy of the Regulatory Analysis Form to IRRC and the Chairpersons of the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development.

Under section 5(c) of the Regulatory Review Act (71 P. S. § 745.5(c)), 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 Board has considered all comments received 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 September 19, 2007, the final-form rulemaking was deemed approved by the House Gaming Oversight Committee and the Senate Committee on Community, Economic and Recreational Development. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met on September 20, 2007, and approved the final-form rulemaking.

Findings

The Board finds that:

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

(2) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the act.

Order

The Board, acting under the act, orders that:

(a) The regulations of the Board, 58 Pa. Code Part VII, are amended by deleting §§ 511.1—511.9 and 513.1—513.5 and by adding final regulations in §§ 511a.1—511a.9 and 513a.1—513a.5 to read as set forth in Annex A.

(b) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

MARY DIGIACOMO COLINS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 5447 (October 6, 2007).)

Fiscal Note: Fiscal Note 125-57 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart J. EXCLUSION OF PERSONS

CHAPTER 511. (Reserved)

§§ 511.1—511.9. (Reserved).

CHAPTER 511a. PERSONS REQUIRED TO BE EXCLUDED

- Sec.
- 511a.1. Definitions.
- 511a.2. Maintenance and distribution of the exclusion list.
- 511a.3. Criteria for exclusion.
- 511a.4. Duties of the Bureau.
- 511a.5. Placement on the exclusion list.
- 511a.6. Demand for hearing on the placement of a person on the exclusion list.
- 511a.7. Board review.
- 511a.8. Duties of slot machine licensees.
- 511a.9. Petition to remove name from the exclusion list.

§ 511a.1. Definitions.

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

Career or professional offender—A person, who for the purpose of economic gain, engages in activities that are deemed criminal violations under 18 Pa.C.S. (relating to crimes and offenses) or equivalent criminal violations in other jurisdictions, or engages in unlawful activities contained in 4 Pa.C.S. 1518(a) (relating to prohibited acts; penalties).

Cheat—

(i) To alter, without authorization, the elements of chance, method of selection or criteria which determine:

- (A) The result of a slot machine game.
- (B) The amount or frequency of payment in a slot machine game.
- (C) The value of a wagering instrument.
- (D) The value of a wagering credit.

(ii) The term does not include altering for required maintenance and repair.

(iii) The term includes an act in any jurisdiction that would constitute an offense under 4 Pa.C.S. 1518(a)(6) and (7).

Excluded person—A person who has been placed upon the exclusion list and who is required to be excluded or ejected from a licensed facility.

Exclusion list—A list of names of persons who are required to be excluded or ejected from a licensed facility.

OCPG—The Office of Compulsive and Problem Gambling.

§ 511a.2. Maintenance and distribution of the exclusion list.

(a) The Board will maintain a list of persons to be excluded or ejected from a licensed facility.

(b) The exclusion list will be open to public inspection at the Board's central office during normal business hours, posted on the Board's website (www.pgcb.state.pa.us) and will be distributed to every slot machine licensee within this Commonwealth, who shall acknowledge receipt thereof in writing or electronically.

(c) The following information will be provided to the slot machine licensees for each excluded person on the exclusion list:

- (1) The full name and all aliases the person is believed to have used.
- (2) A description of the person's physical appearance, including height, weight, type of build, color of hair and eyes and other physical characteristics which may assist in the identification of the person.
- (3) The person's date of birth.
- (4) The date the person was added to the list.
- (5) A recent photograph, if available.
- (6) The last known address of record.
- (7) Other identifying information available to the Board.
- (8) The reason for placement on the excluded persons list.

(d) The following information will be made available to the public for each excluded person on the exclusion list:

- (1) The full name and all aliases the person is believed to have used.
- (2) A description of the person's physical appearance, including height, weight, type of build, color of hair and eyes and any other physical characteristics which may assist in the identification of the person.
- (3) A recent photograph, if available.
- (4) Birth year.

§ 511a.3. Criteria for exclusion.

(a) The exclusion list may include a person who meets one or more of the following criteria:

- (1) A career or professional offender whose presence in a licensed facility would, in the opinion of the Board, be inimical to the interest of the Commonwealth or of licensed gaming therein, or both.
- (2) An individual with a known relationship or connection with a career or professional offender whose presence in a licensed facility would be inimical to the interest of the Commonwealth or of licensed gaming therein, or both.
- (3) A person who has been convicted of a criminal offense under the laws of any state, or of the United States, which is punishable by more than 1 year in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a

licensed facility would be inimical to the interest of the Commonwealth or of licensed gaming therein, or both.

(4) A person whose presence in a licensed facility would be inimical to the interest of the Commonwealth or of licensed gaming therein, or both, including:

- (i) Cheats.
- (ii) Persons whose gaming privileges have been suspended by the Board.
- (iii) Persons whose Board permits, licenses or other approvals have been revoked.
- (iv) Persons who pose a threat to the safety of the patrons or employees of a slot machine licensee.
- (v) Persons with a history of conduct involving the disruption of the gaming operations within a licensed facility.
- (vi) Persons subject to an order of a court of competent jurisdiction in this Commonwealth excluding those persons from licensed facilities.
- (vii) Persons with pending charges or indictments for a gaming or gambling crime or a crime related to the integrity of gaming operations in this Commonwealth or another jurisdiction.
- (viii) Persons who have been convicted of a gaming or gambling crime or crime related to the integrity of gaming operations in this Commonwealth or another jurisdiction.
- (ix) Persons who have performed an act or have a notorious or unsavory reputation that would adversely affect public confidence and trust in gaming, including, being identified with criminal activities in published reports of various Federal and State legislative and executive bodies that have inquired into criminal or organized criminal activities.

(b) For purposes of subsection (a), a person's presence may be considered "inimical to the interest of the Commonwealth or of licensed gaming therein, or both" if known attributes of the person's character and background meet one or more of the following criteria:

- (1) Are incompatible with the maintenance of public confidence and trust in the credibility, integrity and stability of the operation of a licensed facility.
- (2) May reasonably be expected to impair the public perception of, and confidence in, the strict regulatory process created by the act.
- (3) Create or enhance a risk of the fact or appearance of unsuitable, unfair or illegal practices, methods or activities in the conduct of gaming or in the business or financial arrangements incidental thereto.

(c) A finding of inimicality may be based upon the following:

- (1) The nature and notoriety of the character or background of the person.
- (2) The history and nature of the involvement of the person with licensed gaming in this Commonwealth or another jurisdiction, or with a particular slot machine licensee or licensees or an affiliate, intermediary, subsidiary or holding company thereof.
- (3) The nature and frequency of contacts or associations of the person with a slot machine licensee or licensees, or with employees or agents thereof.
- (4) Other factors reasonably related to the maintenance of public confidence in the efficacy of the regulatory

process and the integrity of gaming operations, the gaming industry and its employees.

(d) A person's race, color, creed, national origin or ancestry, or sex will not be a reason for placing the name of a person upon the exclusion list.

§ 511a.4. Duties of the Bureau.

(a) The Bureau will, on its own initiative, or upon referral by a law enforcement agency or a slot machine licensee investigate a person to determine whether the person meets the criteria for exclusion provided in 4 Pa.C.S. 1514 (relating to regulation requiring exclusion of certain persons) and § 511a.3 (relating to criteria for exclusion).

(b) If, upon completion of an investigation, the Bureau determines that an individual should be placed on the exclusion list, the Bureau will file a petition for exclusion with the Board, identifying the candidate and setting forth a factual basis for the petition. The petition must include information demonstrating that the individual satisfies the criteria for exclusion under section 1514 of the act or this chapter.

(c) When the Bureau files a complaint alleging a violation of 4 Pa.C.S. 1514(e) and § 511a.8(b)(2) (relating to duties of slot machine licensees) against a slot machine licensee, the Bureau will file simultaneously a petition to exclude the person alleged in the complaint to meet the criteria for exclusion under § 511a.3.

§ 511a.5. Placement on the exclusion list.

(a) A person may be placed on the exclusion list:

(1) Upon the filing of a petition for exclusion by the Bureau in accordance with the procedures under § 511a.4 (relating to duties of the Bureau).

(2) Upon receipt of an order from a court of competent jurisdiction within this Commonwealth, excluding the person from licensed facilities.

(b) The placement of a person on the exclusion list shall have the effect of requiring the exclusion or ejection of the excluded person from licensed facilities.

(c) An excluded person may not collect in any manner or in any proceeding any winnings or recover any losses arising as a result of any gaming activity for the entire period of time that the person is on the Board's exclusion list.

(d) Winnings incurred by an excluded person shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

(e) For the purposes of this section, any winnings issued to, found on or about, or redeemed by an excluded person shall be presumed to constitute winnings subject to remittance to the Board.

§ 511a.6. Demand for hearing on the placement of a person on the exclusion list.

(a) Upon placement of a person on the exclusion list, the Clerk will serve notice of the placement to the person by personal service or certified mail at the last known address of the person. When the placement is a result of a petition for exclusion filed by the Bureau, a copy of the petition will be included with the notice.

(b) Upon service of the notice by the Clerk, an excluded person shall have 30 days to demand a hearing before the Board. Failure to demand a hearing within 30 days after

service shall be deemed an admission of all matters and facts alleged in the Bureau's petition for exclusion.

(c) If a hearing is demanded by the excluded person, a hearing will be scheduled as provided in § 491a.8 (relating to hearings generally). At the hearing, the Bureau will have the affirmative obligation to demonstrate that the excluded person satisfies the criteria for exclusion in 4 Pa.C.S. 1514 (relating to regulation requiring exclusion of certain persons) or § 511a.3 (relating to criteria for exclusion). Unless the matter is heard directly by the Board, the presiding officer will prepare a recommendation as provided in § 494a.4 (relating to report or recommendation of the presiding officer) for consideration by the Board.

§ 511a.7. Board review.

After a hearing or consideration of a petition for exclusion filed by the Bureau when no hearing was requested, the Board will:

- (1) Issue a final order affirming the placement of the person on the exclusion list.
- (2) Issue a final order removing the person from the exclusion list.
- (3) Refer the matter to the presiding officer for further hearing.

§ 511a.8. Duties of slot machine licensees.

(a) Slot machine licensees shall establish procedures that are designed to prevent violations of this chapter and submit a copy of the procedures to the Director of OCPG 30 days prior to initiation of gaming activities at the licensed facility. A slot machine licensee will be notified in writing of any deficiencies in the plan and may submit revisions to the plan to the Director of OCPG. The slot machine licensee may not commence operations until the Director of OCPG approves its procedures. Amendments to these procedures must be submitted to and approved by the Director of OCPG prior to implementation.

(b) A slot machine licensee shall have the responsibility to distribute copies of the exclusion list to the appropriate employees. Additions, deletions or other updates to the list shall be distributed by a slot machine licensee to its employees within 2 business days of the slot machine licensee's receipt of the updates from the Board.

(c) A slot machine licensee shall exclude or eject the following persons from its licensed facility:

- (1) An excluded person.
- (2) A person known to the slot machine licensee to satisfy the criteria for exclusion in 4 Pa.C.S. 1514 (relating to regulation requiring exclusion of certain persons) and § 511a.3 (relating to criteria for exclusion).

(d) If an excluded person enters, attempts to enter, or is in a licensed facility and is recognized by employees of the slot machine licensee, the slot machine licensee shall:

- (1) Immediately notify the Bureau of Investigations and Enforcement (BIE) agents at the licensed facility.
- (2) Notify the Director of OCPG in writing within 24 hours.

(e) It shall be the continuing duty of a slot machine licensee to inform the Bureau, in writing, of the names of persons the slot machine licensee believes are appropriate for placement on the exclusion list or a person who has been excluded or ejected under subsection (c)(2) and the reason for placement on the exclusion list.

§ 511a.9. Petition to remove name from the exclusion list.

(a) An excluded person may file a petition with the Clerk to request a hearing for removal of his name from the exclusion list at any time after 5 years from the placement of his name on the exclusion list.

(b) The petition must be signed by the excluded person, contain supporting affidavits, and state the specific grounds believed by the petitioner to constitute good cause for removal from the exclusion list. Upon receipt of the petition, the Bureau may file an answer in accordance with § 493a.5 (relating to answers).

(c) The Board may decide the petition on the basis of the documents submitted by the excluded person and the Bureau. The Board may summarily deny the petition, may grant the petition, or direct that a hearing be held in accordance with § 511a.6 (relating to demand for hearing on the placement of a person on the exclusion list). The Board will grant the petition or direct that a hearing be held only upon a finding that there is new evidence, which is material and necessary, or that circumstances have changed since the placement of the excluded person on the exclusion list, and that there would be a reasonable likelihood that the Board would alter its previous decision.

(d) An excluded person who is barred from requesting a hearing concerning his removal from the exclusion list by the 5-year period of exclusion in subsection (a) may petition the Board for early consideration at any time. However, an excluded person may not, within the 5-year period of exclusion, file more than one petition for early consideration.

(e) A petition for early consideration must contain the information required by subsection (b). Upon receipt of the petition, the Bureau may file an answer in accordance with § 493a.5.

(f) The Board may decide the petition for early consideration on the basis of the documents submitted by the excluded person and the Bureau. The Board may summarily deny the petition or may grant the petition and direct that a hearing be held in accordance with § 511a.6.

(g) The Board will consider the following criteria when making its decision on a petition for early consideration:

- (1) Whether there are extraordinary facts and circumstances warranting early consideration of the excluded person's request for removal from the exclusion list.
- (2) If exclusion was ordered under § 511a.5(a)(2) (relating to placement on the exclusion list), whether the excluded person has completed the period of probation or otherwise satisfied the terms of the court-ordered exclusion.

CHAPTER 513. (Reserved)

§§ 513.1—513.5. (Reserved)

CHAPTER 513a. UNDERAGE GAMING

Sec.	
513a.1.	Definitions.
513a.2.	Exclusion requirements.
513a.3.	Responsibilities of licensees, permittees, registrants and certificationholders.
513a.4.	Signage requirements.
513a.5.	Enforcement.

§ 513a.1. Definitions.

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

Fully executed gaming transaction—An activity involving a slot machine or associated equipment which occurs on the gaming floor of a licensed facility and which results in an individual obtaining any money or thing of value from, or being owed any money or thing of value by, a slot machine licensee.

OCPG—The Office of Compulsive and Problem Gambling.

Winnings—Any money or thing of value received from, or owed by a slot machine licensee as a result of a fully executed gaming transaction.

§ 513a.2. Exclusion requirements.

(a) An individual under 18 years of age may not enter or be on the gaming floor of a licensed facility.

(b) An individual under 21 years of age, whether personally or through an agent, may not operate, use, play or place a wager on, a slot machine in a licensed facility.

(c) An individual under 21 years of age may not receive check cashing privileges, be rated as a player, or receive any complimentary service, item or discount as a result of, or in anticipation of, gaming activity.

(d) An individual under 21 years of age may not collect in any manner or in any proceeding, whether personally or through an agent, winnings or recover losses arising as a result of any gaming activity.

(e) Winnings incurred by an individual under 21 years of age shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

(f) For the purposes of this section, winnings issued to, found on or about or redeemed by an individual under 21 years of age shall be presumed to constitute winnings and be subject to remittance to the Board.

§ 513a.3. Responsibilities of licensees, permittees, registrants and certification holders.

(a) A person holding a license, permit, certification or registration issued by the Board is prohibited from permitting or enabling an individual to engage in conduct that violates § 513a.2(a), (b), (c) or (d) (relating to exclusion requirements).

(b) Slot machine licensees shall establish procedures that are designed to prevent violations of this chapter and submit a copy of the procedures to the Director of OCPG 30 days prior to initiation of gaming activities at the licensed facility. A slot machine licensee will be notified in writing of any deficiencies in the plan and may submit revisions to the plan to the Director of OCPG. The slot machine licensee may not commence operations until the Director of OCPG approves its procedures. Amendments to these procedures must be submitted to and approved by the Director of OCPG prior to implementation.

(c) A slot machine licensee may be subject to Board imposed administrative sanctions if a person engages in conduct that violates § 513a.2(a), (b), (c) or (d) at its licensed facility. Under § 513a.2(e), winnings obtained by a slot machine licensee from or held on account of a person under 21 years of age shall be remitted to the Board to support compulsive and problem gambling programs of the Board.

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

§ 513a.4. Signage requirements.

A slot machine licensee shall post signs that include a statement that is similar to the following: "It is unlawful for any person under 21 years of age to engage in any gaming activities. Individuals violating this prohibition will be removed and may be subject to arrest for criminal trespass under 18 Pa.C.S. § 3503 (relating to criminal trespass)." The complete text of the sign shall be submitted to and approved by the Director of OCPG as part of the procedures required under § 513a.3(b) (relating to responsibilities of licensees, permittees, registrants and certificateholders). The signs shall be prominently posted within 50 feet of each entrance and exit of the gaming floor.

§ 513a.5. Enforcement.

In a prosecution or other proceeding against a person for a violation of this chapter, it will not be a defense that the person believed an individual to be 21 years of age or older.

[Pa.B. Doc. No. 07-1983. Filed for public inspection October 26, 2007, 9:00 a.m.]

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 130f]

Odor Management Certification Program

The Department of Agriculture (Department), under the specific authority conferred by section 508 of the act of July 6, 2005 (P. L. 112, No. 38) known as Act 38 of 2005 (act) (3 Pa.C.S. § 508 (relating to nutrient management certification program and odor management certification program)), proposes regulations implementing the odor management certification program required by act. This proposed rulemaking pertains to duties and programs administered by the Department's Bureau of Plant Industry. Section 508(a) of the act, directs the Department to "... establish, in consultation with the commission, ... an odor management certification program for the purpose of certifying individuals who have demonstrated the competency necessary to develop odor management plans. The Department or its designee shall develop such written testing procedures, educational requirements and examinations as it deems appropriate to carry out its responsibilities under this section. The department shall by regulation establish such fees and terms and conditions of certification as it deems appropriate. The department shall establish individual, commercial and public certification categories, including a certification category for farmers to develop and certify nutrient management plans and odor management plans for their own agricultural operations."

The Department proposes to establish criteria through regulations which carry out the edict of the act.

Background

The act requires the Department to promulgate regulations establishing certification categories and criteria. In addition, section 508(d) of the act requires a person to satisfy the applicable requirements of the regulations prior to certifying an odor management plan or plan amendment. These regulations are therefore necessary to assure compliance with the edict of the act and to allow concentrated animal operations, concentrated animal feeding operations and volunteers to comply with the odor management plan requirements set forth at section 509 of the act.

The major features and amendments to the proposed rulemaking are summarized as follows:

Summary of Major Features

Section 130f.1 (relating to scope).

This section sets forth the scope of the regulations. This section synthesizes the authority and duty set forth in section 508 of the act.

Section 130f.2. Definitions.

Definitions necessary to understand the provisions in the regulations are defined in this section. The definitions are based on definitions in the act, 7 Pa. Code Chapter 130b and 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management).

Section 130f.3. Fees.

This section establishes the certification and examination fees for each category of certification, as required by

section 508(a) of the act. The fees are based on the anticipated costs associated with testing and administering each category of certification.

Section 130f.4. Certification authority.

The language of this section delineates the authority associated with each category of certification. It establishes what types of plans a person certified in a particular category can write or review and approve, or both.

Section 130f.11. Determination of competence.

This section sets forth the provisional training, examination and final certification requirements for commercial and public odor management specialists. In addition, it details how the Department will react to and change requirements when future advances in the field of odor management occur. Finally, it establishes the criteria which must be met in order for: (1) a fully certified public odor management specialist to attain a commercial odor management specialist certificate; (2) a fully certified commercial odor management specialist to attain a public odor management specialist certificate; and (3) a fully certified nutrient management specialist to attain a commercial or public odor management specialist certificate.

Section 130f.12. Final certification.

This section details the eligibility criteria and application process for final certification as a commercial or public odor management specialist and sets forth the time period of filing a final certification application. In addition, it establishes the time period for which final certification is valid.

Section 130f.21. Determination of competence.

This section establishes the competency requirements for individual odor management specialists. Individual odor management specialists are exempt from the plan preparation requirements that are mandatory for commercial and some public odor management specialists. However, the requirements for an individual odor management specialist certification include an orientation training course and a competency evaluation consisting of the same criteria as the provisional certification training for a commercial or public odor management specialist. The competency evaluation for an individual odor management specialist will be developed or approved by the Department and administered by the Department or its designee. The evaluation will require knowledge of the same areas covered on the required examination for commercial and public odor management specialists.

Section 130f.22. Final certification.

These provisions delineate the application procedures and time period for filing an application for final certification as an individual odor management specialist with the Department, as well as, the time period for which a certificate is valid.

Section 130f.31. Recertification.

This section sets forth the recertification process for commercial and public odor management specialists and for individual odor management specialists. At 3 year intervals, odor management specialists shall certify to the Department, through written documentation, that they have received the required number of continuing education training credits in the appropriate areas of training. Commercial and public odor management specialists must receive six continuing education training credits and

individual odor management specialists must receive three continuing education training credits to maintain their certification. Credits accrue at the rate of one credit per hour of course work. In addition, this section sets forth the application process and standards for approval of entities that want to sponsor recertification training courses. Finally, this section addresses the procedure for certification if an odor management specialist allows his certification to lapse.

Section 130f.41. Denial, suspension and revocation of certificates.

The provisions in this section set forth the reasons, as delineated in the act, that the Department may deny, suspend or revoke an odor management specialist's certification. In addition, it provides the process (written notice, which must include the reasons for the Department's action) that must be utilized by the Department when denying, suspending or revoking odor management certification and provides for appeal rights.

Fiscal Impact

Commonwealth

The proposed regulations will not impose any appreciable additional fiscal impacts upon the Commonwealth. The proposed regulations will require the Department to administer another certification training and recertification program and monitor and take appropriate State action when members of the regulated community are not complying with the statutory and regulatory mandates. The cost of administering the mandates of the act and these proposed regulations will be covered by general government operating funds annually appropriated to the Department and augmented with the certification and testing fees set forth in the proposed regulations.

Political Subdivisions

The proposed regulations will impose additional work and costs and have a fiscal impact upon county conservation districts that agree to certify public odor management specialists to draft or review, or both, odor management plans. The proposed regulations will impose no additional burden of enforcement on political subdivisions.

Private Sector

The proposed regulations will impose additional costs on persons wishing to write or review and approve, or both, odor management plans, as required by the act. Those additional costs are in the form of the fees for certification, which are established in the proposed regulations.

General Public

The proposed regulations will impose no direct costs and have no fiscal impact on the general public. Farmers required to have or seeking a voluntary odor management plan, will be affected by the mandates of the act, which requires the plans and the fees charged for attaining the required certification to write or review, or both, those odor certification plans will most likely be a small part of the fee charged to the farmer for the development of odor management plans.

Paperwork Requirements

The proposed regulations will not result in a substantial increase in paperwork. The Department will have to develop new application forms, but they will be based on current certification program forms. Review and administrative procedures will also be very similar to existing certification programs overseen by the Department.

Public Comment Period

Interested persons are invited to submit written comments regarding the proposed regulations within 30 days following publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. §§ 745.5(a)), the Department submitted a copy of this proposed rulemaking on October 15, 2007, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee (Committees). In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

If IRRC has any objections to any portion of the proposed regulations, it will notify the Department within 30 days after the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The act specifies detailed procedures for review, prior to final publication of the proposed regulations, by the Department, the General Assembly and the Governor of objections raised.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Johan E. Berger (717) 772-4189.

Effective Date

This proposed regulation is effective upon publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,
Secretary

Fiscal Note: 2-155. (1) General Fund; (2) Implementing Year 2007-08 is \$14,250; (3) 1st Succeeding Year 2008-09 is \$21,200; 2nd Succeeding Year 2009-10 is \$22,260; 3rd Succeeding Year 2010-11 is \$23,400; 4th Succeeding Year 2011-12 is \$24,600; 5th Succeeding Year 2012-13 is \$25,800; (3) 2005-06 Program—\$0; 2004-05 Program—\$0; 2003-04 Program—\$0; (7) General Government Operations; (8) recommends adoption. These costs will be augmented with the certification and testing fees set forth in the regulations.

Annex A

**TITLE 7. AGRICULTURE
PART V. BUREAU OF PLANT INDUSTRY
CHAPTER 130f. ODOR MANAGEMENT
CERTIFICATION**

Subch.

- A. GENERAL PROVISIONS**
- B. CERTIFICATION**
- C. RECERTIFICATION**
- D. DENIAL, SUSPENSION, REVOCATION**

Subchapter A. GENERAL PROVISIONS

- Sec.
- 130f.1. Scope.
- 130f.2. Definitions.
- 130f.3. Fees.
- 130f.4. Certification authority.

§ 130f.1. Scope.

This chapter prescribes the procedures and qualifications related to certification of odor management special-

ists. This chapter includes the establishment of fees, delineates the requirements for certification of odor management specialists, including recertification criteria and sets forth the conditions of denial, suspension and revocation of odor management certification.

§ 130f.2. Definitions.

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

Act—Act 38 of 2005 (3 Pa.C.S. Chapters 3 and 5 (relating to local regulation; and nutrient management and odor management)).

BMP—Best management practice.

Certificate year—The period from January 1 to December 31.

Certification—The completion of the requirements of an odor management specialist contained in this chapter.

Commission—The State Conservation Commission established by the Conservation District Law (3 P.S. §§ 849—864).

Competency—Demonstrating a high level of technical or scientific knowledge as evidenced by successfully meeting the requirements of § 130f.11 (relating to determination of competence) for commercial and public odor management specialists, or meeting the requirements of § 130f.21 (relating to determination of competence) for individual odor management specialists.

Conservation district—A county conservation district established under the Conservation District Law.

Department—The Department of Agriculture of the Commonwealth.

Designee—A person chosen or appointed by the Secretary of the Department to carry out the Secretary's duties under this chapter.

Impacts—

(i) Conflicts arising from the offsite migration of odors from agricultural facilities.

(ii) The term does not include mental or physical health affects, or changes in property value.

Nutrient management specialist—A person satisfying the certification requirements of section 508 of the act (relating to nutrient management certification program and odor management certification program).

OMP—*Odor management plan*—A written site-specific plan identifying the practices, technologies, standards and strategies to be implemented to manage the impact of odors generated from animal housing or manure management facilities located or to be located on the site.

Odor BMP—*Odor best management practice*—A practice or combination of practices, technologies, standards and strategies to manage the potential for impacts from offsite migration of odors generated from animal housing facilities and manure management facilities that are subject to regulation under the act.

Odor management regulations—The regulations which will be codified in 25 Pa. Code Chapter 83, Subchapter G (relating to facility odor management). (*Editor's Note:* See 37 Pa.B. 4780 (September 1, 2007).)

Odor management specialist—A person satisfying the certification requirements of this chapter.

Individual odor management specialist—A person certified under this chapter to develop odor management plans for his agricultural operation.

Commercial odor management specialist—A private sector person certified under this chapter to develop odor management plans for another person's agricultural operation.

Public odor management specialist—A State, Federal or other public employee certified under this chapter to review odor management plans and make recommendations for approval or denial of odor management plans to a conservation district or the State Conservation Commission, or both.

Odor Site Index—The field evaluation methodology developed specifically for this Commonwealth and approved by the Commission, which applies site-specific factors such as proximity to adjoining landowners, land use of the surrounding area, type of structures proposed, species of animals, local topography and direction of the prevailing winds, to determine the potential for impacts from the offsite migration of odors from agricultural operations.

Provisional certification—The level of certification obtained by an odor management specialist applicant who has successfully completed the required training and passed the written examination, but has not yet developed or reviewed the required number of odor management plans.

Recertification training—The completion of continuing education and training requirements in § 130f.31 (relating to recertification).

§ 130f.3. Fees.

(a) *Certification fees.* Certification fees are nonrefundable. The Department has established the following certification fees for each level of odor management specialist:

- (1) Individual odor management specialist—\$15.
- (2) Commercial odor management specialist—\$200.
- (3) Public odor management specialist—\$25.

(b) *Examination fees.* Examination fees are nonrefundable. The Department has established the following examination fees for each level of odor management specialist:

- (1) Individual odor management specialist—No charge.
- (2) Commercial odor management specialist—\$30.
- (3) Public odor management specialist—\$30.

§ 130f.4. Certification authority.

(a) *Individual certification authority.* A person certified under this chapter as an individual odor management specialist is authorized to develop odor management plans for his own agricultural operation. An individual odor management specialist has no authority to develop an odor management plan for another person or review and recommend action on an odor management plan.

(b) *Commercial certification authority.* A person certified under this chapter as a commercial odor management specialist is authorized to develop odor management plans for another person's agricultural operation. A commercial odor management specialist has no authority to review or recommend action on an odor management plan.

(c) *Public certification authority.* A person certified under this chapter as a public odor management review

specialist is authorized to review odor management plans and make recommendations for approval or denial of odor management plans.

Subchapter B. CERTIFICATION

COMMERCIAL AND PUBLIC ODOR MANAGEMENT SPECIALISTS

Sec.

130f.11. Determination of competence.

130f.12. Final certification.

INDIVIDUAL ODOR MANAGEMENT SPECIALISTS

130f.21. Determination of competence.

130f.22. Final certification.

COMMERCIAL AND PUBLIC ODOR MANAGEMENT SPECIALISTS

§ 130f.11. Determination of competence.

(a) *Commercial odor management specialist.* Determination of competence for a commercial odor management specialist shall be based on the successful completion of provisional certification training and examinations as set forth in this section and the successful completion of the final certification requirements established by this chapter.

(1) Provisional certification requirements for a commercial odor management specialist include an orientation training course, an odor management plan writing course and a written examination approved by the Department.

(2) Final certification of a commercial odor management specialist requires the development of two approved odor management plans as set forth in subsection (h)(1). Odor management plans developed under this subsection will be determined to be adequate by the Department or its designee.

(b) *Public odor management specialist.* Determination of competence for a public odor management specialist will be based on the successful completion of provisional certification training and examinations as set forth in this section and the successful completion of the final certification requirements established by this chapter.

(1) Provisional certification requirements for a public odor management specialist include an orientation training course, an odor management plan review course, an odor management plan writing course and a written examination approved by the Department. Odor management plan reviews completed and odor management plans developed under this subsection will be determined to be adequate by the Department or its designee.

(2) Final certification of a public odor management specialist requires the approved review of one odor management plan and the development of one approved odor management plan as set forth in subsection (h)(2).

(c) *Future advancements.* As advancements in science and technology make new odor management techniques and BMPs available and after these techniques and BMPs are approved by the State Conservation Commission, the certification requirements may include other course work related to those techniques and best management requirements, as well as, any new requirements set forth in the odor management regulations, as part of the certification course and training requirements. The new techniques and BMPs will not become part of the certification requirements until after training manuals and course work have been modified to include the information necessary to impart knowledge of these new techniques and BMPs.

(d) *Provisional certification training.* The provisional certification training courses must, at a minimum, consist of the following areas of odor management planning:

- (1) Understanding the Odor Site Index.
 - (i) Completion and application of the Odor Site Index.
 - (ii) Mapping principles and requirements.
- (2) Understanding odor generation and transmission principles.
- (3) Understanding environmental and economic impacts associated with odor management.
- (4) Understanding and awareness of land use issues related to odor impact and management.
- (5) Understanding OMP components and content.
- (6) Understanding the technology, application and implementation of Odor BMPs.
- (7) Understanding regulatory requirements of agricultural operations.
 - (i) Types of agricultural operations or activities/technologies that may require OMPs.
 - (ii) How to submit an OMP.
 - (iii) Other applicable laws and regulations related to or conjoined with odor management.
- (8) Recordkeeping requirements.
- (9) Proper odor management plan review procedures (public odor management specialists only).
- (10) Proper odor management plan writing procedures (commercial and public odor management specialists only).
- (11) Other areas and course work related to requirements set forth in the odor management regulations, as determined appropriate by the Department.
 - (e) *Examination.* The written examination will be proctored by the Department or its designee. The Department will administer the examination at least twice per year, or more often as deemed necessary by the Department. At a minimum, the successful completion of the examination will demonstrate an examinee's technical knowledge relating to odor management planning and odor management plan development in the following areas:
 - (1) Application of the Odor Site Index.
 - (2) Odor generation and transmission principles.
 - (3) Environmental and economic impacts associated with odor management.
 - (4) Land use issues related to odor impacts and management.
 - (5) OMP components and content.
 - (6) Technology, application and implementation of Odor BMPs.
 - (7) Odor management regulatory requirements of agricultural operations.
 - (8) Recordkeeping requirements.
 - (9) Other applicable laws and regulations related to or conjoined with odor management.
 - (10) Other areas related to new technology and BMPs that become available and are approved by the State Conservation Commission, as well as, new requirements in the odor management regulations. These other areas will not become part of the final certification requirements until training manuals and course work have been modified to include information necessary to impart knowledge of these new techniques and BMPs.

(f) *Other examinations.* The Department may approve the use of written examinations other than the Pennsylvania odor management examination, if the written examinations meet the requirements in subsection (e).

(g) *Provisional certification.* Upon the successful completion of the requirements in subsections (d) and (e), the applicant for certification as a commercial or public odor management specialist will be issued the appropriate provisional certification. The holder of a provisional certification is qualified, dependent on the type of provisional certification attained, to develop or review, or both, odor management plans for the purpose of satisfying the requirements of this section regarding final certification. Provisional certification is valid for 2 years ending on the last day of the month from the date of issuance.

(h) *Final certification requirements.* Once provisional certification has been granted, the provisionally certified specialist shall complete one of the following dependent on the type of provisional certification granted and final certification sought:

(1) *Commercial odor management specialist.* To attain final certification, a provisionally certified commercial odor management specialist shall develop two odor management plans which meet the requirements of section 509 of the act (relating to odor management plans). One of the required odor management plans may be developed based on a scenario developed or approved by the Department. Odor management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(2) *Public odor management specialist.* To attain final certification, a provisionally certified public odor management specialist shall successfully review one odor management plan and develop one odor management plan which meets the requirements of section 509 of the act. The developed odor management plan may be based on a scenario developed or approved by the Department. Odor management plan reviews completed and odor management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(i) *Public odor management specialist to commercial odor management specialist.* A certified public odor management specialist may obtain certification as a commercial odor management specialist. To attain this certification, a certified public odor management review specialist shall develop one additional odor management plan in accordance with section 509 of the act. The certified public odor management specialist seeking this certification shall submit the odor management plan to the Department or its designee for review and approval.

(j) *Commercial odor management specialist to public odor management specialist.* A certified commercial odor management specialist who wishes to obtain certification as a public odor management specialist shall complete an odor management plan review course covering proper odor management plan review procedures and shall successfully review one odor management plan in accordance with section 509 of the act. The applicant seeking to attain this certification shall submit the odor management plan review to the Department or its designee for review and approval.

(k) *Nutrient management specialist to odor management specialist.* A person certified and in good standing as a commercial nutrient management specialist or a public nutrient management specialist under the Department's nutrient management certification regulations (See Chapter 130b (relating to nutrient management certification))

may obtain certification as a commercial or public odor management specialist upon meeting the requirements of this chapter for the level of certification sought.

§ 130f.12. Final certification.

(a) *Application for final certification.* Upon completion of all the provisional certification requirements of this chapter, a provisionally certified commercial odor management specialist or public odor management specialist may submit an application to the Department for final certification. The appropriate certification fee, as set forth in § 130f.3(a) (relating to fees) must accompany the application for final certification.

(b) *Eligibility for final certification.* A person is eligible to apply for final certification as a commercial or public odor management specialist upon fulfilling the applicable requirements established under § 130f.11 (relating to determination of competence). An application for final certification may be obtained from the Department.

(c) *Time period for filing application.* An application for final certification shall be filed with the Department within 120-calendar days of notification by the Department of meeting the appropriate requirements in § 130f.11. If the applicant fails to file an application with the Department within the prescribed 120-calendar days, that person shall again satisfy the appropriate competency requirements as provided in § 130f.11.

(d) *Time period final certification is valid.* Final certification is valid for 3 years ending on December 31 of the third year following the date of final certification. However, the Department will authorize an additional year when the certification is issued during the last 2 months of the initial certificate year.

INDIVIDUAL ODOR MANAGEMENT SPECIALISTS

§ 130f.21. Determination of competence.

(a) Determination of competence for an individual odor management specialist shall be based on the completion of required training which includes an orientation training course and a competency evaluation developed or approved by the Department.

(b) The orientation training course shall at a minimum consist of the same requirements as in § 130f.11 (relating to determination of competence).

(c) The competency evaluation will be administered by the Department or its designee. The Department or its designee will administer the competency evaluation in association with the orientation training course on an as needed basis, which will be determined by the number of requests for the training. At a minimum, the successful completion of the competency evaluation will demonstrate an examinee's technical knowledge relating to odor management planning and odor management plan development in the following areas:

- (1) Application of the Odor Site Index.
- (2) Odor generation and transmission principles.
- (3) Environmental and economic impacts associated with odor management.
- (4) Land use issues related to odor impacts and management.
- (5) Odor management plan components and content.
- (6) Technology, application and implementation of Odor BMPs.
- (7) Odor management regulatory requirements of agricultural operations.

- (8) Recordkeeping requirements.
- (9) Other applicable laws and regulations.

(d) The Department may approve the use of written examinations other than the Pennsylvania odor management examination, if the written examination meets the requirements in subsection (c).

(e) Individual odor management specialists are exempt from the odor management plan preparation requirements.

§ 130f.22. Final certification.

(a) A person is eligible to apply for final certification as an individual odor management specialist upon fulfilling the requirements under § 130f.21 (relating to determination of competence). An application for certification may be obtained from the Department. The appropriate fee must accompany the specialist's application for certification.

(b) An application for certification shall be filed with the Department no later than 120-calendar days after the applicant's completion of the competency requirements. If the applicant fails to file an application with the Department within the prescribed 120-calendar days, that person shall again satisfy the competency requirements as provided in § 130f.21.

(c) A certificate is valid for 3 years ending on December 31 of the third year following the date of certification. However, the Department will authorize an additional year when the certification is issued during the last 2 months of the initial certificate year.

Subchapter C. RECERTIFICATION

Sec.
130f.31. Recertification.

§ 130f.31. Recertification.

(a) At intervals of 3 years, final certified commercial, public or individual odor management specialists shall provide written documentation of having received continuing education and training in Department-approved training courses in odor management planning and odor management plan development. Training must address the specific areas in § 130f.11 (relating to determination of competence) for commercial and public odor management specialists and § 130f.21 (relating to determination of competence) for individual odor management specialists.

(b) Recertification credits approved by the Department will be given on the basis of attendance at approved training sessions, as provided in subsection (a). The Department will evaluate the training and assign the appropriate credits. Commercial and public odor management specialists are required to obtain six credits during the recertification interval. Individual odor management specialists are required to obtain three credits during the recertification interval. The Department may, if deemed necessary, require specific training for certified odor management specialists, in addition to the required training in §§ 130f.11 and 130f.21. The Department will provide written notification to the certified odor management specialists of specifically required training.

(c) Training will be approved for recertification credits at the rate of one credit per hour of applicable instruction, exclusive of coffee breaks, lunches, visits to exhibits, and the like. Credits will be assigned to each training session based upon the subjects covered and the amount of time expended on each subject. Credits assigned may

be modified if either the content or length of the training substantially differs from the originally approved course.

(d) Sponsors of recertification training shall first submit a written request for course approval to the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408. A request shall be submitted to the Department at least 15 working days prior to the training date and include the following information:

- (1) The name and phone number of the contact person who is coordinating the training.
- (2) The specific location of the training.
- (3) The date of the training.
- (4) A list of the speakers, subject matter and time allotted to each subject.
- (5) A statement whether the training is open to the public and if there is a charge to attend.

(e) A recertification training course will be approved if at a minimum it consists of the same requirements as set forth in § 130f.11(d) and (e) and is conducted or sponsored by an educational institution, an association, a business, a governmental agency or other qualified source. Preapproval of recertification courses is vested solely with the Department.

(f) Falsification by a course sponsor of information required under this section may result in the withdrawal of credits or course approval, or both.

(g) If the Department or its designee is unable to monitor the training, the sponsor shall be responsible for verifying attendance and shall compile a list of Pennsylvania-certified specialists in attendance. The list shall be returned to the Department within 10 working days following the training date and include the name of each person attending and their certification number.

(h) If an odor management specialist allows final certification to expire and does not obtain recertification in accordance with this chapter, the final certification will be suspended and the specialist shall refrain from all duties relating to his certification until all delinquent recertification credits are acquired as described in subsection (b).

(i) If an odor management specialist whose final certification has been suspended as set forth in subsection (h) fails to complete delinquent recertification credits within 1 year from the expiration date of the final certification, the final certification will be revoked and that person shall again satisfy the requirements of § 430f.11 and § 130f.12 (relating to final certification) for commercial and public specialists, or § 130f.21 and § 130(f).22 (relating to final certification) for individual specialists, whichever is applicable.

Subchapter D. DENIAL, SUSPENSION AND REVOCATION OF CERTIFICATES

Sec.
130f.41. Denial, suspension and revocation of certificates.

§ 130f.41. Denial, suspension and revocation of certificates.

(a) The Department may, after notice, including a statement of the reason therefore, deny, suspend or revoke a commercial, public or individual odor management specialist certification for any of the following:

- (1) A violation of the act or this chapter.
- (2) Failure to obtain the required recertification credits.

(3) Inconsistency or demonstration of a lack of knowledge of odor management plan writing and review skills.

(4) Three or more occurrences within a 3-year period of delay or noncommunication with a landowner or review agency during plan development or review.

(5) Falsifying information.

(6) Misrepresentation associated with the act or its attendant regulations.

(7) A violation of program policy established by the Department, its designee or the Commission.

(b) An applicant or odor management specialist may request a hearing, in writing, within 15 days of receipt of a notice of denial, suspension or revocation from the Department. The request shall be sent to the Bureau of Plant Industry, Agriculture Building, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110.

[Pa.B. Doc. No. 07-1984. Filed for public inspection October 26, 2007, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 130]

Consumer Products

The Environmental Quality Board (Board) amends 37 Pa.B. 5117 (September 15, 2007) and 37 Pa.B. 5379 (October 6, 2007) by announcing revised dates for the public comment period and public hearings for the proposed rulemaking to amend Chapter 130, Subchapter B (relating to consumer products).

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. The proposed rulemaking, if adopted, will be submitted to the Environmental Protection Agency as a revision to the State Implementation Plan.

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 December 26, 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 the Board by December 26, 2007. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments: Comments may be submitted electronically to the Board at RegComments@state.pa.us

and must be received by the Board by December 26, 2007. A subject heading of the proposal and a return name and address must be included in each transmission.

Public Hearings:

The Board will hold three public hearings for the purpose of accepting comments on the proposed rulemaking to amend Chapter 130, Subchapter B. The hearings will be held as follows:

November 26, 2007 1 p.m. Department of Environmental Protection
Rachel Carson State Office Building
Room 105
400 Market Street
Harrisburg, PA 17105

November 26, 2007 1 p.m. Department of Environmental Protection
Southwest Regional Office
Waterfront A and B Conference Room
400 Waterfront Drive
Pittsburgh, PA 15222

November 26, 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

[Pa.B. Doc. No. 07-1985. Filed for public inspection October 26, 2007, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 405a AND 461a]

Bureau of Investigations and Enforcement; and Slot Machine Testing and Control

The Pennsylvania Gaming Control Board (Board), under its general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. §§ 1207, 1320 and 1517(a.2) (relating to regulatory authority of board; slot machine testing and certification standards; and investigations and enforcement), proposes to amend Chapters 405a and

461a (relating to Bureau of Investigations and Enforcement; and slot machine testing and control) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

The Board initially adopted Chapter 405a at 37 Pa.B. 2808 (June 23, 2007) and Chapter 461a at 37 Pa.B. 3381 (July 21, 2007). These proposed amendments are intended to better conform the language in the regulations to the language of the Pennsylvania Race Horse Development and Gaming Act (act), make provisions consistent with changes in subsequently adopted chapters and remove obsolete provisions.

Explanation of the Proposed Amendments to Chapters 405a and 461a

In § 405a.3(b) (relating to Office of Enforcement Counsel), the Board is deleting the phrase "and operational" so that this section mirrors the language in 4 Pa.C.S. § 1517(a.2)(2) (relating to investigations and enforcement). The title "Director of the Office of Enforcement Counsel" has been changed to "Chief Enforcement Counsel" in this section and in § 405a.5 (relating to investigatory subpoena) to match the Board's current organizational structure.

In § 405a.6 (relating to enforcement action), the Board is updating citations and extending the time to file a notice of defense and request a hearing in subsections (c) and (d) from 15 days to 20 days to match the time period in the final-form version of § 493a.2(e).

In § 405a.6(e), the Board is changing the requirement concerning the mailing of final orders. Final orders will be sent by first class mail instead of certified mail. Because a respondent's address is determined at the beginning of the proceeding there is no need to use certified mail for the final order.

In §§ 461a.3 and 461a.4 (relating to testing and approval generally; and submission for testing and approval), the Board is removing the references and provisions relating to abbreviated testing and approval of slot machines and associated equipment. Section 1320 of the 4 Pa.C.S. allowed the Board to use certifications of equipment by other states or approved private testing laboratories until the Board established its testing facility. Now that the Gaming Laboratory is operational, the time period to use these alternate processes has expired.

In § 461a.7 (relating to slot machine minimum design standards), the Board is deleting subsection (d) which contains the "payout requirement of 85% within 10 million plays" standard. Because the length of time that a slot machine is typically used today is shorter and because of the advent of server based games, this standard has become obsolete. The other requirements which reflect the statutory requirement of having a payout of at least 85% remain unchanged.

In § 461a.12 (relating to progressive slot machines), references to § 461a.7 have been updated to reflect the deletion of subsection (d) previously discussed.

Affected Parties

Manufacturers submitting slot machines for testing and certification will be affected by no longer being able to request alternate certification of their slot machines and related equipment. There are 16 currently licensed manufacturers.

Respondents to complaints will also be affected. The Board projects that there will be approximately 2,000 complaints filed over the next 12 months.

Fiscal Impact

Commonwealth

By mailing Board orders by first class mail instead of certified mail, the Board estimates this proposed rulemaking will save up to \$10,000 annually.

Political Subdivisions

This proposed rulemaking will have no fiscal impact on political subdivisions of the Commonwealth.

Private Sector

The Board anticipates that there will be no significant costs or savings to the regulated public as a result of these proposed amendments.

General Public

The proposed amendments will have no fiscal impact on the general public.

Paperwork requirements

The proposed amendments do not change or add new reporting, recordkeeping or paperwork requirements.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-71.

Contact Person

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review, at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 12, 2007, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

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

MARY DIGIACOMO COLINS,
Chairperson

Fiscal Note: 125-71. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart A. GENERAL PROVISIONS

CHAPTER 405a. BUREAU OF INVESTIGATIONS AND ENFORCEMENT

§ 405a.3. Office of Enforcement Counsel.

* * * * *

(b) The [Director of the Office of] Chief Enforcement Counsel will report to the Executive Director of the Board on administrative [and operational] matters.

(c) The [Director of the Office of] Chief Enforcement Counsel may be removed by the Board only for good cause shown.

§ 405a.5. Investigatory subpoena.

(a) The [Director of the Office of] Chief Enforcement Counsel is authorized to require the attendance and testimony of witnesses and the production of books, accounts, papers, records, documents, files, computer files and photographs in original or electronic format necessary for all action within the authority of the Bureau under the act or this part.

(b) The [Director of the Office of] Chief Enforcement Counsel or [his] a representative may issue subpoenas.

(c) In case of disobedience of any subpoena or the contumacy of any witness appearing before the [Director of the Office of] Chief Enforcement Counsel or a representative, the [Director of the Office of] Chief Enforcement Counsel or a representative may invoke the aid of Commonwealth Court or any court of record of this Commonwealth to require the person subpoenaed to obey the subpoena or to give evidence or to produce books, accounts, papers, records, documents, files, computer files and photographs in original or electronic format relative to the matter in question.

* * * * *

§ 405a.6. Enforcement action.

(a) Upon a determination by the Office of Enforcement Counsel that sufficient facts exist to support enforcement action against a person holding a license, permit, certification or registration issued by the Board, the Office of Enforcement Counsel will initiate a complaint in accordance with § 493a.2 (relating to complaints), including a proposed order for an enforcement action and serve the complaint in accordance with § [491.3] 491a.5 (relating to service by the Board).

* * * * *

(c) Within [15] 20 days from the date of service of complaint for an enforcement action, the person may file a notice of defense in accordance with § 493a.2(e) and serve a copy of the request on the Office of Enforcement Counsel. Failure to file a notice of defense for an enforcement action complaint within [15] 20 days will be deemed:

* * * * *

(d) Upon the person's failure to request a hearing within the prescribed [15] 20 days, the Office of Enforcement Counsel will present the proposed enforcement

order to the Board. The Board may, by resolution, adopt the proposed enforcement order.

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

Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT

CHAPTER 461a. SLOT MACHINE TESTING AND CONTROL

§ 461a.3. Testing and approval generally.

(a) In accordance with section 1320 of the act (relating to slot machine testing and certification standards), [the Board will determine the manner and scope in which slot machines and associated equipment are to be tested and approved prior to operation and use in a licensed facility in this Commonwealth.

(b) Slot] slot machines and associated equipment operated in this Commonwealth must be approved by the Board [.

(c) The Board has the authority to require one or more of the following procedures:

(1) An abbreviated testing and approval process in accordance with § 461a.4(g) (relating to submission for testing and approval).

(2) Testing and approval] in accordance with § 461a.4 [(i)] (g).

[(3) Utilize the services of a Board-approved private slot machine testing facility to conduct the testing until a slot machine testing facility is established by the Board.

(d)] (b) The general cost of establishment and operation of the Board's testing facility shall be paid by each manufacturer licensee on a quarterly basis based upon each manufacturer's proportion of the total number of products reviewed.

[(e)] (c) The Board will require payment of all costs for the testing and approval of slot machines and associated equipment submitted by manufacturers or installed at a licensed facility based on the actual direct costs incurred by the Board.

[(f)] (d) The Board will require a manufacturer licensee seeking approval of a slot machine or associated equipment to pay all costs of transportation, inspection and testing.

§ 461a.4. Submission for testing and approval.

* * * * *

(g) [Notwithstanding the terms of subsection (d), the Board may utilize an abbreviated testing and approval process in accordance with section 1320 of the act (relating to slot machine testing and certification standards).

(h) When an applicant for, or holder of, a manufacturer license seeks to utilize, during the applicable period, the abbreviated testing and approval process for a slot machine prototype, associated equipment prototype or any modification thereto, it shall submit to the Slot Lab the following:

(1) A prototype of the equipment, device or software accompanied by a written request for abbreviated testing and approval which identifies the jurisdiction within the United States upon which the

applicant for, or holder of, a manufacturer license proposes the Board rely ("named jurisdiction"). The manufacturer shall transport the equipment device or software at its own expense and deliver it to the offices of the Slot Lab.

(2) A certification executed by the chief engineer of the applicant for, or holder of, a manufacturer license or the engineer in charge of the division of the manufacturer responsible for producing the equipment, device or software submitted ("professional") asserting that:

(i) The specific prototype or modification is identical in all mechanical, electrical, electronic and other respects to one which has been tested and approved by the testing facility operated by the named jurisdiction or a private testing facility on behalf of the named jurisdiction.

(ii) The manufacturer is licensed and in good standing in the named jurisdiction and that the subject product has all regulatory approvals prerequisite to sale or distribution in the named jurisdiction.

(iii) In the professional's opinion, the testing standards of the named jurisdiction are comprehensive and thorough and provide similar adequate safeguards as those required by this subpart.

(iv) In the professional's opinion, the equipment, device or software complies with the act, this subpart and technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's website including requirements related to the central control computer.

(3) An executed copy of a current product submission checklist, and any product specific supplemental submission checklists applicable to the submitted equipment, device or software unless a substantially similar checklist was filed with the named jurisdiction and is included in the submission package required by paragraph (4).

(4) Copies of the submission package, and amendments thereto, filed with the named jurisdiction, copies of any correspondence, review letters or approvals issued by the testing facility operated by the named jurisdiction or a private testing facility on behalf of the named jurisdiction and, as applicable, a copy of the final regulatory approval issued by the named jurisdiction.

(5) A disclosure that lists any conditions or limitations placed by the named jurisdiction on the operation or placement of the equipment, device or software at the time of approval or subsequently thereafter.

(6) A complete, comprehensive and technically accurate description of the manner in which the slot machine was tested for compatibility and compliance with the central control computer and protocol specifications approved by the Department including the ability to communicate with the central control computer for the purpose of transmitting auditing program information, real time information retrieval and activation and disabling of slot machines.

(7) Any hardware, software and other equipment, inclusive of technical support and maintenance applicable thereto, required by the Slot Lab to conduct the abbreviated testing and approval pro-

cess contemplated by the act, this subpart and technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's website. The testing equipment and services required by this paragraph shall be provided at no cost to the Board.

(8) Additional documentation requested by the Board which is necessary to evaluate the slot machine, associated equipment or modification thereto.

(i)] When an applicant for, or holder of, a manufacturer license seeks Board approval of a slot machine prototype, associated equipment prototype, or any modification thereto [for which the abbreviated testing process in subsection (g) is not applicable], it shall submit to the Slot Lab the following:

* * * * *

[(j)] (h) At the conclusion of testing of a prototype or modification by the Slot Lab, but prior to a decision to approve a prototype or modification, the Board may require a trial period of scope and duration as it deems appropriate to assess the operation of the prototype or modification in a live gaming environment. The conduct of the trial period shall be subject to compliance by the licensed manufacturer, licensed manufacturer designee, applicable licensed suppliers, and the slot machine licensee with specific terms and conditions as may be required by the Board, which may include development and implementation of product specific accounting and internal controls, periodic data reporting to the Board and compliance with technical standards on trial periods or the prototype or modification adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's website. The Board may authorize the receipt of compensation by a licensed manufacturer, licensed manufacturer designee or licensed supplier during the trial period. The Board may order termination of the trial period if it determines that the licensed manufacturer, licensed manufacturer designee, applicable licensed suppliers or the slot machine licensee conducting the trial period has not complied with the terms and conditions required by the Board or that the product is not performing as expected.

[(k)] (i) At the conclusion of testing of a prototype or modification, the Slot Lab will report to the Board the results of its testing. Upon receipt of the Slot Lab's report, the Board will:

* * * * *

(2) Require additional testing or a trial period under subsection [(j)] (h).

[(l)] (j) Board approval of a prototype or modification does not constitute a guarantee of the [prototype] prototype's or modification's safety.

[(m)] (k) A slot machine licensee is prohibited from installing in its licensed facility a slot machine or associated equipment, or modification thereto, required to be tested [and approved under subsection (c)] unless the equipment, device or software has been approved by the Board. A slot machine licensee may not modify, alter or tamper with an approved slot machine or associated equipment. A slot machine or associated equipment installed in a licensed facility in contravention of this requirement will be subject to seizure by the Board.

[(n)] (l) Notwithstanding subsection **[(m)] (k)**, the Board may authorize installation of a modification to a slot machine prototype or associated equipment prototype on an emergency basis to prevent cheating or malfunction, upon the written request of a licensed manufacturer. The request must expressly detail the name and employer of any persons to be involved in the installation of the modification and the manner in which it is to be effected. Within 15 days of receipt of any authorization to install an emergency modification, the manufacturer shall submit the modification for full testing and approval in accordance with this subpart.

[(o)] (m) A slot machine licensee shall immediately notify the Board of any known or suspected defect or malfunction in any slot machine or associated equipment installed in its licensed facility. The slot machine licensee shall comply with instructions issued by the Board with regard to the continued operation of the slot machine or associated equipment.

[(p)] (n) Concurrent with the initial receipt of slot machines, an applicant for, or holder of, a slot machine license shall file a slot machine master list as required by § 463a.5 (relating to slot machine master list).

[(q)] (o) The testing of equipment, devices or software under this subpart may require the dismantling of the product and testing that may result in damage to, or destruction of, one or more systems or components. Once submitted for testing, equipment, devices or software will not be returned to the manufacturer.

§ 461a.7. Slot machine minimum design standards.

* * * * *

(d) [In addition to the requirements of subsections (a), (b) and (c), the volatility of a slot machine must verify that the theoretical payout percentage equals or exceeds the minimum payout requirement of 85% within 10 million plays. The criteria used to calculate the volatility must be in accordance with technical standards applicable to volatility under § 461b.1 (relating to slot machine minimum design standards).

(e) The selection from the set of all possible combinations of symbols shall be made applying a pseudo random number generator. At a minimum, a pseudo random number generator must adhere to the following criteria:

* * * * *

[(f)] (e) A slot machine is prohibited from automatically altering any function of the slot machine based on internal computation of the hold percentage.

[(g)] (f) The available winning combinations and applicable rules of play for a slot machine shall be available at all times the slot machine is idle to the patron playing the slot machine. The award schedule of available winning combinations may not include possible aggregate awards achievable from free plays. A slot machine that includes a strategy choice must provide mathematically sufficient information for a patron to use optimal skill. Information regarding a strategy choice need not be made available for any strategy decisions whenever the patron is not required, in addition to the initial wager, to make an additional wager and, when as a result of playing a strategy choice, the patron can not lose any credits earned thus far during that game play.

[(h)] (g) Slot machines approved for use in a licensed facility must be equipped with the following meters that

comply with the technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's website:

* * * * *

[(i)] (h) A slot machine that does not meter one or more of the events required to be metered under subsection **[(h)] (g)** may be approved where a slot machine licensee's system of internal controls establishes that the meter is not required to capture all critical transactions occurring on the slot machine.

[(j)] (i) The meters required under subsection **[(h)] (g)** must continuously and automatically increment in units equal to the denomination of the slot machine or, in the case of a slot machine configured for multidomination play, must display the required information in dollars and cents.

[(k)] (j) A slot machine approved for use in a licensed facility must be equipped with the following noncumulative meters:

* * * * *

[(l)] (k) A slot machine must have a meter which stores the number of games played, in the manner and for a duration specified in this subpart or in technical standards adopted by the Board and published in the *Pennsylvania Bulletin* and posted on the Board's website, since the following events:

* * * * *

[(m)] (l) A slot machine must be equipped with a device, mechanism or method for retaining the total value of all meters required under subsection **[(h)] (g)** for 72 hours subsequent to a power loss.

[(n)] (m) The required meters on a slot machine must be accessible and legible without access to the interior of the slot machine.

[(o)] (n) A slot machine must be equipped with a tower light capable of effectively communicating the status of the slot machine in accordance with technical standards on tower lights and error conditions under § 461b.2 (relating to slot machine tower lights and error conditions).

[(p)] (o) A slot machine must be equipped with a device, mechanism or method for detecting, displaying and communicating to a slot monitoring system error conditions. The error conditions detected, displayed and communicated by a slot machine, and the method to be utilized to clear the message with regard to the error condition, must be in accordance with technical standards on tower lights and error conditions under § 461b.2.

[(q)] (p) A slot machine must, in accordance with section 1324 of the act (relating to protocol information), comply with the comprehensive protocol specifications necessary to enable the slot machine to communicate with the Department's central control computer as that protocol is amended or supplemented, for the purpose of transmitting auditing program information, real time information retrieval and slot machine activation and disabling.

[(r)] (q) A slot machine must lock up and preclude further play whenever a jackpot occurs that is not able to be paid completely by the slot machine and requires a

hand pay. When the jackpot occurs, the slot machine can offer a predetermined number of double-up wagers before the slot machine locks up.

[(s)] (r) Printers incorporated into a slot machine must be:

* * * * *

[(t)] (s) Seating made available by a slot machine licensee for use during slot play must be fixed and stationary in nature. Slot seating must be installed in a manner that effectively precludes its ready removal by a patron but permits controlled removal, for example for American With Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101—12213) purposes, by slot operations department personnel.

[(u)] (t) Unless a slot machine licensee's slot monitoring system is configured to automatically record all of the information required by this subsection, the slot machine licensee shall be required to physically house in each slot machine the following entry authorization logs:

* * * * *

[(v)] (u) A slot machine must be equipped with a lock controlling access to the card cage door securing the microprocessor, the key to which must be different from any other key securing access to the slot machine's components including its belly door or main door, bill validator or slot cash storage box. Access to the key securing the microprocessor shall be limited to a supervisor in the slot operations department, and that department shall establish a sign out and sign in procedure with regard to this key.

[(w)] (v) A slot machine must be equipped with a mechanism for detecting and communicating to a slot monitoring system any activity with regard to access to the card cage door securing its microprocessor.

§ 461a.12. Progressive slot machines.

* * * * *

(b) A slot machine that offers a progressive jackpot which may increase in value based upon wager and is adjusted and displayed by a device other than the approved program that controls the operation of the slot machine, referred to herein as a progressive controller, must have the following features:

* * * * *

(2) A slot machine paid progressive payout meter in accordance with § 461a.7 **[(h)] (g)** (relating to slot machine minimum design standards).

(3) A slot attendant paid progressive payout meter in accordance with § 461a.7 **[(h)] (g)**.

* * * * *

[Pa.B. Doc. No. 07-1986. Filed for public inspection October 26, 2007, 9:00 a.m.]

**[58 PA. CODE CHS. 421a AND 423a]
General Provisions; and Applications**

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) proposes to

amend Chapters 421a and 423a (relating to general provisions; and applications) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

These proposed amendments add a new section relating to advertising and new provisions for abandoned applications.

Explanation of Amendments to Chapters 421a and 423a

Currently, the Board has included provisions related to advertising in the statement of conditions that slot machine and manufacturer licensees must execute as part of the licensing process.

This proposed rulemaking will add § 421a.6 (relating to advertising) which: allows the Board to require slot machine, manufacturer and junket licensees to cease using inappropriate advertising; defines what will be considered to be advertising; prohibits the use of false or misleading information; requires the inclusion of a toll-free gambling assistance telephone number in any advertisement which must be approved utilizing the process contained in § 501a.2(g) (relating to compulsive and problem gambling); and bars slot machine, manufacturer and junket licensees from using individuals or virtual facsimiles thereof to induce patrons to engage in gaming or play a specific slot machine.

This proposed rulemaking will also amend § 423a.4 (relating to deficient and abandoned applications) by adding new provisions governing abandoned applications.

The Board has found that after it sends a notice of a deficiency concerning an application, applicants, particularly gaming permit and nongaming employee registration applicants, often times do not submit the requested materials. This may be because they can't obtain the necessary items or circumstances have changed and they no longer have an interest in pursuing their application. While the Board's regulations allow these applicants to file a petition to withdraw their application, many applicants simply do nothing.

Under the current regulation, the Board can deny these applications. However, if the Board denies these applications, the applicants are subject to the 5-year bar on filing a new application under § 423a.7 (relating to restriction on application after denial or revocation).

To give the Board another option for handling these applications, new provisions have been added to this section which will allow the Board to declare an application abandoned when an applicant fails to follow-up on requests for information. If an application has been deemed to be abandoned, the applicant will be so notified. However, unlike a denial, the applicant will be allowed to file a new application for a license, permit or registration immediately.

Affected Parties

Slot machine, manufacturer and junket licensees will be required to cease using inappropriate advertising upon receipt of written notice from the Board and will have to have the language relating to a toll-free gambling assistance telephone number that will be used in any advertisement approved by the Director of the Office of Compulsive and Problem Gambling. There are 11 currently approved slot machine licensees, 16 licensed manufacturers and no licensed junkets.

Applicants whose applications are deemed abandoned, instead of being denied, will be able to file a new application immediately instead of having to wait 5 years.

Fiscal Impact

Commonwealth

There will be no new costs to the Board or other Commonwealth agencies as a result of this proposed rulemaking. The Director of the Office of Compulsive and Problem Gambling currently reviews the toll-free gambling assistance telephone number message that is used in advertisements.

Political Subdivisions

This proposed rulemaking will have no fiscal impact on political subdivisions of this Commonwealth.

Private Sector

The Board anticipates that there will be no significant new costs or savings to slot machine, manufacturer and junket licensees as a result of these amendments because they reflect existing requirements.

Applicants whose applications are deemed abandoned will be able to apply for a license, permit or registration immediately thereby increasing their ability to be employed in the gaming industry.

General Public

This proposed rulemaking will have no fiscal impact on the general public.

Paperwork Requirements

The proposed amendments do not change or add new reporting, recordkeeping or paperwork requirements.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Paul Resch, Secretary, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-72.

Contact Person

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review, at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 15, 2007, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

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

Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

MARY DIGIACOMO COLINS,
Chairperson

Fiscal Note: 125-72. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 421a. GENERAL PROVISIONS.

§ 421a.6. Advertising.

(a) Slot machine, junket and manufacturer licensees will be required to discontinue as expeditiously as possible the use of a particular advertisement or promotion upon receipt of written notice from the Board that the Board has determined that the use of the particular advertisement or promotion in, or with respect to, this Commonwealth is not within the spirit or intent of the act.

(b) For purposes of this section, the term "advertisement" means marketing materials including signs, billboards, print, radio and television advertisements and any notice or communication by a slot machine, junket or manufacturer licensee or its agent to the public of information concerning the gaming-related business of a slot machine licensee through broadcasting, publication, mailing or other means of dissemination.

(c) Advertisements used by slot machine, junket or manufacturer licensees may not contain false or misleading information. An advertisement may not:

(1) Use a font, type size, location, lighting, illustration, graphic depiction or color obscuring any material fact.

(2) Fail to disclose any material conditions or limiting factors associated with the advertisement.

(d) Advertisements must contain a statement that is similar to the following: "If you or someone you know has a gambling problem, help is available. Call (toll-free telephone number)." The complete text of the statement and type size to be used for the statement shall be submitted to the Director of the Office of Compulsive and Problem Gambling for approval utilizing the process contained in § 501a.2(g) (relating to compulsive and problem gambling plan).

(e) A slot machine, junket or manufacturer licensee or an agent thereof may not employ or contract with an individual, or use a virtual facsimile thereof, at a licensed facility to induce a person to engage in gaming or play a specific slot machine.

CHAPTER 423a. APPLICATIONS

§ 423a.4. Deficient and abandoned applications.

* * * * *

(b) **[Refusal] Failure** to provide the information necessary to cure the deficiencies required under subsection (a) may result in the immediate denial of the application **or in the application being declared abandoned.**

(c) When an application is denied or declared abandoned under subsection (b), the applicant will be given written notice of this action by the Board. An applicant whose application is denied will be subject to the restrictions on filing a new application in § 423a.7 (relating to restriction on application after denial or revocation). An applicant whose application has been declared abandoned may file a new application at any time.

[Pa.B. Doc. No. 07-1987. Filed for public inspection October 26, 2007, 9:00 a.m.]

STATEMENTS OF POLICY

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Matter of Conscience

The State Board of Pharmacy (Board) is adopting § 27.103 (relating to matters of conscience—statement of policy) to read as set forth in Annex A. The statement of policy sets forth guidelines that should be considered when a pharmacist has a religious, moral or ethical objection to filling a prescription. This statement of policy is intended to ensure that patients are not abandoned or neglected and that pharmacists are not forced to engage in activities that conflict with their religious, moral and ethical beliefs.

Background and Purpose

Questions have been raised regarding the professional obligations of licensed pharmacists with respect to providing services to which they may be religiously, morally or ethically opposed. The Board is publishing this statement of policy to provide guidance to pharmacists and pharmacies on how to handle the situation when a pharmacist has an issue with filling a prescription due to religious, moral or ethical objection. This statement of policy is not intended to supersede relevant laws, rules or regulations. The Board also recognizes that professional judgment is often based upon a specific set of facts that requires a particular analysis and not every situation can be addressed with general guidance.

Guidelines

Pharmacists have a professional responsibility to ensure that their patients obtain properly ordered and therapeutically appropriate medications in a timely matter with appropriate counseling from a pharmacist. Pharmacists also have a responsibility to practice competently and to protect against abandoning or neglecting a patient in need of immediate care without making alternate arrangements. When a pharmacist recognizes that the pharmacist's religious, moral or ethical belief, or any other factor, will result in the refusal to fill a prescription that is otherwise available in a pharmacy, the pharmacist has a professional obligation to take steps to avoid the possibility of abandoning or neglecting a patient. When a pharmacist begins practice in a professional setting, the pharmacist should take steps that may include notification to the owner and pharmacist-manager if the pharmacist's beliefs will limit the drug products the pharmacist will dispense.

If a pharmacy employs a pharmacist who has identified circumstances that would preclude the filling of prescriptions for particular products, the owner and pharmacist-manager should devise reasonable accommodations that will respect the pharmacist's choice while assuring delivery of services to patients in need. This may include scheduling of pharmacists to allow a pharmacist who has a religious, moral or ethical objection to practice simultaneously with another pharmacist who will fill the requested prescription, entering into collaborative arrangements with pharmacies in close proximity, or other accommodations designed to protect the public.

In addition, a pharmacist who has a religious, moral or ethical objection to filling a particular prescription should

avoid judgmental or confrontational activities with the patient and should not interfere with another pharmacist filling the prescription.

EDWARD J. BECHTEL, R.Ph.,
Chairperson

(Editor's Note: Title 49 of the Pennsylvania Code is amended by adding a Statement of Policy in § 27.103.)

Fiscal Note: 16A-5421. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 27. STATE BOARD OF PHARMACY

STATEMENTS OF POLICY

§ 27.103. Matters of conscience—statement of policy.

(a) *Background and purpose.* This statement of policy is not intended to supersede relevant laws, rules or regulations. Questions have been raised relating to the professional obligations of licensed pharmacists with respect to providing services to which they may be religiously, morally or ethically opposed. Pharmacists have a professional responsibility to offer complete pharmaceutical service by compounding or dispensing prescriptions which may reasonably be expected to be compounded or dispensed by pharmacists to meet the needs of patients who would usually attempt to utilize the services. However, pharmacists may also decline to fill or refill a prescription if, in the pharmacist's professional judgment exercised in the interest of the safety of the patient, the pharmacist believes the prescription should not be filled or refilled. When a pharmacist recognizes that religious, moral or ethical beliefs will result in the refusal to fill a prescription that is otherwise available in a pharmacy, the pharmacist has a professional obligation to take steps to avoid the possibility of abandoning or neglecting a patient.

(b) *Guidelines.* Pharmacists and pharmacies should consider the following guidelines when a pharmacist has religious, moral or ethical objections to filling certain prescriptions:

(1) When a pharmacist begins practice in a professional setting, the pharmacist should take steps that may include notification to the owner and pharmacist-manager if the pharmacist's beliefs will limit the drug products the pharmacist will dispense.

(2) If a pharmacy employs a pharmacist that has identified circumstances that would preclude the filling of prescriptions for particular products, the owner and pharmacist-manager should devise reasonable accommodations that will respect the pharmacist's choice while assuring delivery of services to patients in need. This may include the scheduling of pharmacists to allow a pharmacist who has a religious, moral or ethical objection to practice simultaneously with another pharmacist who will fill the requested prescription, entering into collaborative arrangements with pharmacies in close proximity, or other accommodations designed to protect the public.

(3) When a pharmacist has a religious, moral or ethical objection to filling a prescription, the pharmacist should not interfere with another pharmacist responding to the professional needs of a patient. The objecting pharmacist should refrain from engaging in nonhealth related judgmental or confrontational activities with the patient.

(4) In the case of a pharmacy staffed by only one licensed pharmacist who conscientiously objects to performing certain pharmacy practices and providing services customarily and ordinarily performed by a licensed pharmacist at a pharmacy, the pharmacist should ensure that protocols are in place that will avoid results that cause harm or potential harm to any patients/customers as a consequence of any action or inaction by the pharmacist based upon any such conscientious objections, including, but not limited to, the denial of access to prescribed medications and disruptions in the continuity of care.

[Pa.B. Doc. No. 07-1988. Filed for public inspection October 26, 2007, 9:00 a.m.]

NOTICES

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 October 16, 2007.

BANKING INSTITUTIONS

Charter Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-12-07	Monument Bank Doylestown Bucks County	Doylestown	Approved
10-16-07	Prestige Community Bank Newtown Bucks County	104 Pheasant Run Newtown Bucks County	Commenced Operations

Holding Company Acquisitions

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
10-11-07	First Keystone Corporation, Berwick, to acquire 100% of Pocono Community Bank, Stroudsburg, which will be merged with and into First Keystone National Bank, Berwick (a wholly-owned subsidiary of First Keystone Corporation).	Berwick	Approved

Section 112 Applications

<i>Date</i>	<i>Name of Corporation</i>	<i>Location</i>	<i>Action</i>
10-11-07	Harleysville National Corporation, Harleysville, to acquire up to 19.9% of Berkshire Bancorp, Inc., Wyomissing, and thereby indirectly acquire up to 19.9% of the voting control of Berkshire Bank, Wyomissing.	Harleysville	Approved
This application is in conjunction with an application by Harleysville National Corporation, Harleysville, for approval to acquire 100% of East Penn Financial Corporation, Emmaus, which currently has approval to own up to 19.9% of Berkshire Bancorp, Inc.			
10-15-07	The PNC Financial Services Group, Inc., Pittsburgh, to acquire up to 19.9% of Bucks County Bank, Doylestown, in conjunction with the acquisition of Yardville National Bancorp, Hamilton, NJ. (Yardville National Bancorp owned 13.39% of the common shares of Bucks County Bank at the time the application was filed, but currently owns less than 10.0% of Bucks County Bank.)	Pittsburgh	Withdrawn

Consolidations, Mergers and Absorptions

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-15-07	Federated Investors Trust Company of PA, Pittsburgh, and Federated Investors Trust Company, Sicklerville, NJ Surviving Institution— Federated Investors Trust Company of PA, Pittsburgh	Pittsburgh	Approved
Merger will complete the conversion from a New Jersey State-chartered institution to a Pennsylvania State-chartered trust company.			

Branch Applications

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-11-07	Citizens Bank of Pennsylvania Philadelphia Philadelphia County	273 DeKalb Pike North Wales Montgomery County	Filed
10-12-07	Conestoga Bank Chester Springs Chester County	630 Skippack Pike Whitpain Township Montgomery County	Approved
10-12-07	Republic First Bank Philadelphia Philadelphia County	8764 Frankford Avenue Philadelphia Philadelphia County	Approved
10-12-07	Abington Savings Bank Jenkintown Montgomery County	420 South York Road Hatboro Montgomery County	Approved

Branch Relocations

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-10-07	Firsttrust Savings Bank Conshohocken Montgomery County	<i>To:</i> Butler Avenue and County Line Road Chalfont Bucks County <i>From:</i> 4275 County Line Road Chalfont Bucks County	Filed

Branch Discontinuances

<i>Date</i>	<i>Name of Bank</i>	<i>Location</i>	<i>Action</i>
10-12-07	Stonebridge Bank Exton Chester County	1212 Churchville Road Bel Air Harford County, MD	Approved

SAVINGS INSTITUTIONS

No activity.

CREDIT UNIONS

No activity.

The Department's website at www.banking.state.pa.us includes public notices for more recently filed applications.

STEVEN KAPLAN,
Secretary

[Pa.B. Doc. No. 07-1989. Filed for public inspection October 26, 2007, 9:00 a.m.]

DEPARTMENT OF EDUCATION

Availability of 2007-2008 Career and Technical Education Curriculum Grants

Applications for curriculum grant funding are invited. The project period is December 3, 2007, to June 30, 2008. The maximum amount per project is \$25,000.

1. Eligibility Requirements

Funding is available on a competitive basis to career and technical education centers, area vocational-technical schools that offer approved career and technical education programs.

2. Application Deadline

Applications are due November 30, 2007, by 5 p.m.

3. How to apply

The Department of Education (Department) has implemented an internet-based E-Grant system that requires

eligible applicants to apply for funding online. The grant guidelines will be available on the Department's website www.pde.state.pa.us/. On the left side click on: Pre K-12 Schools, Career and Technical Education, Grants and Funding and Funding Sources. This page provides a listing of the various funding guidelines. Click on Curriculum Grants.

4. Questions Concerning the Grant Application

Questions concerning the grant application should be addressed to John Bonchalk, General Vocational Education Advisor, Department of Education, Bureau of Career and Technical Education, Data Analysis, Assessment and Contracts Division, 333 Market Street, 11th Floor, Harrisburg, PA 17126-0333, (717) 772-4853, jbbonchalk@state.pa.us.

GERALD L. ZAHORCHAK, D. Ed.,
Secretary

[Pa.B. Doc. No. 07-1990. Filed for public inspection October 26, 2007, 9:00 a.m.]

Availability of 2007-2008 Career and Technical Education Equipment Grants

Applications for equipment grant funding are invited. The project period is December 3, 2007, to June 30, 2008. The maximum amount per project is \$50,000.

1. *Eligibility Requirements*

Funding is available on a competitive basis to career and technical education centers, area school districts with eight or more approved career and technical programs two of which must be trade and industrial, and school districts with approved career and technical education agriculture programs.

2. *Application Deadline*

Applications are due November 30, 2007, by 5 p.m.

3. *How to apply*

The Department of Education (Department) has implemented an internet-based E-Grant system that requires

eligible applicants to apply for funding online. The grant guidelines will be available on the Department's website at www.pde.state.pa.us/. On the left side click on Pre K-12 Schools, Career and Technical Education, Grants and Funding and Funding Sources. This page provides a listing of the various funding guidelines. Click on Equipment Grants.

4. *Questions Concerning the Grant Application*

Questions concerning the grant application should be addressed to John Bonchalk, General Vocational Education Advisor, Department of Education, Bureau of Career and Technical Education, Data Analysis, Assessment and Contracts Division, 333 Market Street, 11th Floor, Harrisburg, PA 17126-0333, (717) 772-4853, jbonchalk@state.pa.us.

GERALD L. ZAHORCHAK, D. Ed.,
Secretary

[Pa.B. Doc. No. 07-1991. Filed for public inspection October 26, 2007, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Applications, Actions and Special Notices

APPLICATIONS

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

This notice provides information about persons who have applied for a new, amended or renewed NPDES or WQM permit, a permit waiver for certain stormwater discharges or submitted a Notice of Intent (NOI) for coverage under a general permit. The applications concern, but are not limited to, discharges related to industrial, animal or sewage waste, discharges to groundwater, discharges associated with municipal separate storm sewer systems (MS4), stormwater associated with construction activities or concentrated animal feeding operations (CAFOs). This notice is provided in accordance with 25 Pa. Code Chapters 91 and 92 and 40 CFR Part 122, implementing The Clean Streams Law (35 P. S. §§ 691.1—691.1001) and the Federal Clean Water Act.

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

For NPDES renewal applications in Section I, the Department of Environmental Protection (Department) has made a tentative determination to reissue these permits for 5 years subject to effluent limitations and monitoring and reporting requirements in their current permits, with appropriate and necessary updated requirements to reflect new and changed regulations and other requirements.

For applications for new NPDES permits and renewal applications with major changes in Section II, as well as applications for MS4 individual permits and individual stormwater construction permits in Sections IV and VI, the Department, based upon preliminary reviews, has made a tentative determination of proposed effluent limitations and other terms and conditions for the permit applications. These determinations are published as proposed actions for comments prior to taking final actions.

Unless indicated otherwise, the EPA Region III Administrator has waived the right to review or object to proposed NPDES permit actions under the waiver provision in 40 CFR 123.24(d).

Persons wishing to comment on an NPDES application are invited to submit a statement to the regional office noted before an application within 30 days from the date of this public notice. Persons wishing to comment on a WQM permit application are invited to submit a statement to the regional office noted before the application within 15 days from the date of this public notice. Comments received within the respective comment periods will be considered in the final

determinations regarding the applications. Comments should include the name, address and telephone number of the writer and a concise statement to inform the Department of the exact basis of a comment and the relevant facts upon which it is based.

The Department will also accept requests for a public hearing on applications. A public hearing may be held if the responsible office considers the public response significant. If a hearing is scheduled, a notice of the hearing will be published in the *Pennsylvania Bulletin* and a newspaper of general circulation within the relevant geographical area. The Department will postpone its final determination until after a public hearing is held.

Persons with a disability who require an auxiliary aid, service, including TDD users, or other accommodations to seek additional information should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984.

I. NPDES Renewal Applications

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0061646	Pennsylvania American Water 100 Pennsylvania Avenue Wilkes-Barre, PA 18701	Roaring Brook Township Lackawanna County	Stafford Meadow Brook 5A HQ-CWF	Y
PA0064289	Johnson's Home for the Aged R. R. 2 Box 72 Wapwallopen, PA 18660	Hollenback Township Luzerne County	UNT to Wapwallopen Creek Watershed 5B CWF	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0087017 (SEW)	Lower Paxton Township Authority—Springford Village WWTP 425 Prince Street Suite 139 Harrisburg, PA 17109	Dauphin County Lower Paxton Township	Nyes Run 7-D	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0228656 IW	Irvona Municipal Authority P. O. Box 247 Irvona, PA 16656	Clearfield County Irvona Borough	North Witmer Run 8C	Y
PA0112551 (Nonmunicipal)	Randall B. Moyer SFTF 230 Madisonburg Pike Madisonburg, PA 16852	Centre County Miles Township	UNT to Elk Creek 6A	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0210285	James A. Newton 959 Jackson Avenue Warren, PA 16365	Glade Township Warren County	UNT to Glade Run 16-B	Y
PA0239062	Norbert F. Dietrich 30002 Lake Creek Road Cochranon, PA 16314	Wayne Township Crawford County	UNT to Sugar Creek 16-D	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.

PA0058505, Sewage, SIC 5812, **Kilcar House, Inc.**, 1197 California Road, Quakertown, PA 18951-4519. This proposed facility is located in Richland Township, **Bucks County**.

Description of Proposed Activity: Renewal of an NPDES permit to discharge 1,400 gpd of treated sewage into the 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 31.5 miles below the point of discharge.

The proposed effluent limits for Outfall 001 are based on a design flow of 1,400 gpd.

Parameter	Average Monthly (mg/l)		Instantaneous Maximum (mg/l)	
CBOD ₅	25		50	
Suspended Solids	30		60	
Ammonia (as N)	20.0		40.0	
Phosphorus (as P)	Monitor and Report		Monitor and Report	
(0-2 Years)	0.5		1.0	
(3-5 Years)	0.5		1.2	
Total Residual Chlorine	200 colonies/100 ml		1,000 #/100 ml	
Fecal Coliform	minimum of 2.0 mg/l at all times			
Dissolved Oxygen	within limits of 6.0 to 9.0 Standard Units at all times			
pH				

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

1. The EPA waiver is in effect.
2. Disinfection required.

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

PA-0012742, Industrial, **Copperhead Chemical Company, Inc.**, Two River Road, Tamaqua, PA 18252. This proposed facility is located in Walker Township, **Schuylkill County**.

Description of Proposed Activity: Renewal of NPDES Permit.

The receiving stream, Little Schuylkill River, is in the State Water Plan Watershed 3A and is classified for: CWF. The nearest downstream public water supply intake for Pottsville Water Authority is located on Schuylkill River is 50 miles below the point of discharge.

The proposed effluent limits for Outfall 011 based on a design flow of 0.0175 mgd.

Parameter	Mass (lb/day)		Concentration (mg/l)	
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily
BOD ₅	4.0	8.84		
Total Suspended Solids	4.9	10.1		
COD	12.5	35.5		
Oil and Grease			15.0	30.0
Total Residual Chlorine			1.2	2.8
Fecal Coliform			200/100 ml	
(5-1 to 9-30)			2,000/100 ml	
(10-1 to 4-30)			6 to 9 Standard Units	
pH				

PA-0063568, Industrial, **Northampton Borough Municipal Authority**, 1 Clear Springs Drive, Northampton, PA 18067. This proposed facility is located in Whitehall Township, **Lehigh County**.

Description of Proposed Activity: Discharge of treated industrial waste water consisting of potable water filtration plant backwash water.

The receiving stream, Spring Creek, is in the State Water Plan Watershed 2C and is classified for: CWF. The nearest downstream public water supply intake for City of Allentown is located on Lehigh River is 8.5 miles below the point of discharge.

The proposed effluent limits for Outfall 001 based on a design flow of 0.95.

Outfall 001

Parameter	Mass (lb/day)		Concentration (mg/l)	
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily
Aluminum			1.2	2.0
Manganese			1.0	2.0
Total Iron			2.0	4.0
Total Suspended Solids			30	60
pH			6.0 to 9.0 Standard Units at all times	
Total Residual Chlorine			0.68	1.60

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

1. *Chemical Additives*

PA#0070505, Industrial, **Geo Specialty Chemicals**, 2409 North Cedar Crest Boulevard, Allentown, PA 18104-9733. This existing facility is located in South Whitehall Township, **Lehigh County**.

Description of Proposed Activity: Renewal of NPDES permit to discharge treated industrial wastewater and noncontact cooling water.

The receiving stream, Jordan Creek, is in the State Water Plan Watershed 02C and is classified for: TSF, MF. The nearest downstream public water supply intake for BCWSA is located on the Delaware River more than 50 miles below the point of discharge.

The proposed effluent limits for Monitoring Point 101 (treated wastewater) are based on a flow of 2.0 mgd:

Parameter	Mass (lb/day)		Concentration (mg/l)	
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily
Flow (mgd)	Report	Report		
BOD ₅	540	1,430	32	86
Total Suspended Solids	790	2,570	48	154
pH	Within limits of 6.0 to 9.0 Standard Units at all times			

The proposed effluent limits for Outfall 001 (treated wastewater and noncontact cooling water) are based on a flow of 6.0 mgd.

Parameter	Mass (lbs/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Report	Report			
CBOD ₅					
(5-1 to 10-31)	550	1,100	11	22	27
(11-1 to 4-30)	1,100	2,200	22	44	55
NH ₃ -N					
(5-1 to 10-31)	130	260	2.6	5.2	6.5
(11-1 to 4-30)	390	780	7.8	15	19
Dissolved Oxygen	Minimum of 5.0 at all times				
Total Suspended Solids	1,250	2,500	25	50	62
Phosphorus	350	700	7	14	17
Sulfate	25,000	50,000	500	1,000	1,250
Total Dissolved Solids	50,000	100,000	1,000	2,000	2,500
Color			100 Pt-co	200 Pt-co	250 Pt-co
pH	Within limits of 6.0 to 9.0 Standard Units at all times				
Formaldehyde			0.05		

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

Controlling chemical additives usage rates, maintenance of wells for groundwater monitoring, monitoring waiver for specified parameters, PPC and BMP requirements applicable to stormwater discharges.

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 0088889, CAFO, **Graywood Farms, LLC**, 225 Mason Dixon Road, Peach Bottom, PA 17653.

Graywood Farms, LLC has submitted an application to renew the NPDES permit for Graywood Dairy Farm, an existing dairy operation in Fulton Township, **Lancaster County**. The CAFO is situated near a UNT of Conowingo Creek (Watershed 7-K), which is classified as a HQ-CWF. The CAFO has a target animal population of approximately 1,181 animal equivalent units consisting of 607 adult cows, 365 heifers and 159 calves.

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 the NPDES permit for the operation subject to the terms and conditions and monitoring and reporting requirements specified in the permit. The permit application and draft permit are on file at the Southcentral Regional Office of the Department.

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

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

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

PA0205001, Industrial Waste, SIC 4941, **Indiana County Municipal Services Authority**, 602 Kolter Drive, Indiana, PA 15701. This application is for renewal of an NPDES permit to discharge treated process water from the West Lebanon Water Plant in Young Township, **Indiana County**.

The following effluent limitations are proposed for discharge to the receiving waters, Wertz Pond, classified as a CWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Buffalo Township Water Authority, located at Freeport, 37 miles below the discharge point.

Outfall 001: existing discharge, design flow of 0.003 mgd.

Parameter	Mass (lbs/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow	Monitor and Report				
TSS			30		60
Aluminum			4		8
Iron			2		4
Manganese			1		2
TRC			0.5		1.0
pH	not less than 6.0 nor greater than 9.0 Standard Units				

Other Conditions:

The EPA waiver is in effect.

PA0205079, Industrial Waste, SIC 2086, **American Beverage Company**, One Daily Way, Verona, PA 15147. This application is for renewal of an NPDES permit to discharge untreated noncontact cooling water and stormwater from a bottling plant in Verona Borough, **Allegheny County**.

The following effluent limitations are proposed for discharge to the receiving waters, Plum Creek, classified as a WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first existing/proposed downstream potable water supply is the Fox Chapel Water Authority, located at Fox Chapel, 1.7 miles below the discharge point.

Outfall 001: existing discharge, design flow of 0.047 mgd.

Parameter	Mass (lbs/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Temperature (° F)					
Jan. 1-Jan. 31					72.4
Feb. 1-Feb. 29					75.4
Mar. 1-Sep. 15					110
Sep. 16-Sep. 30					106.9
Oct. 1-Oct. 15					101.1
Oct. 16-Oct. 31					95.1
Nov. 1-Nov. 15					90.4
Nov. 16-Nov. 30					75.9
Dec. 1-Dec. 31					66.3
pH	not less than 6.0 nor greater than 9.0				

Outfall 003: existing discharge, design flow of 0.036 mgd.

Parameter	Mass (lbs/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Temperature (° F)					
Jan. 1-Jan. 31					72.4
Feb. 1-Feb. 29					75.4
Mar. 1-Sep. 15					110
Sep. 16-Sep. 30					106.9
Oct. 1-Oct. 15					101.1
Oct. 16-Oct. 31					95.1
Nov. 1-Nov. 15					90.4
Nov. 16-Nov. 30					75.9
Dec. 1-Dec. 31					66.3
pH	not less than 6.0 nor greater than 9.0				

Outfall 004: existing discharge, design flow of 0.048 mgd.

Parameter	Mass (lbs/day)		Concentration (mg/l)		
	Average Monthly	Maximum Daily	Average Monthly	Maximum Daily	Instantaneous Maximum
Flow (mgd)	Monitor and Report				
Temperature (° F)					
Jan. 1-Jan. 31					
Feb. 1-Feb. 29					
Mar. 1-Sep. 15					
Sep. 16-Sep. 30					
Oct. 1-Oct. 15					
Oct. 16-Oct. 31					
Nov. 1-Nov. 15					
Nov. 16-Nov. 30					
Dec. 1-Dec. 31					
pH	not less than 6.0 nor greater than 9.0				

The EPA waiver is in effect.

PA0093165, Sewage, **Claysville-Donegal Joint Municipal Authority**, P. O. Box 467, Claysville, PA 15323. This application is for renewal of an NPDES permit to discharge treated sewage from Claysville Water Pollution Control Plant in Donegal Township, **Washington County**.

The following effluent limitations are proposed for discharge to the receiving waters, known as Dutch Fork, which are classified as a HQ-WWF with existing and/or potential uses for aquatic life, water supply and recreation. The first downstream potable water supply intake from this facility is the Claysville-Donegal Joint Municipal Authority.

Outfall 001: existing discharge, design flow of 0.16 mgd.

Parameter	Concentration (mg/l)			
	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Maximum
CBOD ₅	15	22.5		30
Suspended Solids	25	38		50
Ammonia Nitrogen				
(5-1 to 10-31)	1.5	2.3		3.0
(11-1 to 4-30)	4.0	6.0		8.0
Phosphorus	2	3		4
Fecal Coliform				
(5-1 to 9-30)	200/100 ml as a Geometric Mean			
(10-1 to 4-30)	2,000/100 ml as a Geometric Mean			
Total Residual Chlorine	0.03			0.10
Dissolved Oxygen	not less than 7.0 mg/l			
pH	not less than 6.0 nor greater than 9.0			

The EPA waiver is in effect.

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

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

WQM Permit No. 5207402, Sewerage, **PA American Water Company**, 800 West Hersheypark Drive, Hershey, PA 17033. This proposed facility is located in Lehman Township, **Pike County**.

Description of Proposed Action/Activity: This project consists of upgrades to the existing Saw Creek Wastewater Treatment Plant to include replacement of blowers, pumps, instruments, aeration systems in kind/replace gaseous CI w/liquid NaOCI.

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

WQM Permit No. 6707410, Sewerage, **Jackson Township Sewer Authority**, 439 Roth's Church Road, Spring Grove, PA 17362. This proposed facility is located in Jackson Township, **York County**.

Description of Proposed Action/Activity: Application for construction/operation of the Northern Sanitary Sewer Collection System and Pumping Station to serve the Village of Thomasville.

WQM Permit No. 2207404, Sewerage, **Susquehanna Township Authority**, 1900 Linglestown Road, Harrisburg, PA 17110. This proposed facility is located in Susquehanna Township, **Dauphin County**.

Description of Proposed Action/Activity: Application for construction/operation of sewer extension and pump station to serve the Maplewood Development.

WQM Permit No. 6707411, Sewerage, **Dillsburg Area Authority**, 98 West Church Street, P. O. Box 370, Dillsburg, PA 17019. This proposed facility is located in Monroe Township, **Cumberland County** and Carroll Township, **York County**.

Description of Proposed Action/Activity: Application for construction/operation of the Berkshire Hills Interceptor.

WQM Permit No. 0707403, Sewerage, **Duncansville Municipal Authority**, P. O. Box 502, Duncansville, PA 16635. This proposed facility is located in Duncansville and Allegheny Townships, **Blair County**.

Description of Proposed Action/Activity: Application for construction/operation of upgrade major collectors and interceptors in the Borough of Duncansville.

WQM Permit No. 6798403, Amendment 07-1, Sewerage, **Conewago Township Sewer Authority**, 600 Locust Point Road, York, PA 17406. This proposed facility is located in Conewago Township, **York County**.

Description of Proposed Action/Activity: Application for construction/operation to obtain updated organic treatment capacity using vendor Process Design Report.

WQM Permit No. 0107202, CAFO, **Hillandale Gettysburg, LP**, 370 Spicer Road, Gettysburg, PA 17325. This proposed facility is located in Tyrone Township, **Adams County**.

Description of Proposed Action/Activity: Requesting approval to expand layer operation and egg processing facility.

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

WQM Permit No. 5607404, Jerry J. Klotz, 821 East Main Street, Somerset, PA 15501. This proposed facility is located in Somerset Township, **Somerset County**.

Description of Proposed Action/Activity: Application for the construction and operation of a single residence sewage treatment plant.

WQM Permit No. 463S028-A1, Sewerage, **Westmoreland Fayette Municipal Sewer Authority**, P. O. Box 126, Scottdale, PA 15683. This existing facility is located in East Huntingdon Township, **Westmoreland County**.

Description of Proposed Action/Activity: Application for the modification of chlorine contact system.

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

V. Applications for NPDES Wavier Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4)

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

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

Lehigh County Conservation District: Lehigh Agricultural Center; Suite 102, 4184 Dorney Park Road, Allentown, PA 18104, (610) 391-9583.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI023907024	Bruce Uhl 3109 Birchwood Drive Allentown, PA 18103	Lehigh	Salisbury Township	Trout Creek HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI024807014	Traditions of America, LP Attn: J. B. Reilly 1 Saucon View Drive Bethlehem, PA 18017	Northampton	Hanover Township	Monocacy Creek HQ-CWF

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

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

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

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

Armstrong County Conservation District, Armsdale Administration Building, 124 Armsdale Road, Suite B-2, Kittanning, PA 16201, (724) 548-3425.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI050303001	Jack Claypoole R. D. 2 Box 153 Dayton, PA 16222	Armstrong	Cowanshannock Township	South Branch of Pine Creek HQ-CWF

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

Conservation District: Crawford County Conservation District, Woodcock Creek Nature Center, 21742 German Road, Meadville, PA 16433, (814) 763-5269.

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI062007002	Cambridge Area Joint Authority 161 Carringer Street Cambridge Springs, PA 16403	Crawford	Cambridge Borough Cambridge Township	French Creek WWF

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

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

PUBLIC WATER SUPPLY (PWS) PERMIT

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

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

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

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

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

SAFE DRINKING WATER

Applications Received under the Pennsylvania Safe Drinking Water Act

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

Application No. 2307503, Public Water Supply.

Applicant	Aqua Pennsylvania, Inc.
Township	Springfield
County	Delaware
Responsible Official	Karl Kyriss 762 Lancaster Avenue Bryn Mawr, PA 19010-3489
Type of Facility	PWS
Consulting Engineer	CET Engineering Services 1240 North Mountain Road Harrisburg, PA 17112-1788
Application Received Date	October 5, 2007
Description of Action	Installation of the Aries Managed Air System.

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

Application No. 4007508, Public Water Supply.

Applicant	United Water Pennsylvania, Inc. Dallas Township Luzerne County
Responsible Official	John D. Hollenbach, General Manager United Water Pennsylvania, Inc. 4211 East Park Circle Harrisburg, PA 17111
Type of Facility	Community Water System

Consulting Engineer Thomas R. Schink, P. E.
United Water Pennsylvania, Inc.
4211 East Park Circle
Harrisburg, PA 17111
(717) 561-1103
Ext. 1652

Application Received Date October 1, 2007

Description of Action Application for construction of a booster pump station with a flow control valve to allow transfer of water between two pressure gradients within UWP's Dallas, PA distribution system.

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

Permit No. 3607513, Public Water Supply.

Applicant **Yogi Bear's Jellystone Park**
Municipality East Drumore Township
County **Lancaster**
Responsible Official Yogi Bear's Jellystone Park,
Owner
340 Blackburn Road
Quarryville, PA 17566

Type of Facility Public Water Supply
Consulting Engineer G. Matthew Brown, P. E.
ARRO Consulting, Inc.
270 Granite Run Drive
Lancaster, PA 17601

Application Received: September 24, 2007

Description of Action Installation of general corrosion control, softening, disinfection and nitrate removal systems.

Permit No. 3607514, Public Water Supply.

Applicant **Borough of Lititz**
Municipality Lititz Borough
County **Lancaster**
Responsible Official Borough of Lititz, Borough
Manager
7 South Broad Street
Lititz, PA 17543

Type of Facility Public Water Supply
Consulting Engineer Michael J. Daschbach, P. E.
Entech Engineering, Inc.
4 South Fourth Street
Reading, PA 19603

Application Received: September 25, 2007

Description of Action Construction of a new Kissel Hill booster pump station adjacent to the existing station.

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

Permit No. 5056A3, Public Water Supply.

Applicant **Borough of Tarentum**
318 2nd Avenue
Tarentum, PA 15084

Township or Borough Tarentum Borough
Responsible Official William Rossey
Borough of Tarentum
318 2nd Avenue
Tarentum, PA 15084

Type of Facility Water treatment plant
Consulting Engineer Gibson-Thomas Engineering Co.,
Inc.
1004 Ligonier Street
P. O. Box 853
Latrobe, PA 15650

Application Received Date September 27, 2007

Description of Action Change from soda ash to caustic soda.

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

Application No. 2507505, Public Water Supply.

Applicant **Lake Shore Club District Association**
Township or Borough Fairview Township
Erie County
Responsible Official Gerard N. Cairns, President
Consulting Engineer Robert L. Rabell, P. E.
R. L. Rabell Surveying &
Engineering
10560 Walnut Street
Albion, PA 16401

Application Received Date September 24, 2007

Description of Action Installation of approx 25,000 LF of new 6" and 8" waterlines and appurtenances, elimination of old lines and change from private community water well supply to a bulk municipal water supply source from Fairview Township Water Authority. System will now be consecutive to Fairview Township Water Authority.

Application No. 3307501, Public Water Supply.

Applicant **Winslow Township Supervisors**
Township or Borough Winslow Township
Jefferson County
Responsible Official Robert Krajewski, Chairperson
Consulting Engineer Jeffrey B. Spencer, EIT
Gwin, Dobson & Foreman, Inc.
3121 Fairway Drive
Altoona, PA 16602

Application Received Date October 9, 2007

Description of Action Extend Borough of Sykesville water system to the Village of Soldier. Project will involve the installation of 18,000 LF of 8" and 2,000 LF of 6" waterline, a 75,000 gal. water storage tank, booster pump station and all required appurtenances.

MINOR AMENDMENT

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

Application No. 2680501MA, Minor Amendment.

Applicant	Municipal Authority of Westmoreland County 6064 Route 30 P. O. Box 730 Greensburg, PA 15601
Township or Borough	Connellsville
Responsible Official	John P. Ashton, Operations Manager-Production Municipal Authority of Westmoreland County 6064 Route 30 P. O. Box 730 Greensburg, PA 15601
Type of Facility	Indian Creek Water Treatment Plant
Consulting Engineer	
Application Received Date	September 26, 2007
Description of Action	Replace existing 0—100 pounds per day ammoniators with 0—200 pounds per day ammoniators.

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:

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

Union Tank Car, Altoona City, **Blair County**. Mountain Research, LLC, 825 25th Street, Altoona, PA 16601, on behalf of Union Tank Car, 175 West Jackson Boulevard, Chicago, IL 60604, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with VOCs. The property is and will remain a railroad car refurbishing facility. The applicant is seeking to remediate to the Statewide Health and Site-Specific Standards.

Former Mountville Wallpaper Factory, Mountville Borough, **Lancaster County**. Apex Company, 269 Great Valley Parkway, Malvern, PA 19355, on behalf of US Small Business Administration, Robert N.C. Nix Federal Building, 900 Market Street, 5th Floor, Philadelphia, PA 19107, submitted a Notice of Intent to Remediate site soils and groundwater contaminated with metals, VOCs and SVOCs. The property is a former wallpaper manufacturing facility and planned future use is nonresidential. The applicant seeks to remediate to the Statewide Health and Site-Specific Standards.

R. R. Donnelley, Lancaster Township, **Lancaster County**. AMO Environmental Decisions, Inc., 4327 Point Pleasant Pike, Danboro, PA 18916, on behalf of R. R. Donnelley, 1375 Harrisburg Pike, Lancaster, PA 17601, submitted a Notice of Intent to Remediate site groundwater contaminated with VOCs and nickel. The current and intended future use of the property is industrial. The applicant seeks to remediate to the Statewide Health Standard.

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

Wickwire Property, Wysox Township, **Bradford County**. Fagan Engineers, 113 East Chemung Place, Elmira, NY 14904 on behalf of Gary Wickwire, R. R. 2, Box 101, Wysox, PA 18854 has submitted a Notice of Intent to Remediate soil and groundwater contaminated with benzene, ethylbenzene, isopropyl benzene, naphtha-

lene, toluene, fluorene and phenanthrene. The applicant proposes to remediate the site to meet the Statewide Health Standard. The property will be used for commercial purposes.

Dominion Transmission Ellisburg Compressor Station, Genesee Township, **Potter County**, URS Corporation, 140 Cypress Station Drive, Suite 140, Houston, TX 77090 on behalf of Dominion Resources Services, Inc., 501 Martindale Street, Suite 400, Pittsburgh, PA 15212-5817 has submitted a Notice of Intent to Remediate soil and groundwater contaminated with ethylene glycol. The applicant proposes to remediate the site to meet the Statewide Health Standard. The site will continue to be used as a natural gas compressor station.

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

Former GTE Products Corporation Titusville Facility, Oil Creek Township, **Venango County**. Malcolm Pirnie, 43 British American Boulevard, Latham, NY 12110 on behalf of GTE Operations Support Incorporated, One Verizon Way VC34W453, Basking Ridge, NJ 07920-1097, has submitted a Notice of Intent to Remediate. Remediation will involve soil and groundwater beneath the ground surface that have been impacted by VOCs from past manufacturing operations. The site will continue to be used for nonresidential, industrial/commercial purposes. The Notice of Intent to Remediate was published in *The Titusville Herald* on September 5, 2007.

RESIDUAL WASTE GENERAL PERMITS

Applications 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 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 Application Number WMGR039. G & H Oil Company, 2553 Pennsylvania Avenue West Extension, Warren, PA 16365-3620. General Permit Application Number WMGR039 authorizes operation of transfer facilities and rail transloading facilities for the processing of waste oil (including waste oil mixed with waste in accordance with 25 Pa. Code § 298.10(b)(2)(ii) or (iii)), waste oil/water mixtures and asphalt condensate from the manufacture of shingles prior to beneficial use. The approved processing is limited to collection, bulking, storage and passive oil/water separation. The application for renewal of General Permit Application Number WMGR039 was determined to be administratively complete by Central Office on October 10, 2007.

Comments concerning the application should be directed to 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 may contact the Department of Environmental Protection through the Pennsylvania Relay Service (800) 654-5984. Public comments must be submitted within 60 days of this notice and may recommend revisions to, and approval or denial of the application.

DETERMINATION FOR APPLICABILITY FOR RESIDUAL WASTE GENERAL PERMITS

Applications for Determination of Applicability 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 Residual Waste Regulations for a General Permit to Operate Residual Waste Processing Facilities and/or the Beneficial Use of Residual Waste Other Than Coal Ash

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

General Permit Application No. WMGR028SE001A. Independence Construction Materials, (Devault Asphalt Plant), located at 4045 State Road, Devault, PA 19432. This application is for a determination of applicability under the beneficial use of baghouse fines and/or scrubber pond precipitates, generated by hot-mix asphalt plants as an aggregate in roadway construction, an ingredient or component in cement or asphalt products, a soil additive or a soil conditioner located in Charlestown Township, **Chester County**. The application for determination of applicability was accepted as administratively complete by the Southeast Regional Office on October 10, 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 to the date of the hearing.

Persons with a disability who wish to comment and require an auxiliary aid, service or other accommodation to participate should contact the regional office identified before the application. TDD users should contact the Department through the Pennsylvania AT&T Relay Service at (800) 654-5984. Final plan approvals and operating permits will contain terms and conditions to ensure that the source is constructed and operating in compliance with applicable requirements in 25 Pa. Code Chapters 121–143, the Federal Clean Air Act (act) and regulations adopted under the act.

PLAN APPROVALS

Plan Approval Applications Received under the Air Pollution Control Act (35 P. S. §§ 4001–4015) and 25 Pa. Code Chapter 127, Subchapter B that may have special public interest. These applications are in review and no decision on disposition has been reached.

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

40-317-033: Stroehmann Bakeries, LC (325 Kiwanis Boulevard, Valmont Industrial Park, Hazleton, PA 18201) for installation of a new bread oven with oxidizer at their facility in Hazle Township, **Luzerne County**.

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

06-05103B: Granger Energy of Morgantown, LLC (16980 Wood Road, Lansing, MI 48906-1044) for construction of a landfill gas treatment plant in the New Morgan Borough, **Berks County**. The treated gas is to be shipped by pipeline to facilities to be used as a fuel in combustion units. The treatment plant will be subject to 40 CFR Part 60, Subpart WWW, Standards of Performance for New Stationary Sources.

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

11-00521A: Fuel Recovery, Inc. (2593 Wexford-Bayne Road, Suite 100, Sewickley, PA 15143) for installation of a portable trammel (rotating screen) and associated equipment for purpose of preprocessing coal refuse at the Lilly coal Refuse Site in Washington Township, **Cambria County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.

24-083M: Carbone of America Ind. Corp. (215 Stackpole Street, St. Marys, PA 15857) for construction of an electric furnace with associated oxidizer in St. Marys City, **Elk County**. This is a Title V facility.

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

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

46-0032C: SPS Technologies, LLC (301 Highland Avenue, Jenkintown, PA 19046) for re-evaluation of limi-

tations for the vapor degreaser on trichloroethylene in Abington Township, **Montgomery County**. The limitation was changed from a 12-ton trichloroethylene per year throughput limit to a 12-ton trichloroethylene per year emission limit.

09-0198: ABC Crushed Materials, LLC (100 Pipe Mill Road, Fairless Hills, PA 19030) for operation of a Portable Nonmetallic Mineral Processing Plant in Falls Township, **Bucks County**. Diesel-Fired Internal Combustion Engines are used to power the processing equipment. Raw, asphalt-brick-concrete materials are processed into Dense Graded Aggregate (DGA) for use at locations within the Keystone Industrial Port Complex (KIPC). The plan approval will allow DGA material for use at locations outside the KIPC. The only pollutant of concern from the proposed operation is PM emissions. This operation has a potential-to-emit of 0.138 tpy for total PM. PM emissions will be controlled by a water spray dust suppression system. The Plan Approval will contain recordkeeping and operating restrictions designed to keep the facility operating within the allowable emissions and all applicable air quality requirements.

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

36-05001F: Armstrong World Industries, Inc. (1507 River Road, Marietta, PA 17547) for moving a tenor to another building in East Donegal Township, **Lancaster County**. Emissions of PM are expected to remain unchanged. The approval will include monitoring, work practices, recordkeeping and reporting requirements designed to keep the facility operating within all applicable air quality requirements.

67-05083: Conectiv Mid-Merit, LLC (P. O. Box 6066, 92 DC 72, Newark, DE 19714-6066) for construction of a combined cycle electric generating facility. The proposed facility is to be in Peach Bottom Township, **York County**, off Atom Road, along Pikes Peak Road, approximately one mile northeast of the Borough of Delta.

Plan Approval 67-05083 was originally issued on January 5, 2007. The plan approval has been modified as follows:

Fuel Oil Sulfur Content

The liquid distillate fuel oil fired in the combustion turbines is required to be ultra low sulfur diesel (ULSD) with a maximum sulfur content of 15 ppm (as defined by ASTM Standard D975 Table 1). The original air quality modeling was done using low sulfur diesel (0.05 wt% S) and predicted possible impacts on the Class I areas during firing of fuel oil. A plan approval condition had been included to limit maximum daily fuel oil firing to prevent visibility impacts at the Class I areas. The requirement to use ULSD (0.0015 wt% S) allows increased daily firing of fuel oil. The daily maximum fuel oil firing limits have been changed to reflect the use of ULSD. The annual limit for oil-fired operation has not changed.

40 CFR Part 60 Subpart KKKK Standards of Performance for Stationary Combustion Turbines

The requirements of 40 CFR Part 60 Subpart KKKK had been incorporated into the plan approval. The NOx limit for natural gas firing was incorrectly designated as 25 ppm and has now been corrected to 15 ppm. The NOx limits in the plan approval modification are as follows:

Fuel type	NOx Emission Limit
Natural Gas	15 ppm at 15% O ₂ or 0.43 lb/MW-hr of useful output
Oil	42 ppm at 15% O ₂ or 1.3 lb/MW-hr of useful output

Ammonia Slip

The 5 ppmvd one-hour limit restriction in the plan approval has been replaced with a 5 ppmvd 24-hour rolling block average and a 7 ppmvd 3-hour rolling block average, volume corrected to 15% oxygen. Conectiv is proposing to use a continuous emissions monitor (CEM) to ensure compliance with the ammonia slip limit.

Emissions Testing

Section E, SG01, Condition No. 018 has been revised as follows:

Within 60 days after achieving the maximum firing rate, but not later than 180 days after start-up and, if warranted and requested by the Department of Environmental Protection based on the results of initial testing, each subsequent year of temporary operation thereafter, the permittee shall demonstrate compliance with each of the emission limits established in Conditions Nos. 001, 002, 009 and 010 above and opacity, as per 25 Pa. Code Chapter 139, 40 CFR Part 60 and Title IV.

Further testing will be required in the operating permit. The schedule will be determined based on the emissions testing and CEM data collected during temporary operation.

Subpart GG

Subpart GG has been replaced by the requirements of 40 CFR Part 60, Subpart KKKK. Section E, Condition No. 026 has been revised to remove reference to Subpart GG.

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

12-399-016A: Micron Research Corporation (P. O. Box 269, Emporium, PA 15834) for construction and operation of a four 2,000 pound electric induction furnaces (Source ID P120), six natural gas fired bake furnaces (Source ID P115) and a Baker Perkins double arm mixer (Source ID P110) at their facility in Shippen Township, **Cameron County**. The PM emissions from the proposed double arm mixer and the existing mixer will be controlled by an existing cartridge collector. Additionally, the air contaminant emissions from each carbon bake furnace will be controlled by a natural gas fired thermal afterburner. The facility proposed to install and operate six natural gas fired thermal afterburners (ID C115) to control emissions from the bake furnaces. The operation of the proposed sources will increase the production capacity at the facility. However, the facility will remain as a State-only facility.

The Department of Environmental Protection's (Department) review of the information contained in the application submitted by Micron indicates that the sources and the aircleaning devices will comply with all applicable air quality requirements pertaining to air contamination sources and the emission of air contaminants, including the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the fugitive air contaminant emission requirement of 25 Pa. Code § 123.1, the PM emission limitation of 25 Pa. Code § 123.13, the SOx emission limitation of 25 Pa. Code § 123.21 and the visible emission limitation of 25 Pa. Code § 123.41. The plan approval, if issued, will

subsequently be incorporated in an operating permit by means of an administrative amendment in accordance with 25 Pa. Code § 127.450 at a later date.

Based upon this finding, the Department proposes to issue a plan approval for the construction and installation of the proposed sources and control devices. The following is a summary of the conditions the Department proposes to place in the plan approval to ensure compliance with all applicable regulatory requirements:

1. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, Source ID P110 is a Baker Perkins double arm mixer, the air contaminant emissions from Source ID P110 and the existing mixer shall be controlled with a Neederman Filtermax model 6000 cartridge collector (ID C110).

2. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, only one of the two double arm mixers at the facility shall be operated at any time.

3. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the Mixer's lid shall remain closed at all times except when adding or removing the materials from Source ID P110.

4. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the PM emissions shall not exceed 0.02 grain per dry standard cubic foot from the exhaust of ID C110 associated with Source ID P110. Additionally, there shall be no visible emissions from the exhaust of ID C110 associated with Source ID P110.

5. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, Source ID P115 consists of six Abbot Furnace Company model 12GAS-156-BOX-1800 furnaces. The air contaminant emissions from each furnace of Source ID P115 shall be controlled by each afterburner of ID C115. Additionally, Source ID P115 and ID C115 shall be fired on natural gas only.

6. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, each afterburner of ID C115 shall be equipped with a 150,000 Btu/hr Eclipse model TJ15 natural gas fired burner.

7. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the minimum temperature of each afterburner shall be maintained at all time at 1,550° F. Additionally, all gases that enter the combustion chamber of each afterburner of ID C115 shall be retained at a minimum of one second at 1,550° F.

8. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the permittee shall continuously monitor and record the temperature of each afterburner to verify compliance with the minimum temperature requirement for each afterburner.

9. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the PM emissions from ID C115 associated with source ID P115 shall not exceed 0.02 grain per dry standard cubic foot. Additionally the visible emissions from ID C115 shall not exceed 0% opacity.

10. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the NOx, SOx and CO emissions from each afterburner of ID C115 associated with each furnace of Source ID P115 shall not exceed 0.60 pound per hour, 2.60 tons in any 12-consecutive month period and 0.40 pound per hour, 1.73 tons in any 12-consecutive month period and 0.012 pound per hour, 0.05 ton in any 12-consecutive month period respectively.

11. The permittee shall keep records of calculations to verify compliance with the NOx, SOx and CO emissions

limitations for each afterburner of ID C115 associated with each furnace of Source ID P115.

12. Within 180 days of startup of Source ID P115, the permittee shall conduct NO_x and PM stack testing on three afterburners of ID C115 associated with the three furnaces of Source ID P115 to verify compliance with the emission limitations for each furnace of Source ID P115.

13. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, each induction furnace of Source ID P120 shall be equipped with a full diameter hood incorporating a carbon pack through which all of the emissions of each furnace of Source ID P120 must pass before being vented to the atmosphere.

14. Under the BAT requirements of 25 Pa. Code §§ 127.1 and 127.12, the PM emissions from the exhaust of each induction furnace of ID C120 associated with each furnace of Source ID P120 shall not exceed 0.02 grain per dry standard cubic foot. Additionally the visible emissions from each s furnace of ID C120 shall not exceed 0% opacity.

A copy of the plan approval application and the Department's review is available for public review between 8 a.m. and 4 p.m. at the Department's Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701. Appointments for scheduling a review may be made by calling the Department at (570) 327-3693. Written comments or requests for a public hearing should be directed to Muhammad Q. Zaman, Manager, Facilities Permitting Section, Department of Environmental Protection, Air Quality Program, Northcentral Regional Office, 208 West Third Street, Suite 101, Williamsport, PA 17701, (570) 327-0512.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.

42-147B: W. R. Case & Sons Cutlery Co. (P. O. Box 4000, Owens Way, Bradford, PA 16701) for a plan approval to authorize the applicant to permanently operate a Cutlery Making Process in the City of Bradford, **McKean County**.

Under 25 Pa. Code §§ 127.44(a) and 127.424(b), the Department of Environmental Protection (Department) intends to issue a Plan Approval for their plant in the City of Bradford, McKean County. This plan approval will authorize the applicant to permanently operate a Cutlery Making Process. The plan approval will subsequently be incorporated into a State-only Operating Permit at a later date.

Based on the information provided by the applicant and the Department's own analysis the PM emissions from the process will be less than 3 tpy.

Anyone wishing to provide the Department with additional information they believe should be considered may submit the information to the address shown. Comments must be received, by the Department, within 30 days of the last day of publication. Written comments should include the following:

1. Name, address and telephone number of the person submitting comments.
2. Identification of the proposed Plan Approval; No. 42-147B.
3. Concise statement regarding the relevancy of the information or any objections to issuance of the Plan Approval.

A public hearing may be held, if the Department, in its discretion, decides that such a hearing is warranted on the comments received during the public comment period. All persons submitting comments or requesting a hearing will be notified of the decision to hold a hearing by publication in a local newspaper of general circulation or the *Pennsylvania Bulletin* or by telephone, where the Department determines the notification is sufficient. Written comments or requests for a public hearing should be directed to John F. Guth, Regional Air Quality Manager, Department of Environmental Protection, Northeast Regional Office, 230 Chestnut Street, Meadville, PA 16335, (814) 332-6940.

Department of Public Health, Air Management Services: 321 University Avenue, Philadelphia, PA 19104, Edward Braun, Chief, (215) 685-9476.

AMS 07132: Temple University—Main Campus (1009 West Montgomery Avenue, Philadelphia, PA 19122) for installation of three 91.3 mmBtu/hr boilers at their Central Steam Plant. Each boiler will burn natural gas and No. 2 oil. The boilers will have the following potential annual emissions: 15.5 tons of NO_x, 31.4 tons of CO, 7.0 tons of VOCs, 7.1 tons of SO₂ and 4.2 tons of PM. The plan approval will contain operating, testing, monitoring, recordkeeping and reporting requirements to ensure operation within all applicable requirements.

AMS 06194: Drexel University—University City (3330 Market Street, Philadelphia, PA 19104) for installation and operation of 20 natural gas fired boilers each less than 4 mmBtu/hr, three No. 2 or natural gas fired boiler less than or equal to 5 mmBtu/hr, 17 natural gas fired hot water heaters each less than or equal to 2 mmBtu/hr, three natural gas fired emergency generators each less than or equal to 100 kW, 10 No. 2 oil fired emergency generator each less than 700 hp, one No. 2 oil fired 1,676 hp emergency generator and one No. 2 oil fired 105 hp fire pump in the City of Philadelphia, **Philadelphia County**. There will be a potential emission increase 16 tpy of NO_x. The plan approval will contain operating and recordkeeping requirements to ensure operation within all applicable requirements.

OPERATING PERMITS

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

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

48-00032: Grand Central Sanitary Landfill, Inc. (1963 Pen Argyl Road, Pen Argyl, PA 18072) for renewal of their Title V Operating Permit for operation of their landfill in Plainfield Township, **Northampton County**. The facility's major source of emissions is the landfill, which primarily emits VOCs. The proposed Title V Operating Permit does not reflect any change in air emissions from the facility. This Title V Operating Permit shall include emission restrictions, monitoring, recordkeeping and reporting requirements designed to ensure this facility complies with all applicable air quality regulations.

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

21-05026: Carlisle SynTec, Inc. (1295 Ritner Highway, Carlisle, PA 17013) for operation of their synthetic rubber roofing manufacturing plant in Carlisle Borough,

Cumberland County. The facility has the potential to emit more than 50 tons of VOC annually. This is a renewal of the previous Title V operating permit and will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality regulations.

36-05024: Bigbee Steel & Tank Co. (99 West Elizabethtown Road, Manheim, PA 17545) for operation of their steel storage tank manufacturing facility in Rapho Township, **Lancaster County.** The facility has the potential to emit more than 50 tons of VOC annually. This is a renewal of the previous Title V operating permit and will include emission limits and work practice standards along with monitoring, recordkeeping and reporting requirements to ensure the facility complies with the applicable air quality requirements.

67-05012: Transcontinental Gas Pipe Line Corp. (P. O. Box 1396, Houston, TX 77251-1396) for renewal of Title V operating permit issued in March 2003 in Peach Bottom Township, **York County.** The facilities major sources of emissions include five natural gas fired engines, which primarily emit NOx and VOC. TV operating permit 67-05012 will contain restrictions, monitoring, recordkeeping and work practice standards designed to keep the facility operating within all applicable air quality requirements.

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

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

36-05107: Pepperidge Farm, Inc. (2195 North Reading Road, Denver, PA 17517) for operation of a bakery at their Denver Plant in East Cocalico Township, **Lancaster County.** This is a renewal of the State-only operating permit issued in December of 2002.

36-05108: International Paper Co. (801 Fountain Avenue, Lancaster, PA 17601) for operation of their solid fiber shipping container manufacturing facility in Manheim Township, **Lancaster County.** This is a renewal of the State-only operating permit issued in June 2002.

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

17-00023: Mill Creek Mining Co.—owner—Energy Resources, Inc.—operator (P. O. Box 259, Brockway, PA 15824) for operation of a dry coal processing facility in Bradford Township, **Clearfield County.**

The facility incorporates a roll crusher, two double deck screens and associated conveyors, and the like as well as a 697 brake horsepower diesel fuel-fired emergency generator.

The air contaminant emissions from the facility are not expected to exceed 6.27 tons of PM, 2.46 tons of PM10, .41 ton of NOx, .10 ton of CO, .07 ton of SOx and 0.01 ton of VOC per year. The facility is not a major (Title V) facility for any air contaminant.

The Department of Environmental Protection (Department) proposes to incorporate into the operating permit to be issued conditions requiring compliance with all appli-

cable regulatory requirements pertaining to air contamination sources and the emission of air contaminants. These conditions include:

1. Conditions requiring compliance with the applicable requirements of Subpart Y of the Federal Standards of Performance for New Stationery Sources, 40 CFR 60.250—60.254.

2. Conditions limiting the operation of the 697 brake horsepower diesel fuel-fired emergency generator to no more than 50 hours in any 12-consecutive month period and requiring records to be maintained, and submitted on an annual basis, of the number of hours the emergency generator operates each month.

3. A condition restricting the diesel fuel used in the emergency generator to virgin fuel to which no reclaimed/reprocessed oil, waste oil or other waste materials have been added.

4. A condition prohibiting the operation of the inactive wet coal preparation plant and associated bituminous coal-fired boiler which exists at this location unless plan approval has first been obtained from the Department to reactivate the respective plant and/or boiler.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, New Source Review Chief, (814) 332-6940.

16-00133: Clarion Bathware, Inc. (16273 Route 208, Marble, PA 16334) for re-issuance of a Title V Permit to operate a fiberglass bathware manufacturing facility in Washington Township, **Clarion County.** The facility's major emission sources include the resin and gelcoat operations, miscellaneous natural gas usage, custom, acrylic and mold shops, saws and grinders. The facility is a major facility due to its potential to emit of VOC and styrene. The facility is subject to 40 CFR Part 63, Subpart WWWW—National Emissions Standards for HAPs: Reinforced Plastic Composites Production.

43-00339: Supreme Manufacturing, Inc. (327 Billy Boyd Road, Stoneboro, PA 16153) for issuance of a Natural Minor Operating Permit to operate a facility that manufactures bulk material handling dredges and floating conveyors in New Vernon Township, **Mercer County.** The facility's primary emission sources include a sand-blasting bay and a paint bay.

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 particu-

lar 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)	3.0mg/l	6.0mg/l	7.0mg/l
Manganese (total)	2.0mg/l	4.0mg/l	5.0mg/l
Suspended solids	35 mg/l	70 mg/l	90 mg/l
pH ¹			
Alkalinity greater than acidity ¹		greater than 6.0; less than 9.0	

¹ The parameter is applicable at all times.

A settleable solids instantaneous maximum limit of 0.5 ml/l applied to: (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.

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

56020104 and NPDES No. PA0249246, Future Industries, Inc., P. O. Box 157, Meyersdale, PA 15552-0157, permit renewal for the continued operation and restoration of a bituminous surface mine in Brothersvalley Township, **Somerset County**, affecting 128.8 acres. Receiving streams: UNT to/and Buffalo Creek classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received October 2, 2007.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.

26070105 and NPDES Permit No. PA0251232, Amerikohl Mining, Inc. (1384 SR 711, Stahlstown, PA 15687) Application for commencement, operation and reclamation of a bituminous surface mine, located in Saltlick Township, **Fayette County**, affecting 71.64 acres. Receiving streams: UNTs to Little Champion Creek, classified for the following use: CWF. There is no

potable water supply intake within 10 miles downstream from the point of discharge. Application received October 5, 2007.

02070104 and NPDES Permit No. 0251224, Collier Land & Coal Development, LP (P. O. Box 62278, Upper St. Clair, PA 15241) Application for commencement, operation and reclamation of a bituminous surface mine, located in Collier Township, **Allegheny County**, affecting 33.3 acres. Receiving streams: UNTs to Robinson Run, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Application received October 5, 2007.

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

54991302T and NPDES Permit No. PA0223972, S & S Coal Company, LLC (66 Snyder Lane, Hegins, PA 17938), transfer of an existing anthracite underground mine operation from Snyder Coal Company in Barry, Foster and Hegins Townships, **Schuylkill County** affecting 9.5 acres, receiving stream: tributary to Hans Yost Creek. Application received October 3, 2007.

49970202R2, Susquehanna Coal Company (P. O. Box 27, Nanticoke, PA 18634), renewal of an existing anthracite coal refuse reprocessing operation in Mt. Carmel Township, **Northumberland County** affecting 808.0 acres, receiving stream: none. Application received October 4, 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 No. 28070801. R. R. Miller & Sons, Inc., 10961 Worleytown Road, Greencastle, PA 17225, commencement, operation and restoration of a small noncoal (industrial minerals) operation in Montgomery Township, **Franklin County**, affecting 9 acres, receiving stream: West Branch Conococheague Creek. Application received October 3, 2007.

Greensburg District Mining Office: Armbrust Professional Center, 8205 Route 819, Greensburg, PA 15601, (724) 925-5500.

65070301. Latrobe Specialty Steel Co. (2626 Ligonier Street, Latrobe, PA 15650) Application for commencement, operation and reclamation of a noncoal surface mine, located the City of Latrobe, **Westmoreland County**, affecting 33.25 acres. Receiving stream: Loyalhanna Creek, classified for the following use: WWF. There is no potable water supply intake within 10 miles downstream from the point of discharge. Application received September 21, 2007.

Knox District Mining Office: P. O. Box 669, 310 Best Avenue, Knox, PA 16232-0669, (814) 797-1191.

29000302. Frank Tucci (25000 PA Route 99, Cambridge Springs, PA 16403). Revision to an existing gravel operation in Rockdale Township, **Crawford County** affecting 24.0 acres. Receiving stream: Kelly Run, classified for the following use: HQ-CWF. There are no potable surface water supply intakes within 10 miles downstream. Revision to add an additional two acres for mineral extraction. Application received October 9, 2007.

37020306. The East Fairfield Coal Co. (Box 217, 10900 South Avenue, North Lima, OH 44452-9792) Revision to an existing noncoal operation in North Beaver Township, **Lawrence County** affecting 170.3 acres. Receiving stream: Honey Creek, classified for the following use: HQ. There are no potable surface water supply intakes within 10 miles downstream. Revision to add 0.9 acre to the permit. Application received October 11, 2007.

4914-37020306-E-1. The East Fairfield Coal Co. (Box 217, 10900 South Avenue, North Lima, OH 44452-9792) Application for a stream encroachment to conduct support activities within 100 feet of an UNT of Honey Creek in North Beaver Township, **Lawrence County** affecting 170.3 acres. Receiving stream: Honey Creek,

classified for the following use: HQ. There are no potable surface water supply intakes within 10 miles downstream. Application received October 11, 2007.

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

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

7773SM1A2C7 and NPDES Permit No. PA0595322. Reading Materials, Inc., (P. O. Box 1467, Skippack, PA 19474) renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Douglass Township, **Berks County**, receiving stream: UNT to Schuylkill River, classified for the following use: WWF. Application received October 9, 2007.

7973SM2C11 and NPDES Permit No. PA0043901. Hanson Aggregates BCM, Inc., (P. O. Box 231, Easton, PA 18044) renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Wrightstown Township, **Bucks County**, receiving stream: UNT to Neshaminy Creek, classified for the following uses: TSF and MF. Application received October 9, 2007.

66060801. Raymond C. Hayduk, Jr., (257 Riverside Drive, Factoryville, PA 18419) Stages I and II bond release for a quarry operation in Lemon Township, **Wyoming County** affecting 2.0 acres, on property owned by Raymond C. Hayduk, Jr. Application received October 9, 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

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

E48-383. Northampton Hospital Corporation d/b/a Easton Hospital, 250 South 21st Street, Easton, PA 18042, in Northampton and Palmer Townships, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain the following water obstructions and encroachments in a tributary to Shoeneck Creek (CWF): 1) An approximate 2,000 LF channel change; 2) a road crossing consisting of a reinforced concrete box culvert having a span of 12.0 feet and underclearance of 4.5 feet; and 3) Two stormwater outfall structures. This work is associated with the proposed Easton Hospital located on the southside of SR 0248, approximately 0.5 mile southeast of SR 0033 (Nazareth, PA Quadrangle N: 15.5 inches; W: 5.0 inches).

E48-392. James R. Blake, 843 Media Street, Bethlehem, PA 18017, in Lower Mt. Bethel Township, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain an addition on the downstream side of a house and a garage on the upstream side of the house situated in the floodway of the Delaware River (WWF). The project is located between Delaware Avenue and the Delaware River, approximately 4.7 miles north of SR 0022 (Bangor, PA Quadrangle N: 0.7 inch; W: 9.9 inches).

E45-511. The Spirit of Swiftwater, Inc., One Empire Plaza, Stroudsburg, PA 18360, in Pocono Township, **Monroe County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain a road crossing in a tributary to Swiftwater Creek (HQ-CWF) to serve as access to a proposed office building. The project is located at the current site of Swiftwater Inn, just south of the intersection of SR 0314 and SR 0611 (Mt. Pocono, PA Quadrangle N: 17.25 inches; W: 10.91 inches).

E40-677. Can Do, Inc., One South Church Street, Suite 200, Hazleton, PA 18201, in Hazle Township, **Luzerne County**, United States Army Corps of Engineers, Baltimore District.

To place fill in two wetland areas totalling 0.035 acre for the purpose of constructing a parallel section of railroad track to improve train movements in and out of Humbolt Industries out of Humbolt Industrial Park. This project is located 2,500 feet south east of the intersection of SR 0924 and Oak Ridge Road (Conyngham, PA Quadrangle N: 8.17 inches; W: 10.52 inches).

E48-381. Monocacy Heights, LP, 4383 Hecktown Road, Suite J, Bethlehem, PA 18020, in Plainfield Township, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain a 57.25-inch by 36-inch stormwater outfall structure with 18-foot wingwalls and cable concrete slope protection within the floodway of Little Bushkill Creek (HQ-CWF) associated with the Mint Brook Farms subdivision (Wind Gap, PA Quadrangle N: 0 inch; W: 2.3 inches).

E48-388. Bushkill Professional Center, Inc., 1724 South Delps Road, Bath, PA 18014, in Bushkill Township, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To place fill in an area of EV Wetlands equal to 0.15 acre and to construct and maintain a 42-inch reinforced concrete pipe and an 18-inch RCP across UNTs to Bushkill Creek (HQ-CWF) for the purpose of providing access to the proposed Bushkill Professional Center. The project is generally located east of the intersection of Miller Road (TR 634) and Morristown Road (SR 0512) (Wind Gap, PA Quadrangle N: 11.2 inches; W: 11.4 inches).

E48-386. Lower Mount Bethel Township, 2004 Hutchison Avenue, P. O. Box 257, Bangor, PA 18063, in Lower Mount Bethel Township, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain a 5-foot wide by 80-foot long, trapezoidal shape, concrete ford/low flow crossing of Oughoughton Creek (HQ-CWF). This project is located approximately 3,000-feet upstream on the confluence of Oughoughton Creek and the Delaware River (Belvedere, NJ-PA Quadrangle N: 8.76 inches; W: 17.22 inches).

E45-510. Liberty Homes Custom Builders, P. O. Box 260, Pocono Lake, PA 18347, in Tobyhanna Township, **Monroe County**, United States Army Corps of Engineers, Philadelphia District.

To place and maintain fill in 0.06 acre of PFO Wetlands for the purpose of constructing a single family residential building. The project is located within Lot 68 in the Arrowhead Lakes Development (Thornhurst, PA Quadrangle N: 5.7 inches; W: 9.5 inches).

E48-393. Traditions of America, LP, One Saucon Drive, Bethlehem, PA 18017, in Hanover Township, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain a trapizoidal shape, rock-lined stormwater outfall channel to the Monocacy Creek (HQ-CWF). This project is located approximately 100-feet downstream of Bridal Path Road along the Monocacy Creek (Catassauqua, PA Quadrangle N: 5.7 inches; W: 9.5 inches).

E45-507. Buck Hill Falls Company, 53 Golf Drive, Buck Hill Falls, PA 18323, in Barrett Township, **Monroe County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain a 42-inch HDPE and 15-inch HDPE culvert in a tributary to Buck Hill Creek (HQ-CWF) and to install sewer and water utility lines and to place fill in approximately 0.04 acre of EV Wetlands for the purpose of extending an existing road to provide access to two residential lots. The project is located approximately 525-feet west of the intersection of Partridge Path and Virio Road (Buck Hill Falls, PA Quadrangle N: 12.0 inches; W: 4.8 inches).

E45-514. Rock Tenn Company, Paper Mill Road, Delaware Water Gap, PA 18327, in Smithfield Township, **Monroe County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain 580 LF of bank stabilization consisting of R-7 riprap, concrete block wall and/or sheet piling along the right bank of the Brodhead Creek (HQ-CWF) and to remove a gravel bar blocking an existing intake pipe. This project is located to the rear of the Rock Tenn Company approximately 600-feet downstream of I-80 along the Brodhead Creek (Stroudsburg, PA Quadrangle N: 22.6 inches; W: 3.18 inches).

E48-387. Allen Township, 4714 Indian Trail Road, Northampton, PA 18067, in Allen Township, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain a 12-foot by 6-foot single span, concrete box culvert with its invert depressed 1.0-foot below the existing stream bed elevation, including concrete wingwalls and riprap bank protection, along with 0.025 acre of wetland fill associated with the roadway realignment. This project is located 1,200-feet upstream of the intersection of Short Lane and Atlas Road (Catasauqua, PA Quadrangle N: 12.51 inches; W: 12.55 inches).

E48-391. Watchung Valley Development, LLC, 23 Sutton Road, Lebanon, NJ 08333, in Bethlehem Township, **Northampton County**, United States Army Corps of Engineers, Philadelphia District.

To construct and maintain a precast, concrete, 3-sided open bottom box culvert having a span of 18-feet and under clearance of 3.5 feet, two trapezoidal shape, grass line stormwater swales and an 18-inch plastic outfall pipe in a tributary to Nancy Run (HQ-CWF). The project is located at the intersection of Easton Avenue and Pembroke Road (Nazareth, PA Quadrangle N: 5.0 inches; W: 5.5 inches).

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

E02-1568. Leonard Stern, P. O. Box 407, Gibsonia, PA 15044. To construct and maintain conspan culvert in West Deer Township, **Allegheny County**, Pittsburgh ACOE District. (Valencia PA Quadrangle, N: 1.6 inches; W: 5.0 inches, Latitude: 40° 38' 2"; Longitude: 79° 54' 38"). The applicant proposes to construct and maintain a 20 foot wide by 5 foot high, and 10 foot long conspan arch culvert over Deer Creek (CWF), a sanitary sewer line crossing under a UNT to Deer Creek (CWF), a sanitary sewer line crossing under Deer Creek, and a water line crossing under Deer Creek, all for a proposed residential development. The project is located on the west side of McIntyre Road, approximately 1 mile north of its intersection with SR 0910.

E04-318. Norfolk Southern Railway Corporation, 110 Franklin Road, SE—Box 13, Roanoke, VA 24042-0013. To construct and maintain steel curtains around

stormwater outfall pipes in Conway Borough, **Beaver County**, Pittsburgh ACOE District (Baden, PA Quadrangle N: 6.5 inches; W: 0.6 inch, Latitude: 40° 39' 38"; Longitude: 80° 14' 41.4"). The applicant proposes to construct and maintain four floating 10 foot long by 14 foot wide steel curtains around stormwater outfall pipes that discharge into the Ohio River (WWF) with the intention to contain the occasional sheens that discharge from the stormwater pipes. The project is located at the Conway Rail Yard.

E26-347. Cynthia A. Robertson, 645-1/2 Grandview Avenue, Pittsburgh, PA 15202. To operate and maintain multiseason, nonresidential structure and deck in Henry Clay Township, **Fayette County**, Pittsburgh, ACOE District (Ohio Pyle, PA Quadrangle N: 2.4 inches; W: 6.0 inches, Latitude: 39° 45' 44.4"; Longitude: 79° 24' 59.8"). The applicant proposes to operate and maintain a new multiseason, nonresidential structure and deck to be used for recreational purposes in floodway of Hall Run. The structure is 14 feet wide by 28 feet long and is built on a trailer frame over concrete blocks located along Ark Hallow Road (T-876).

ENVIRONMENTAL ASSESSMENTS

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

EA32-008. Evergreen Conservancy, P. O. Box 0783, Indiana, PA 15701. To construct and maintain a passive treatment system in Banks Township, **Indiana County**, Baltimore ACOE District (Burnside, PA Quadrangle N: 20.6 inches; W: 13.4 inches, Latitude: 40° 51' 48"; Longitude: 78° 50' 49"). The applicant proposes to construct and maintain a passive treatment system that will impact approximately 0.22 acre of wetland, which is impaired by mine drainage, to improve the quality of water in the South Branch Bear Run (CWF). The project is located in State Game Lands No. 174, along Lochvale Road (SR 1053).

EA56-004. Shade Creek Watershed Association, 314 Central Avenue, Suite 205, Central City, PA 15926. To place limestone sand along several watercourses in Shade Township, **Somerset County**, Pittsburgh ACOE District. The applicant proposes to place approximately 23 or 46 tons of limestone sand annually in and/or along several watercourses within the Dark Shade Creek Watershed, to improve water quality and aquatic life, in the upper portion of this basin, which is affected by acid mine drainage and acid deposition. In the initial year of application, the dosage of limestone sand will be 2 to 3 times greater than the aforementioned dosage, in order to prime the Watershed. There are two Coal Run (CWF) application sites: Swallow Farm private road (Central City, PA Quadrangle: Latitude: 40° 03' 08"; Longitude: 78° 47' 45"); Gahagan Road Bridge (Central City, PA Quadrangle: Latitude: 40° 03' 51"; Longitude: 78° 48' 02"); and one Dark Shade Creek (CWF) site: Cook Road or Tipple Road (Central City, PA Quadrangle: Latitude: 40° 04' 40"; Longitude: 78° 47' 48"). The six remaining application sites are: Shingle Run (CWF)/Game Land Road (Central City, PA Quadrangle Latitude: 40° 04' 56"; Longitude: 78° 46' 10"); Snowden Run (CWF)/Game Land Road (Central City, PA Quadrangle Latitude: 40° 05' 22"; Longitude: 78° 45' 48"); Beaverdam Run (HW-CWF)/Fleegle Road and private road (Schellsburg, PA Quadrangle Latitude: 40° 05' 15"; Longitude: 78° 44' 09"); Berkebile Run (HQ-CWF)/Shaffer Mountain Road and private road (Central City, PA Quadrangle Latitude: 40° 06' 59"; Longitude: 78° 45' 39"); Laurel Run (CWF)/Easy Camp Road and private

road (Central City, PA Quadrangle Latitude: 40° 07' 24"; Longitude: 78° 46' 54"); and Miller Run (CWF)/Custer Road (Central City, PA Quadrangle Latitude: 40° 07' 15"; Longitude: 78° 50' 27").

Central Office: Bureau of Waterways Engineering, Rachel Carson State Office Building, Floor 3, 400 Market Street, Harrisburg, PA 17105.

EA04-002CO. Shawn Thomas, 105 Strathmore Court, Mars, PA 16046. Economy Borough, **Beaver County**, ACOE Pittsburgh District.

Project proposes to construct, operate and maintain a nonjurisdictional dam across a tributary to Big Sewickly Creek (TSF) to impound water to provide a geothermal heating and cooling source for a private residence. The proposed dam will be located approximately 2,400 feet northeast of the intersection of Wallrose Heights Road (SR 2006) and Locust Road (Baden, PA Quadrangle; Latitude: 40° 39' 05"; Longitude: 80° 08' 55").

ACTIONS

THE CLEAN STREAMS LAW AND THE FEDERAL CLEAN WATER ACT

FINAL ACTIONS TAKEN FOR NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND WATER QUALITY MANAGEMENT (WQM) PERMITS The

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

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

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

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

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

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

I. NPDES Renewal Permit Actions

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0026476 (Major Sewage)	Coaldale-Lansford-Summit Hill Sewer Authority 124 West Ridge Street Lansford, PA 18232-1333	Coaldale Borough Schuylkill County	Panther Creek 03A	N
PA0032328 Sewage Nonmunicipal	Hickory Hills Mobile Home Community, LLC 121 Hickory Hills Drive Bath, PA 18014	Northampton County Moore Township	Tributary to East Branch Monocacy Creek Watershed No. 2C	Y
PA0063592 (Minor Sewage)	Gilberton Borough 2710 Main Street Mahanoy Plane, PA 17949	Gilberton Borough Schuylkill County	Mahanoy Creek 06B	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0084018 (SEW)	Stan Custer Custer Group of Companies— Fishing Creek Estates 2805 Old Post Road Suite 200 Harrisburg, PA 17110	Dauphin County Middle Paxton Township	Fishing Creek 7-C	Y
PA0052485 (SEW)	James T. Miller Mountain Springs Camping Resort, Inc. P. O. Box 365 Shartlesville, PA 19554	Berks County Upper Bern Township	UNT Mill Creek 3-C	Y
PA0085065 (IW)	Rachel S. Diamond Regional Director Department of Environmental Protection Southcentral Regional Office 909 Elmerton Avenue Harrisburg, PA 17110	Berks County Cumru Township	Schuylkill River 3-C	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N</i>
PA0092045 Sewage	Fayette Airport Enterprises, LLC 25 Main Street Smithfield, PA 15478	Fayette County Dunbar Township	UNT of Gist Run	Y
PA0093165 Sewage	Claysville-Donegal Joint Municipal Authority P. O. Box 467 Claysville, PA 15323	Washington County Donegal Township	Dutch Fork	Y
PA0204200 Sewage	Joseph T., Jr. and Michele A. Naviglia 1743 Wildlife Lodge Road Lower Burrell, PA 15068	Westmoreland County City of Lower Burrell	UNT to Little Pucketa Creek	Y
PA0217760 Sewage	RoxCoal, Inc. P. O. Box 149 Friedens, PA 15541	Somerset County Stonycreek Township	Reitz Creek	Y
PA0219207 Sewage	Lincoln Township Municipal Authority P. O. Box 162 Sipesville, PA 15561	Somerset County Lincoln Township	Quemahoning Creek	Y

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

<i>NPDES No. (Type)</i>	<i>Facility Name & Address</i>	<i>County & Municipality</i>	<i>Stream Name (Watershed #)</i>	<i>EPA Waived Y/N ?</i>
PA0038482	Fox Township Sewer Authority 116 Irishtown Road P. O. Box 186 Kersey, PA 15846-0186	Fox Township Elk County	UNT to Daguscahonda Run 17-A	Y
PA0238716	Brett M. and Tricia M. Peterson 11432 Scotland Avenue North East, PA 16428	North East Township Erie County	UNT to Lake Erie 15	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. PA0026450, Sewage, **Bristol Township**, 2501 Bath Road, Bristol, PA 19007. This proposed facility is located in Bristol Township, **Bucks County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge treated sewage into the Delaware River Zone 2 in Watershed 2E.

NPDES Permit No. PA0027294, Sewage, **Bristol Borough Water and Sewer Authority**, Pond and Mulberry Streets, Bristol, PA 19007. This proposed facility is located in Bristol Borough, **Bucks County**.

Description of Proposed Action/Activity: Approval for the renewal to discharge treated sewage to the Otter Creek a tributary to the Delaware River Zone 2 in Watershed 2E.

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

NPDES Permit No. PA 0065196, Sewage, **David and Michael Schnellman**. This proposed facility is located in Upper Milford Township, **Lehigh County**.

Description of Proposed Action/Activity: Issuance of NPDES Permit.

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

NPDES Permit No. PA0083062, Sewage, **Williams Valley School District**, 10330 SR 209, Tower City, PA 17980-9611. This proposed facility is located in Williams Township, **Dauphin County**.

Description of Proposed Action/Activity: Authorization to discharge to Wiconisco Creek in Watershed 6-C.

NPDES Permit No. PA0087572, Industrial Waste, **Williamstown Borough Authority, Water Treatment Plant**, P. O. Box 32, Williamstown, PA 17098. This proposed facility is located in Williams Township, **Dauphin County**.

Description of Proposed Action/Activity: Authorization to discharge to a UNT of Wiconisco Creek in Watershed 6-C.

NPDES Permit No. PA0248266, CAFO, **Steven Hykes**, 1239 Hykes Road, Greencastle, PA 17225. This proposed facility is located in Antrim Township, **Franklin County**.

Description of Size and Scope of Proposed Operation/Activity: Authorization to operate a 663-AEU swine operation in Watershed 13-C.

NPDES Permit No. PA0248690, CAFO, **Barry Good**, 1695 Rake Road, Mohrsville, PA 19541. This proposed facility is located in Centre Township, **Berks County**.

Description of Size and Scope of Proposed Operation/Activity: Authorization to operated a 524-AEU layer and dairy operation in Watershed 03-C.

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

NPDES Permit No. PA0253511, Industrial Waste, **Rolling Rock Farms**, P. O. Box 717, Ligonier, PA 15658. This proposed facility is located in Ligonier Township, **Westmoreland County**.

Description of Proposed Action/Activity: Permit issuance for discharge from Rolling Rock Water Treatment Plant.

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

NPDES Permit No. PA0024970, Sewage, **Department of the Army, Pittsburgh District, Corps of Engineers, Williams S. Moorhead Federal Building**, 100 Liberty Avenue, Pittsburgh, PA 15222-4188. This proposed facility is located in Pymatuning Township, **Mercer County**.

Description of Proposed Action/Activity: New permit replacing an expired minor NPDES permit for a treated nonmunicipal sewage discharge.

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

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

WQM Permit No. WQG010020, Sewerage, **Judy Schimpf**, 1650 Fels Road, Pennsburg, PA 18073. This proposed facility is located in Milford Township, **Bucks County**.

Description of Action/Activity: Construction and operation of a small flow treatment plant.

WQM Permit No. WQG02230721, Sewerage, **Thornbury Township**, 6 Township Drive, Cheyney, PA 19319. This proposed facility is located in Thornbury Township, **Delaware County**.

Description of Action/Activity: Construction and operation of a pump station and sewer extension.

WQM Permit No. 1507407, Sewerage, **Simmers Building, Inc.**, 1035 West Lincoln Highway, Coatesville, PA 19320. This proposed facility is located in West Caln Township, **Chester County**.

Description of Action/Activity: Construction and operation of a single residence sewage treatment plant.

WQM Permit No. 1507408, Sewerage, **Simmers Building, Inc.**, 1035 West Lincoln Highway, Coatesville, PA 19320. This proposed facility is located in West Caln Township, **Chester County**.

Description of Action/Activity: Construction and operation of a single residence sewage treatment plant.

WQM Permit No. 1507409, Sewerage, **Simmers Building, Inc.**, 1035 West Lincoln Highway, Coatesville, PA 19320. This proposed facility is located in West Caln Township, **Chester County**.

Description of Action/Activity: Construction and operation of a single residence sewage treatment plant.

WQM Permit No. 0907408, Sewerage, **Franklin Kolp**, 1191 Swamp Road, Furlong, PA 18925. This proposed facility is located in Wrightstown Township, **Bucks County**.

Description of Action/Activity: Construction and operation of a single residence sewage treatment plant.

WQM Permit No. 0907405, Sewerage, **Gerald Bachinsky**, 3113 Edison Furlong Road, Furlong, PA 18925. This proposed facility is located in Plumstead Township, **Bucks County**.

Description of Action/Activity: Construction and operation of a single residence sewage treatment plant.

WQM Permit No. WQG02230724, Sewerage, **Delaware County Regional Water Quality Control Authority**, P. O. Box 999, 100 East Fifth Street, Chester, PA 19016. This proposed facility is located in Chester Township, **Delaware County**.

Description of Action/Activity: Construction and operation of a sewer extension and individual pump station.

WQM Permit No. 4603404, Amendment, Sewerage, **Abington Township**, 1176 Old York Road, Abington, PA 19001-3713. This proposed facility is located in Upper Dublin Township, **Montgomery County**.

Description of Action/Activity: Modifications to existing sewage treatment plant.

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

WQM Permit No. WQG012220, Sewerage, **Barbara and Merrill Murphy**, 622 Creek Road, Bath, PA 18014. This proposed facility is located in Moore Township, **Northampton County**, PA.

Description of Proposed Action/Activity: This project is to replace a malfunctioning onlot sewage system with a small flow treatment system at a single-family residence.

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

WQM Permit No. WQG02210705, Sewage, **Cumberland Franklin Joint Municipal Authority**, 725 Municipal Drive, Shippensburg, PA 17257. This proposed facility is located in Shippensburg/Southampton Township, **Cumberland County**.

Description of Proposed Action/Activity: Construction/Operation of a sewer extension and pump station to serve the Deerfield Residential Community.

WQM Permit No. 0707402, Sewage, **David P. Kephart**, R. R. 1, Box 666, East Freedom, PA 16637. This proposed facility is located in East Freedom Township, **Blair County**.

Description of Proposed Action/Activity: Approval for the construction/operation of sewerage facilities consisting of a system of piping, septic tank, a dosing tank with pump, sand filter and chlorine tank.

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

WQM Permit No. 1491204-A1, Industrial Waste, SIC 3274, **Graymont PA, Inc.**, 965 East College Avenue, Bellefonte, PA 16823-6823. This proposed facility is located in Spring Township, **Centre County**.

Description of Proposed Action/Activity: The applicant proposes to discharge boiler and cooling blow down waters, treated reverse osmosis and softener wastewaters and stormwater to the groundwater.

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

WQM Permit No. WQG016154, Sewerage, **Joseph A. and Joyce A. Smida**, 845 Chateau Drive, Elwood City, PA 16117. This proposed facility is located in Franklin Township, **Beaver County**.

Description of Proposed Action/Activity: Permit issuance for the construction and operation of a single residence sewage treatment plant.

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

WQM Permit No. WQG018572, Sewerage, **Jennifer A. and Scott J. Blum**, 304 Dunns Eddy Road, Youngsville, PA 16371. This proposed facility is located in Conewango Township, **Warren County**.

Description of Proposed Action/Activity: A Single Residence Sewage Treatment Plant.

WQM Permit No. WQG018570, Sewerage, **Living Word Christian Center**, 21 South Maysville Road, Greenville, PA 16125. This proposed facility is located in West Salem Township, **Mercer County**.

Description of Proposed Action/Activity: A Single Residence Sewage Treatment Plant.

WQM Permit No. WQG018566, Sewerage, **Robert J. and Susan M. Saeli**, 150 Independence Drive, Orchard Park, NY 14127. This proposed facility is located in Otto Township, **McKean County**.

Description of Proposed Action/Activity: A Single Residence Sewage Treatment Plant.

IV. NPDES Stormwater Discharges from MS4 Permit Actions

V. NPDES Waiver Stormwater Discharges from MS4 Actions

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

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI021306001	Carbon Development, LLC 3701 Perkiomen Avenue Reading, PA 19606	Carbon	Kidder Township	Black Creek HQ-CWF
PAI024806029	J.G. Petrucci Co., Inc. 171 Route 173 Suite 201 Asbury, PA 08802	Northampton	Forks Township	Bushkill Creek HQ-CWF
PAI023907017	Michael Seislove 3261 Route 100 Suite 100 Macungie, PA 18062	Lehigh	Lower Macungie Township	Swabia Creek HQ-CWF Little Lehigh Creek HQ-CWF
PAI024506002	Smithfield Township R. R. 5 Box 5229 East Stroudsburg, PA 18301	Monroe	Smithfield Township	Marsh Creek HQ-CWF
PAI025806002	Powers Stone, Inc. R. R. 5 Box 124 Montrose, PA 18801-9340	Susquehanna	Forest Lake Township	Tributary to Wyalusing Creek CWF
PAS10Q0712R1	Cedar Fair, LP 3830 Dorney Park Road Allentown, PA 18104	Lehigh	South Whitehall Township	Cedar Creek HQ-CWF
PAI0239050161	Diakon Lutheran Social Ministries 798 Hausman Road Suite 300 Allentown, PA 18104-9108	Lehigh	South Whitehall Township	Little Cedar Creek HQ-CWF Little Lehigh Creek HQ-CWF
PAI024506030	Monroe-Pike Land, LLC R. R. 2 Box 2091C East Stroudsburg, PA 18301	Monroe	Stroud Township Pocono Township	Brodhead Creek HQ-CWF
PAI021305005	William Baumgartner R. R. 4 Box 4290 Kunkletown, PA 18058	Carbon	Towamensing Township	Wild Creek HQ-CWF Tributary to Beltzville Lake
PAI024505024	Hanning Development, LLC 200 Plaza Court East Stroudsburg, PA 18301	Monroe	Tobyhanna Township	Tobyhanna Creek HQ-CWF

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

<i>NPDES Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Receiving Water/Use</i>
PAI062507002	Department of Transportation 1-0 255 Elm Street Oil City, PA 16301	Erie	Girard Township	Crooked Creek HQ, CWF, MF

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 & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Williams Township Northampton County	PAG2004807011	Williams Township Attn: Deborah Patterson 655 Cider Press Road Easton, PA 18042	Tributary to Lehigh River CWF	Northampton County Cons. Dist. (610) 746-1971
Whitehall Township Lehigh County	PAG2003907011	Mohamed Riaz Muslim Assoc. of LV 1988 Schadt Avenue Whitehall, PA 18052	Lehigh River CWF	Lehigh County Cons. Dist. (610) 391-9583
Kingston Township Luzerne County	PAG2004007028	Mark Anderson 33 Green Road Shavertown, PA 18708	Green Pond Creek CWF	Luzerne County Cons. Dist. (570) 674-7991
Hanover Township Luzerne County	PAG2004007021	Schiel Development, LLC Attn: Francis Schiel 30 Hanover Street Wilkes-Barre, PA 18702	Solomon's Creek CWF	Luzerne County Cons. Dist. (570) 674-7991
Chambersburg Borough Franklin County	PAG2002807032	Chambersburg Senior High School Rick Vensel 435 Stanley Avenue Chambersburg, PA 17201	Conococheague Creek WWF	Franklin County Conservation District 100 Sunset Boulevard West Chambersburg, PA 17201 (717) 264-8074 Ext. 5
Silver Spring Township Cumberland County	PAG200210605030	David Strong DD & K 3064 Bricker Road Manheim, PA 17545	Trindle Spring Run CWF	Cumberland County Conservation District 310 Allen Road Carlisle, PA 17013 (717) 240-7812
Silver Spring Township Cumberland County	PAG2002105030	David Strong DD & K 3064 Bricker Road Manheim, PA 17545	Trindle Spring Run CWF	Cumberland County Conservation District 310 Allen Road Carlisle, PA 17013 (717) 240-7812

Facility Location:

<i>Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Penn Township Cumberland County	PAG2002107034	Wes Ketner 320 South Hanover Street Carlisle, PA 17013	Mount Rock Spring Creek WWF	Cumberland County Conservation District 43 Brookwood Avenue Carlisle, PA 17013 (717) 240-7812
East Pennsboro Township Cumberland County	PAG2002107045	Szeles Real Estate Development, Inc. A. Richard Szeles 945 East Park Drive Harrisburg, PA 17111	UNT to Conodoguinet Creek WWF	Cumberland County Conservation District 310 Allen Road Suite 301 Carlisle, PA 17013 (717) 240-7812
Marion Township Berks County	PAG2000607029	Patrick J. Motley Motley Associates, Inc. 1300 New Holland Road Kenhorst, PA 19607	Tulpehocken Creek TSF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657 Ext. 201
Robeson Township Berks County	PAG2000607039	Walter Greth Greth Development Group P. O. Box 305 Temple, PA 19560	UNT to Indian Corn Creek CWF-WWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657 Ext. 201
Spring Township Berks County	PAR10C443R	Alan Kreider 207 Reedy Road Sinking Spring, PA 19608	Cacoosing Creek WWF	Berks County Conservation District 1238 County Welfare Road Suite 200 Leesport, PA 19533-9710 (610) 372-4657 Ext. 201
Centre County Taylor Township	PAG20014070071	Mike Sulesky-Liner Borrow Waste Site No. 2 New Enterprise Stone and Lime Co. P. O. Box 77 New Enterprise, PA 16664	Bald Eagle Creek CWF	Centre County Conservation District 414 Holmes Avenue Suite 4 Bellefonte, PA 16823 (814) 355-6817
Centre County Rush Township Philipsburg Borough	PAG2001407013	Philipsburg Borough Council Sanitary Sewer Replacement 4 North Centre Street Philipsburg, PA 16866	Cold Stream CWF Moshannon Creek TSF Onemile Run CWF	Centre County Conservation District 414 Holmes Avenue Suite 4 Bellefonte, PA 16823 (814) 355-6817
Columbia County Town of Bloomsburg	PAG2001907009	Commonwealth of PA c/o Bloomsburg University 400 East Second Street Bloomsburg, PA 17815	Fishing Creek WWF	Columbia County Conservation District 702 Sawmill Road Suite 204 Bloomsburg, PA 17815 (570) 784-1310 Ext. 102

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<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Columbia County Locust Township	PAG2001907011	Timothy S. Karr Villager GMAC Real Estate 521 North Derr Street Lewisburg, PA 17837	UNT to Roaring Creek CWF	Columbia County Conservation District 702 Sawmill Road Suite 204 Bloomsburg, PA 17815 (570) 784-1310 Ext. 102
Washington County North Strabane Township	PAG2006306005	Cannery Casino Resorts 221 North Rampart Boulevard Las Vegas, NV 89145	Chartiers Creek WWF	Washington County CD (724) 228-6774
Washington County South Franklin and North Franklin Townships	PAG2006307034	Washington County Planning Commission— Department of Aviation 205 A Airport Road Washington, PA 15301	UNT to Chartiers Creek WWF	Washington County CD (724) 228-6774
Butler County Cranberry Township	PAG2001007010	SCI Development Co., Inc. Franklin Crossing P. O. Box 97 Mars, PA 16046	Wolfe Run WWF	Butler Conservation District (724) 284-5270
Butler County Adams Township	PAG2001007013	Project, Mars Alliance Church 407 Church Street Extension Mars, PA 16046 Attn: Joe Holland Christian & Missionary Alliance Church 997 SR 228 Mars, PA 16046	Kaufman Run WWF	Butler Conservation District (724) 284-5270
Butler County Adams Township	PAG2001007020	Ken Thomas The Enclave at Champlain Place 904 Champlain Place Gibsonia, PA 15044	Breakneck Creek WWF	Butler Conservation District (724) 284-5270
Crawford County Vernon Township	PAG2002007007	Department of Transportation 01 255 Elm Street Oil City, PA 16301	Van Horne Creek WWF	Crawford Conservation District (814) 763-5269
Jefferson County Snyder Township	PAG2003307003	Game School North 3R SR 28 Sect. 515 Department of Transportation P. O. Box 429 2550 Oakland Avenue Indiana, PA 15701-0429	Mill Creek CWF	Jefferson Conservation District (814) 849-7463
<i>General Permit Type—PAG-3</i>				
<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Center and Brush Valley Townships Indiana County	PAR406103A1	Evergreen Landfill, Inc. P. O. Box 195 Route 119 North Luciousboro Road Coral, PA 15731	UNT to Laurel Run	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000

<i>Facility Location & Municipality</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
McKees Rocks Borough Allegheny County	PAR706119	The Lane Construction Corporation 965 East Main Street Meriden, CT 64500	Ohio River	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Collier Township Allegheny County	PAR706118	The Lane Construction Corporation 965 East Main Street Meriden, CT 64500	Chartiers Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Wilmington Township Lawrence County	PAR158304	Praxair, Inc. 39 Old Ridgebury Road Danbury, CT 06810	UNT to Neshannock Creek	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
<i>General Permit Type—PAG-4</i>				
<i>Facility Location: Municipality & County</i>	<i>Permit No.</i>	<i>Applicant Name & Address</i>	<i>Receiving Water/Use</i>	<i>Contact Office & Phone No.</i>
Moore Township Northampton County	PAG042220	Barbara and Merrill Murphy 622 Creek Road Bath, PA 18014	Hokendauqua Creek CWF	DEP—NERO Water Mgmt. Program 2 Public Square Wilkes-Barre, PA 18711-0790 (570) 826-2511
Bedford County West St. Clair Township	PAG043581	Tracey D. Miller 5890 Courtland Road Alum Bank, PA 15521	Dunning Creek 11-C	DEP—SCRO 909 Elmerton Avenue Harrisburg, PA 17110 (717) 705-4707
Franklin Township Beaver County	PAG046357	Joseph A. and Joyce A. Smida 845 Chateau Drive Elwood City, PA 16117	UNT of Connoquenessing Creek	Southwest Regional Office Water Management Program Manager 400 Waterfront Drive Pittsburgh, PA 15222-4745 (412) 442-4000
Conewango Township Warren County	PAG049371	Jennifer A. and Scott J. Blum 304 Dunns Eddy Road Youngsville, PA 16371	UNT to Scott Run 16-B	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
West Salem Township Mercer County	PAG049369	Living Word Christian Center 21 South Maysville Road Greenville, PA 16125	UNT to Big Run 20-A	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
Pinegrove Township Warren County	PAG048856	Todd E. and Dawn E. Venman 2525 Swede Hill Road Russell, PA 16345-1504	Wiltsie Run 20-A	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942
West Salem Township Mercer County	PAG048528	William G. Schellenger, Jr. 43 South Summit Road Greenville, PA 16125	UNT to Booth Run 20-A	DEP—NWRO Water Management 230 Chestnut Street Meadville, PA 16335-3481 (814) 332-6942

*Facility Location:
Municipality &
County*Otto Township
McKean CountyPermit No.
PAG049365*Applicant Name &
Address*Robert J. and
Susan M. Saeli
150 Independence Drive
Orchard Park, NY 14127*Receiving
Water/Use*UNT to Knapp Creek
16-C*Contact Office &
Phone No.*DEP—NWRO
Water Management
230 Chestnut Street
Meadville, PA 16335-3481
(814) 332-6942*General Permit Type—PAG-8 (SSN)**Facility Location &
County/
Municipality*Conemaugh
Township
Indiana County

Permit No.

*Applicant Name &
Address*Synagro
3239 Route 981
New Alexandria, PA
15670*Site Name &
Location*

Geyer Farm

*Contact Office &
Phone No.*Southwest Regional Office
Water Management
Program Manager
400 Waterfront Drive
Pittsburgh, PA
15222-4745
(412) 442-4000*General Permit Type—PAG-9**Facility Location:
Municipality &
County*416 Adams Pond
Road
Berlin Township
Wayne CountyPermit No.
PAG092201*Applicant Name &
Address*RORRE Corporation
416 Adams Pond Road
Honesdale, PA 18431*Site Name &
Location*Propst Farm
416 Adams Pond Road
Berlin Township
Wayne County*Contact Office &
Phone No.*DEP—NERO
2 Public Square
Wilkes-Barre, PA
18711-0790
(570) 826-2511*General Permit Type—PAG-12**Facility Location &
Municipality*Lancaster County
Warwick TownshipPermit No.
PAG123541*Applicant Name &
Address*John M. Hess
502 West Lincoln Avenue
Lititz, PA 17543*Receiving Water/Use*Lititz Run
WWF*Contact Office &
Phone No.*DEP—SCRO
909 Elmerton Avenue
Harrisburg, PA 17110
(717) 705-4707**PUBLIC WATER SUPPLY (PWS)
PERMITS**

The Department of Environmental Protection has taken the following actions on applications received under the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) for the construction, substantial modification or operation of a public water system.

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

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

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

SAFE DRINKING WATER**Actions taken under the Pennsylvania Safe Drinking Water Act**

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

Permit 0907513 issued to **Aqua Pennsylvania, Inc.**, for installation of the Aries Managed Air System, located in Middletown Township, **Montgomery County**. Type of Facility: PWS. Consulting Engineer: CET Engineering Services, 1240 North Mountain Road, Harrisburg, PA 17112-1788. Permit to Construct issued October 4, 2007.

Permit 4607507 issued to **Eadeh Family Limited Partnership**, for operation of VOC removal system at Mill Hill Seafood, located in Lower Providence Township, **Montgomery County**. Type of Facility: PWS. Consulting Engineer: Ebert Engineering, Inc., P. O. Box 540, 4092 Skippack Pike, Skippack, PA 19474.

Permit 1507503 issued to **Warwick Land Development, Inc.**, for relocation of water storage and disinfection system, located in Warwick Township, **Chester County**. Type of Facility: PWS. Consulting Engineer: The Arrow Group, Inc., 270 Granite Run Drive, Lancaster, PA 17601. Permit to Construct issued October 15, 2007.

Permit 15075033, No. 2307503, Public Water Supply.

Applicant **Warwick Land Development, Inc.**
P. O. Box 608
Reagent Center
Lionville, PA 19353

Township **Warwick**

County **Chester**

Type of Facility **PWS**

Consulting Engineer **The Arro Group, Inc.**
270 Granite Run Drive
Lancaster, PA 17601

Permit to construct Issued **October 15, 2007**

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

Permit No. 3480046, Operations Permit, Public Water Supply.

Applicant **Bethlehem Authority**
10 East Church Street
Bethlehem, PA 18018
Lehigh Township

County **Northampton**

Type of Facility **PWS**

Consulting Engineer **James DeWolfe, P. E.**
Malcolm Pirnie, Inc.
1224 North Atherton Street
State College, PA 16803

Permit to Operate Issued **October 5, 2007**

Permit No. 2400140, Operations Permit, Public Water Supply.

Applicant **Sand Springs Water Company, Inc.**
4511 Falmer Drive
Bethlehem, PA 18020
Butler Township

County **Luzerne**

Type of Facility **PWS**

Consulting Engineer **William Schumacher, Jr., P. E.**
Schumacher Engineering, Inc.
55 North Conahan Drive
Hazleton, PA 18201

Permit to Operate Issued **October 3, 2007**

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

Permit No. 2207507, Public Water Supply.

Applicant **Harman Stove Company**

Municipality **Jackson Township**

County **Dauphin**

Type of Facility **Installation of Arsenic removal treatment.**

Consulting Engineer **Harry E. Bingaman, P. E.**
Glace Assoc., Inc.
3705 Trindle Road
Camp Hill, PA 17011

Permit to Construct Issued **October 16, 2007**

Permit No. 2207508, Public Water Supply.

Applicant **United Water Pennsylvania**

Municipality **Lower Paxton Township**

County **Dauphin**

Type of Facility **Pump replacement at the Colorado booster pump facility.**

Consulting Engineer **Arthur Saunders, P. E.**
United Water Pennsylvania
4211 East Park Circle
Harrisburg, PA 17111

Permit to Construct Issued **October 12, 2007**

Operations Permit issued to **United Water Pennsylvania**, 7220015, Susquehanna Township, **Dauphin County** on October 15, 2007, for the operation of facilities approved under Construction Permit No. 2205508 MA.

Operations Permit issued to **United Water Pennsylvania**, 7220015, Susquehanna Township, **Dauphin County** on October 15, 2007, for the operation of facilities approved under Construction Permit No. 2206503 MA.

Operations Permit issued to **Columbia Water Company**, 7360123, Columbia Borough, **Lancaster County** on October 12, 2007, for the operation of facilities approved under Construction Permit No. 3607503 MA.

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

Permit No. 6507503, Public Water Supply.

Applicant **Latrobe Municipal Authority**
104 Guerrier Road
Latrobe, PA 15650

Borough or Township **Derry Township**

County **Westmoreland**

Type of Facility **Kingston Filtration Plant**

Consulting Engineer **Gibson-Thomas Engineering Co., Inc.**
1004 Ligonier Street
P. O. Box 853
Latrobe, PA 15650

Permit to Construct Issued **October 2, 2007**

Operations Permit issued to **Jackson Township Water Authority**, 2949 William Penn Avenue, Johnstown, PA 15909, (PWSID No. 4110021) **Jackson Township, Cambria County** on September 27, 2007, for the operation of facilities approved under Construction Permit No. 1106504MA.

Operations Permit issued to **Pennsylvania-American Water Company**, 800 Hersheypark Drive, Hershey, PA 17033, (PWSID No. 5320025) **White Town-**

ship, **Indiana County** on September 27, 2007, for the operation of facilities approved under Construction Permit No. 3206501MA.

Operations Permit issued to **Fox Chapel Authority**, 255 Alpha Drive, Pittsburgh, PA 15238, (PWSID No. 5020040) Fox Chapel Borough, **Allegheny County** on September 27, 2007, for the operation of facilities approved under Construction Permit No. 0206503MA.

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

Operations Permit issued to **Timbercrest Property LLC, Timbercrest Apartments and Townhouses**, PWSID No. 6200066, Vernon Township, **Crawford County**. Emergency Operation Permit issued October 12, 2007, for the right to provide bulk water purchased from the Borough of Cambridge Springs (PWSID No. 6200004) by tank truck as an emergency source of supply. The duration of this permit is 60 days, expiring December 3, 2007.

STORMWATER MANAGEMENT

Action on plans submitted under the Stormwater Management Act (32 P. S. §§ 680.1—608.17)

Bureau of Watershed Management, P. O. Box 8555, Harrisburg, PA 17105-8555.

The Maiden Creek Watershed Act 167 Stormwater Management Plan, submitted by **Berks County**, was approved on September 25, 2007. This approval applies to the portion of the watershed within Berks County.

The Sacony Creek Watershed Act 167 Stormwater Management Plan Update, submitted by **Berks County**, was approved on September 25, 2007. This approval applies to the portion of the watershed within Berks County.

The Act 167 Stormwater Management Plan for the portion of the Schuylkill River Watershed, submitted by **Berks County**, was approved on September 25, 2007. This approval applies to the portion of the watershed within Berks County.

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:

Borough or Township	Borough or Township Address	County
Silver Spring Township	6475 Carlisle Pike Mechanicsburg, PA 17050	Cumberland

Plan Description: Disapproval of a revision to the Official Sewage Plan of Silver Spring Township, **Cumberland County**. The proposed Sebastian Homes subdivision consists of the conversion of an 0.84 acre nonbuilding lot (Lot 15A) into a residential building lot to be served by an individual onlot sewage disposal system. The plan revision was disapproved because it does not adequately address the long-term sewage disposal needs of the lot, as site suitability testing was not conducted properly.

HAZARDOUS SITES CLEAN-UP UNDER THE ACT OF OCTOBER 18, 1988

Notice of Proposed Interim Response Macoby Creek HSCA Site, Upper Hanover Township, Montgomery County

The Department of Environmental Protection (Department), under the authority of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305) (HSCA), is proposing an interim response at the Macoby Creek HSCA Site (Site) in Upper Hanover Township, Montgomery County, PA.

The Department of Environmental Protection (Department), under the authority of HSCA, has conducted an investigation of the Site at 1400 Spring Valley Road, in Upper Hanover Township, where an electroplating facility operated from the early 1950s until the early 1980s. Records show that the electroplater discharged spent wastewater into two clay-lined lagoons on the property. The Department's investigation included onsite soil sampling, the installation and sampling of 36 monitoring wells and sampling of nearby home wells. Sampling results show Site soils under the plant building, near a loading dock and under two former lagoons to be contaminated with trichloroethylene and cadmium. Water sampling results indicate that the building is also the source of groundwater contamination as well.

To address the release and threat of release of hazardous substances at the Site and corresponding threats to human health and the environment, the Department proposes an Interim Response action at the Site under section 501(a) of HSCA (35 P. S. § 6020.501(a)). The Department is proposing the demolition of the building and excavation and removal of contaminated soils to a designated hazardous waste landfill and/or residual waste landfill. This proposed alternative complies with Applicable, Relevant and Appropriate Requirements (ARARs) and is feasible and cost-effective. Other possible alternatives include no action, in-situ stabilization or ex-situ treatment of the soils.

An Administrative Record, which contains more detailed information concerning this proposed response action, is available for public inspection. The Administrative Record may be examined from 8 a.m. until 4 p.m. at the Department's office at 2 East Main Street, Norristown, PA 19401. Those interested in examining the Administrative Record should contact Project Officer Mark Conaron at (484) 250-5730 to arrange for an appointment. An additional copy of the Administrative Record is available for review at the Upper Hanover Township Administrative Building at 1704 Pillsbury Road, East Greenville, PA 18041.

A public hearing is scheduled under section 506(d) of HSCA (35 P. S. § 6020.506(d)), for November 29, 2007, beginning at 7 p.m. in the Upper Hanover Township Administrative Building, 1704 Pillsbury Road, East Greenville, PA 18041. Anyone who would like to present formal oral comments regarding this interim response may do so by registering before the hearing by calling the Department Community Relations Coordinator, Lynda Rebarchak at (484) 250-5820.

Persons with a disability who wish to attend the public hearing and will require an auxiliary aid, service or other accommodation to participate in the proceedings should contact Lynda Rebarchak at the telephone number listed previously or through the Pennsylvania AT&T Relay

Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs. The public may also submit written comments regarding the Department's proposed interim response action during the period of public comment. In accordance with section 506(c) of HSCA, the Department has established a period for public comment that is now open until close of business on January 25, 2008. Written comments should be addressed to Mark Conaron, Project Officer, Department of Environmental Protection, 2 East Main Street, Norristown, PA 19401. Comments can also be sent by means of email to mconaron@state.pa.us

Anyone with questions regarding this notice should contact Mark Conaron at (484) 250-5730.

**Public Notice of Proposed Consent
Order and Agreement
Department of Environmental Protection
Mays Properties, Inc., Silver Lane Site
Robinson Township, Allegheny County**

Under section 1113 of the Pennsylvania Hazardous Sites Cleanup Act (35 P. S. § 6020.1113) (HSCA), notice is hereby provided that the Department of Environmental Protection (Department) has entered into a Consent Order and Agreement (CO & A) with Aristech Chemical Corporation (Aristech) and Beazer East, Inc. (Beazer) concerning the cleanup of the Mays Properties, Inc., Silver Lane Site (Site).

The Site is approximately 3.3 acres in area and consists of approximately 3.2 acres presently owned by Mays Properties, Inc. (Site Owner), located at 1143 Silver Lane, McKees Rocks, Robinson Township, Allegheny County, PA and a small adjacent area less than .1 acre owned by Showcase Properties, Inc.

Beginning in approximately 1977 and continuing until approximately 1979, Beazer's predecessor, Koppers Company, Inc., contracted with Mays Corporation to remove and dispose of various of its waste streams, including maleic anhydride residue, phthalic anhydride residue and phthalic anhydride benzoic (lights). Aristech's predecessor, USS Chemicals, contracted with Mays Corporation to remove and dispose of various of its waste streams from the USS Chemicals plant located on Neville Island, Allegheny County, PA. These waste streams included maleic anhydride residue, phthalic anhydride residue, phthalic anhydride benzoic and polyester waste.

In 1995, Department investigations disclosed the illegal disposal by Mays Corporation of various waste streams at the Site, including solidified benzoic lights and phthalic anhydride heavy ends the Department believes to have been generated at the Koppers' western PA plants and at USS Chemicals' Neville Island plant.

In 1995, Beazer and Aristech, in cooperation with the Department, removed from the Site and properly disposed of, surficial solidified benzoic lights and phthalic anhydride heavy ends. Following that waste removal, Beazer and Aristech performed a characterization of Site soil and groundwater seeps. Results of the investigation indicated that benzoic acid and naphthalene were present in soils at the Site in elevated concentrations. Other chemicals, including phthalic acid, benzene, phenol, pyrene, arsenic and other metals, as well as other VOCs and semi-VOCs, were present at detectable concentrations in the soil in various areas of the Site. In addition, at that time, two seeps located at the southwestern edge of the Site were sampled and found to have detectable levels of aluminum, suspended solids, benzene, iron, manganese, benzoic acid and phthalic acid.

Subject to the terms of the CO & A, Beazer and Aristech propose to implement a Closure Plan at the Site to resolve their potential liability under HSCA and CERCLA for any past, present or future response costs for releases or potential releases of hazardous substances. The Department has approved the Closure Plan. The Closure Plan includes a schedule for closure activities and calls for, among other things: (a) the excavation and proper disposal of Site waste; (b) the installation of erosion and sediment control facilities; (c) the relocation of a small amount of waste currently on an adjacent property; (d) construction of ditches to convey surface water run-off around the limits of the waste; (e) the placement of soil buttress fills and soil covers; (f) the revegetation of the cover system and other disturbed areas; and (g) the monitoring of seeps and water in stormwater ditches related to the Site.

The specific terms of this settlement are set forth in the CO & A between the Department and Aristech and Beazer. The Department will receive and consider comments relating to the CO & A for 60 days from the date of this Public Notice. The Department has the right to withdraw its consent to the CO & A if the comments concerning the CO & A disclose facts or considerations which indicate that the CO & A is inappropriate, improper, or not in the public interest. After the public comment period, the Department's settlement with Aristech and Beazer shall be effective upon the date that the Department notifies Aristech and Beazer, in writing, that this CO & A is final and effective in its present form and that the Department has filed a response to significant written comments to the CO & A or that no such comments were received.

Copies of the CO & A are available for inspection at the Department's Southwest Regional Office. Comments may be submitted, in writing, to Terry Goodwald, Department of Environmental Protection, Hazardous Sites Cleanup, 400 Waterfront Drive, Pittsburgh, PA 15222. Further information may be obtained by contacting Goodwald at (412) 442-4000. TDD users should contact the Department through the Pennsylvania Relay Services at (800) 645-5984.

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 re-

ports, 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.

Peco Doylestown MGP, Doylestown Borough, **Bucks County**. Bruce Middleman, Jacques Whitford Company, Inc., 450 South Graves Road, Suite 105, Plymouth Meeting, PA 19462, Ben Henry, Peco Energy Company, 2301 Market Street, S9-1, Philadelphia, PA 19101, on behalf of Jack Stein, Keystone Motors, 235 South Main Street, Doylestown, PA 18901, Irv Stein, Keystone Motors, 235 South Main Street, Doylestown, PA 18901 has submitted a Final Report concerning remediation of site soil and groundwater contaminated with leas, inorganics, Pah's and other organics. The report is intended to document remediation of the site to meet the Site-Specific Standards.

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 Remedial Investigation and Cleanup Plan concerning remediation of site soil and groundwater contaminated with unleaded gasoline. The report is intended to document remediation of the site to meet the Site-Specific Standards

Northeast Region: Ronald S. Brezinski, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Lehigh County Minor League Ballpark (former Agere South Campus), City of Allentown, **Lehigh County**. Vincent Carbone, P. G., HDR Engineering, Inc., 609 Hamilton Mall, Allentown, PA 18101, has submitted a Final Report (on behalf of his client, LV Red, LLC, 2390 East Camelback Road, Suite 400, Phoenix, AZ 85016), concerning the remediation soils and groundwater found to have been impacted by arsenic, silver, TCE and mercury as a result of the property's historic industrial use. The final report was submitted to document attainment of the Site-Specific Standard, using pathway elimination. A public notice regarding the submission of the final report was published in *The Morning Call* on September 7, 2007.

S & L Plastics, Inc., Upper Nazareth Township, **Northampton County**. Samuel Kucia, Environmental

Consulting, Inc., 500 East Washington Street, Norristown, PA 19401 has submitted a Final Report (on behalf of his client, Nazareth Realty, LLC, 2860 Bath Pike, Nazareth, PA 18064), concerning the remediation of site soils impacted by historical releases of chlorinated solvents. The report was submitted in order to document attainment of the Statewide Health Standard. The intended future use of the site will be nonresidential. A public notice regarding the submission of the final report was published in *The Morning Call* on August 16, 2007.

Bethlehem Commerce Center—Lot 10, City of Bethlehem, **Northampton County**. Kenneth G. Robbins, Project Manager, HDR Engineering, Inc., 609 Hamilton Mall, Allentown, PA 18101 has submitted a Cleanup Plan (on behalf of his client Lehigh Valley Industrial Park, 1805 East Fourth Street, Bethlehem, PA), concerning the remediation of site soil found to have been impacted by inorganics. The Cleanup Plan was submitted in partial fulfillment of the Site-Specific Standard using pathway elimination.

Liberty Property Trust/7277 William Avenue, Allentown City, **Lehigh County**. Vincent Carbone, HDR Engineering, Inc., 609 Hamilton Mall, Allentown, PA 18101-2111 has submitted a Final Report (on behalf of his client, Liberty Property Trust, Lehigh Valley Corporate Center, 1510 Valley Center Parkway, Suite 240, Bethlehem, PA 18017), concerning the remediation soils found to have been impacted by motor oil constituents as a result of damaged oil containers. The report documented attainment of the Statewide Health Standard for soil. A public notice regarding the submission of the final report was published in *The Morning Call* on September 26, 2007.

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

Reading Jewish Community Center, City of Reading, **Berks County**. Hafer Environmental Services, Inc., P. O. Box 4418, Reading, PA 19606, on behalf of The Reading Jewish Community Center, 1700 City Line Street, Reading, PA 19604, submitted a Final Report concerning remediation of site soils contaminated with No. 2 fuel oil from a removed underground storage tank. The report is intended to document remediation of the site to the Statewide Health Standard.

Charles D. Snyder & Son, Inc., City of Harrisburg, **Dauphin County**. BL Companies, Inc., 213 Market Street, 6th Floor, Harrisburg, PA 17101, on behalf of Charles D. Snyder & Son, Inc., P. O. Box 157, Emigsville, PA 17318-0157, submitted a Remedial Investigation and Final Report concerning remediation of site soils and groundwater contaminated with metals and VOCs. The report is intended to document remediation of the site to the Site-Specific Standard.

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

Robert F. Mitchell Oil Co. (Former), Decatur Township, **Clearfield County**, Marshall Miller & Assoc., 3913 Hartzdale Drive, Suite 1306, Camp Hill, PA 17011 on behalf of Carl Wright, Wright Philipsburg, LLC, 532 Bryn Mawr Avenue, Swarthmore, PA 19801 has submitted a Final Report concerning remediation of site soil and groundwater contaminated with gasoline. The report is intended to document remediation of the site to meet the Site-Specific Standard.

Former Region Oil Gulf, City of Sunbury, **Northumberland County**, Delta Consultants, 5910 Rice Creek Parkway, Suite 100, Shoreview, MN 55126 on behalf of Damark, Inc. Liquidating Trust, 5007 East Mount Wash-

ington, Christiansted, USVI 00820-4265 has submitted a combined Remedial Investigation/Cleanup Plan/Final Report concerning remediation of site soil and groundwater contaminated with BTEX, PHCs, MTBE, cumene and naphthalene. The report is intended to document remediation of the site to meet the Site-Specific 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.

Glanzmann Subaru, Jenkintown Borough, **Montgomery County**. Karl Pfizenmayer, Strob Environmental, Inc., 410 North Easton Road, Willow Grove, PA 19090 on behalf of James Glanzmann, 99 Old York Road, Jenkintown, PA 19046 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with unleaded gasoline. The Final report demonstrated attainment of the Statewide Health Standards and was approved by the Department of Environmental Protection on September 19, 2007.

Ramalho Residence, Lower Merion Township, **Montgomery County**. Lewis Ramalho, 3485 Brae Bourn Drive, Huntingdon Valley, PA 19006 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with No. 2 fuel oil. The Final report demonstrated attainment of the Statewide Health Standards and was approved by the Department of Environmental Protection on September 26, 2007.

Houdry Laboratory, Lower Chichester Township, **Delaware County**. James Mulry, Mulry and Cresswell Environmental, Inc., 1691 Horseshoe Pike, Suite 3, Glenmoore, PA 19343 on behalf of Dina Toto, Sunoco, Inc., (R & M) Marcus Hook Refinery, P. O. Box 426, Marcus Hook, PA 19061 has submitted a Remedial Investigation and Cleanup Plan concerning the remediation of site soil contaminated with inorganics, solvents and PCB's. The Remedial Investigation Report and Cleanup Plan was approved by the Department of Environmental Protection on September 17, 2007.

US Steel Fairless Works Lot 8, Fall Township, **Bucks County**. Jeffery Smith, Langan Engineering and Env. Svc., Inc., 30 South 17th Street, Suite 1300, Philadelphia, PA 19103 on behalf of Kathleen Mayer, United States Steel Corp., 600 Grant Street, Pittsburgh, PA 15219 has submitted a Final Report concerning the remediation of site soil contaminated with inorganics and chlorinated solvents. The Final report demonstrated attainment of the Statewide Health Standards and was approved by the Department of Environmental Protection on September 19, 2007.

WaWa Store, Horsham Township, Horsham Township, **Montgomery County**. Jeff Bruderck, GES, Inc., 440 Creamery Way, Suite 500, Exton, PA 19341 on behalf of Ted Lobst, WaWa, Inc., 260 West Baltimore Pike, WaWa, PA 19063 has submitted a 90-day Final Report concerning the remediation of site soil contaminated with No. 2 fuel oil. The 90-day Final report demonstrated attainment of the Statewide Health Standards and was approved by the Department of Environmental Protection on September 27, 2007.

(Revised) Casadoni Homes, Inc., Plumstead Township, **Bucks County**. Andrew Gutshall, EarthRes Group, Inc., P. O. Box 468, Pipersville, PA 18947 has submitted a Final Report concerning the remediation of site soil contaminated with inorganics. The Final report demonstrated attainment of the Statewide Health Standards and was approved by the Department of Environmental Protection on September 17, 2007.

961 Layfield Road Property, New Hanover Township, **Bucks County**. Jason Pero, DeVal Soul & Environmental Consultants, Inc., 4050 Skyrun Drive, Doylestown, PA 18901 on behalf of David Orff, 195 Papermill Road, Barto, PA 19054 has submitted a Final Report concerning the remediation of site soil contaminated with inorganics. The Final report demonstrated attainment of the State-

wide Health Standards and was approved by the Department of Environmental Protection on September 27, 2007.

Heartland Express (Village Square Shopping Center), East Goshen Township, **Chester County**. Gilbert Marshall, Marshall Geoscience, Inc., 170 East First Avenue, Collegeville, PA 19426, David Peck, Haz-Mat Response, Inc., 1203 South Parker, Olathe, KS 66061, Richard Meehan, Heartland Express, Inc., 2777 Heartland Drive, Coralville, IA 52241 on behalf of Edwards McFalls, Hershey's Mill Commercial Holdings, LLC, 1389 East Boot Road, West Chester, PA 19380 has submitted a 90-day Final Report concerning the remediation of site soil contaminated with diesel fuel. The 90-day Final report demonstrated attainment of the Statewide Health Standards and was approved by the Department of Environmental Protection on October 4, 2007.

Heartland Express, Inc. (Caleco), East Goshen Township, **Chester County**. Gilbert Marshall, Marshall Geosciences, Inc., 170 East First Avenue, Collegeville, PA 19426, David Peck, Haz-Mat Response, Inc., 1203 South Parker, Olathe, KS 66061, Richard Meehan, Heartland Express, Inc., 2777 Heartland Drive, Coralville, IA 52241 on behalf of South Wing, South Wing Associates, Airport Road and Wilson Drive, West Chester, PA 19380, Peter Hodson, Coin Automatic Laundry Equipment Company, Airport Road and Wilson Drive, West Chester, PA 19380 has submitted a 90-day Final Report concerning the remediation of site soil contaminated with diesel fuel and fuel oil. The Final report demonstrated attainment of the Statewide Health Standards and was approved by the Department of Environmental Protection on October 5, 2007.

Charles Lobb Residence, Upper Uwchlan Township, **Chester County**. Richard D. Trimpi, Trimpi Associate, Inc., 1635 Old Plains Road, Pennsburg, PA 18073, Merrill Walters, Almerga Environmental, 131 Mt. Pleasant Road, Pottstown, PA 19465 on behalf of Charles Lobb, 8 Highview Road, Downingtown, PA 19335 has submitted a 90-day Final Report concerning the remediation of site soil contaminated with No. 2 fuel oil. The 90-day Final report demonstrated attainment of the Statewide Health Standards and was approved by the Department of Environmental Protection on October 4, 2007.

Cotton Residence, Upper Southampton Township, **Bucks County**. Richard D. Trimpi, Trimp Associates, Inc., 1635 Old Plains Road, Pennsburg, PA 18073 on behalf of Ralph and Beth Cotton, 1074 Manor Lane, Southampton, PA 18966, Clark Miller, State Farm, P. O. Box 13, Concordville, PA 19331 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with No. 2 fuel oil. The Final report demonstrated attainment of the Statewide Health Standards and was approved by the Department of Environmental Protection on October 11, 2007.

200 North Radnor Chester Road, Radnor Township, **Delaware County**. Thomas Buggey, Roux Associates, Inc., 1222 Forest Parkway, Suite 190, West Deptford, NJ 08066 on behalf of Craig Bryson, Radnor Properties—200 RCLP, 55 East Lancaster Pike, Suite 100, Radnor, PA 19087, Mark Olear, Commerce Bancor, Inc., 1701 Route 70 East, Cherry Hill, NJ 08034 has submitted a Final Report concerning the remediation of site soil and groundwater contaminated with No. 2 fuel oil. The Final report demonstrated attainment of the Statewide Health Standards and was approved by the Department of Environmental Protection on October 9, 2007.

Northeast Region: Ronald S. Brezinski, Regional Environmental Cleanup Program Manager, 2 Public Square, Wilkes-Barre, PA 18711-0790.

Nancy Espee Residence, Apolacon Township, **Susquehanna County**. Jim Sposito, James P. Sposito Associates, 11 Archbald Street, Carbondale, PA 18407 has submitted a Final Report (on behalf of his client, Nancy Espee, R. R. 1, Box 1243, Little Meadows, PA 18830), concerning the remediation of soils impacted with No. 2 fuel oil as a result of a pipe line failure with an aboveground fuel oil tank. The report documented attainment of the Statewide Health Standard for soils and was approved on October 2, 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 submitted a Final Report (on behalf of his client, Keystone Precision Instruments, 1670 East Race Street, Allentown, PA 18109), concerning the remediation of soils found to have been impacted by silver as a result of the refurbishing process of used photographic minilabs. The report documented attainment of the Residential Statewide Health Standard for soils and was approved on October 12, 2007.

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

Sunbury Textile Mill Inc. Sites 1, 2 and 3, City of Sunbury, **Northumberland County**. Geosyntec Consultants, 130 Research Lane, Suite 2, Guelph, Ontario, Canada N1G 5G3 on behalf of Sunbury Textile Mills, 1200 Miller Street, Sunbury, PA 17801 has submitted a Cleanup Plan concerning remediation of site soil and groundwater contaminated with chlorinated solvents and petroleum hydrocarbons. The Cleanup Plan was approved on October 11, 2007.

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

International Paper—Dunn Brickyard, City of Erie, **Erie County**. MACTEC Engineering & Consulting, Inc., Carnegie Office Park, Building 4, 700 North Bell Avenue, Suite 200, Pittsburgh, PA 15106 on behalf of the Greater Erie Industrial Development Corporation, 5240 Knowledge Parkway, Erie, PA 16510 has submitted a Cleanup Plan concerning the remediation of site soil contaminated with methane and arsenic. The Cleanup Plan was approved by the Department of Environmental Protection on October 9, 2007.

MUNICIPAL WASTE GENERAL PERMITS

Permits Denied 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 No. WMGM003. American Ash Recycling Corporation of Pennsylvania, 1072 Roosevelt Avenue, York, PA 17402. General Permit Number WMGM003 authorizes processing of municipal incinerator ash using Westinghouse's patented "WES-Phix" process and beneficial use of the processed ash as a construction

material, an ingredient in manufactured products, a bulking agent for sludges and liquid wastes and as embankment material. The application for renewal of General Permit Number WMGM003 was denied by Central Office on October 9, 2007.

Persons interested in reviewing the denial should contact to 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 through the Pennsylvania Relay Service, (800) 654-5984.

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.

Pioneer Crossing Landfill Exeter Township, Berks County Permit Number 100346. This is a Major Permit Modification for the operation of Pioneer Crossing Landfill, issued in accordance with Article V of the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003). This modification approves leachate recirculation at Pioneer Crossing Landfill.

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 Regulations to Operate Solid Waste Processing or Disposal Area or Site.

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

Permit ID No. 300370. Hatfield Power Station Coal Combustion Byproduct Landfill, Allegheny Energy Supply Company, LLC, 800 Cabin Hill Drive, Greensburg, PA 15601. Operation of a residual waste landfill in Monongahela Township, **Greene County.** Permit renewal issued in the Regional Office on October 15, 2007.

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.

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

23-329-007GP: Elwyn, Inc. (111 Elwyn Road, Elwyn, PA 19063) on October 2, 2007, to operate a standby generator in Middletown Township, **Delaware County.**

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

40-399-059GP2: Scranton-Altoona Terminals Corp. (675 Suscon Road, Pittston Township, PA 18640) on October 10, 2007, to install an internal floating roof on tank No. 3 at their site in Pittston Township, **Luzerne County.**

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.

GP-16-146: Cooltech Hydrocarbon, LLC—Marionville Compressor Station (SR 66, Leeper, PA 16233) on October 12, 2007, for two natural gas fired compressor engines BAQ/GPA/GP-5 in **Clarion County.**

GP-27-037: Seneca Resources Corp.—Muzette B Compressor Station (SR 2007 and State Game Lands No. 24, Vonwinckel, PA 16260) on October 10, 2007, for a natural gas fired compressor engine BAQ/GPA/GP-5 in **Forest 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.

38-05028B: Curwood Specialty Films, Inc. (5 Keystone Drive, Lebanon Valley Business Park, Lebanon, PA 17042) on October 5, 2007, to modify their existing printing press battery at the flexible packaging printing facility in South Lebanon Township, **Lebanon County.**

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.

10-281L: II-VI, Inc. (375 Saxonburg Boulevard, Saxonburg, PA 16056) on October 9, 2007, to modify the hydrogen selenide/hydrogen sulfide emergency scrubber (potassium hydroxide scrubbing solution) installed under plan approval 10-281I in Saxonburg, **Butler County.** The scrubber's two columns will be lengthened so additional packing can be installed and will also be used to control the existing Cold Vault Storage room, the existing Gas Transfer process and future DH process trains. The purpose of the scrubber is to prevent the emission of any accidental leak of hydrogen selenide or hydrogen sulfide.

61-185E: Danco Industries, Inc.—Heath Oil Co. (SR 8, Barkeyville, PA 16038) on October 9, 2007, to modify plan approval 61-185B conditions with regards to the fuels allowed to be burned at this source in **Venango 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.

46-0029B: Glasgow, Inc. (P. O. Box 1089, Glenside, PA 19038) on October 12, 2007, to operate replace components/upgrades in Montgomery Township, **Montgomery County.**

09-0037F: CMS Gilbreth Packaging Systems, Inc. (3001 State Road, Croydon, PA 19021) on October 10, 2007, to operate a ten unit rotogravure in Bristol Township, **Bucks County**.

15-0077: Hanson Aggregates PA, Inc. (P. O. Box 231, Easton, PA 18044) on October 15, 2007, to operate a crusher in East Caln Township, **Chester County**.

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

30-00099D: Allegheny Energy Supply Co., LLC (800 Cabin Hill Drive, Greensburg, PA 15601) on October 12, 2007, to allow the Department of Environmental Protection time to review the latest stack test reports for the Hatfield Power Station in Monongahela Township, **Greene County**. This plan approval was extended.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, George Monasky, New Source Review Chief, (814) 332-6940.

24-131J: SGL Carbon, LLC (900 Theresia Street, St. Mary's, PA 15857) on September 30, 2007, to construct two reactors in St. Mary's, **Elk County**.

42-158K: TIN, Inc. (149 Temple Drive, Kane, PA 16735) on September 30, 2007, to add the board breaker in Sergeant Township, **McKean County**.

62-162B: Elkhorn Field Services (Zimmerman Hill Road, Warren, PA 16365) on September 29, 2007, to construct a new refrigeration compressor and a larger glycol dehydration system at the Keystone Gas Processing Plant in Pleasant Township, **Warren County**.

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

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

11-00258: Texas Eastern Transmission, LP (224 Texas Road, Lilly, PA 15938-9403) on October 10, 2007, for a Title V Operating Permit Renewal for their Compressor Station that is comprised of four natural gas-fired turbines along with an emergency generator. The Lilly Compressor Station Facility is in Cambria County and is used for production, storage and distribution of natural gas in Cresson Township, **Cambria County**.

04-00086: First Energy Nuclear Gen. Corp. (FENOC-BEV VLY PWR STA, A-BV-A, Route 168, P. O. Box 4, Shippingport, PA 15077-0004) on October 12, 2007, for the facility operating a two-unit nuclear power plant, featuring a close-cycle cooling system that uses two natural draft-cooling tower makeup. The main sources at this facility are four back-up emergency generators with diesel engines, two auxiliary fuel oil boilers, a shot blast unit with integral baghouse along with a booth for contractor touchup work at the facility in Shippingport Borough, **Beaver County**.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, Facilities Permitting Chief, (814) 332-6940.

42-00174: Rustick, LLC (19 Ness Lane, Kane, PA 16735) on October 10, 2007, to re-issue the Title V Permit for their facility in Sergeant Township, **McKean County**. The facility is a municipal waste landfill. The facility's major emission sources include the landfill and a leachate

treatment plant. The facility is Title V because the design parameter is greater than 2.5 millions mega grams or cubic meters.

37-000-023: Orion Power Midwest, LP—New Castle Power Plant (Washington Street, New Castle, PA 16103) on October 10, 2007, applied for modification of the existing Title V Operating permit to include an Acid Rain permit for January 1, 2008, through December 31, 2012, in Taylor Township, **Lawrence County**. The initial Acid Rain permit was issued on December 24, 1997, and revised on January 13, 1999, was reissued on January 23, 2003. The current permit expires on December 31, 2007. Orion Power Midwest, LP—New Castle Power Plant air emission sources are three coal-fired boilers. The facility, because the boilers are listed in Table 2 (Phase II Allowance Allocations) of 40 CFR 73.10, is a Title IV facility and is therefore subject to the Acid Rain requirements adopted in 25 Pa. Code Chapter 127, Subchapter G.

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.

Northwest Region: Air Quality Program, 230 Chestnut Street, Meadville, PA 16335-3481, Matthew Williams, Facilities Permitting Chief, (814) 332-6940.

33-00116: PW Hardwood, LLC (P. O. Box 459, Brookville, PA 15825-0459) on October 10, 2007, to issue an administrative amendment of a State-only Operating Permit to incorporate the conditions of Plan Approval 33-116B in Oliver Township, **Jefferson County**.

33-00160: Reynoldsville Casket (P. O. Box 68, Reynoldsville, PA 15851-0068) on October 12, 2007, to issue an administrative amendment of a State-only Operating Permit to incorporate the conditions of Plan Approval 33-160B in Reynoldsville Borough, **Jefferson County**.

Operating Permit Revisions Issued including Administrative Amendments, Minor Modifications or Transfers of Ownership under the Air Pollution Control Act (35 P. S. §§ 4001—4015) and 25 Pa. Code §§ 127.412, 127.450, 127.462 and 127.464.

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

34-05003: Tedd Wood, Inc. (P. O. Box 187, Thompsontown, PA 17094-0187) on October 2, 2007, to remove a 2.7 tpy, VOC emissions restriction from a coating booth at their facility in Delaware Township, **Juniata County**. This State-only operating permit was administratively amended to incorporate Plan Approval 34-05003C. This is revision No. 1.

38-05004: Kountry Kraft, Inc. (P. O. Box 570, Newmanstown, PA 17073-0570) on October 3, 2007, to operate their cabinet manufacturing facility in Millcreek Township, **Lebanon County**. This State-only operating permit was administratively amended to incorporate Plan Approval 38-05004A. This is revision No. 1.

ACTIONS ON COAL AND NONCOAL MINING ACTIVITY APPLICATIONS

Actions on applications under the Surface Mining Conservation and Reclamation Act (52 P. S. §§ 1396.1—1396.19a); the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326); The Clean Streams Law (35 P. S. §§ 691.1—691.1001); the Coal Refuse Disposal Control Act (52 P. S. §§ 30.51—30.66); and The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.21). The final action on each application also constitutes action on the request for 401 Water Quality Certification and the NPDES permit application. Mining activity permits issued in response to the applications will also address the application permitting requirements of the following statutes: the Air Quality Control Act (35 P. S. §§ 4001—4015); the Dam Safety and Encroachments Act (32 P. S. §§ 693.1—693.27); and the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003).

Coal Permits Actions

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

11050102 and NPDES No. PA0249831. Hoffman Mining, Inc., P. O. Box 130, 118 Runway Road, Friedens, PA 15541, transfer of an existing bituminous surface auger mine from Heritage Mining Company, P. O. Box 126, Cresson, PA 16630 located in Adams Township, **Cambria County**, affecting 90.6 acres. Receiving streams: Paint Creek and UNT to Paint Creek classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. Application received June 15, 2007. Permit issued October 5, 2007.

32070102 and NPDES No. PA0262331. Thomas J. Smith, Inc., 2340 Smith Road, Shelocta, PA 15774 commencement, operation and restoration of a bituminous surface auger mine in Burrell Township, **Indiana County**, affecting 183.3 acres. Receiving streams: UNTs to Toms Run and Toms Run to Conemaugh River and UNTs to Weirs Run to Blacklick Creek to Conemaugh River classified for the following use: CWF. There are no potable water supply intakes within 10 miles downstream. A variance SR 22—Beginning at a point 1,200 feet west of the common intersection of SRs 22 and 2017 (Palmerton Road) thence continuing easterly along the southern side of SR 22 a distance of 4,800 feet. SR 22—Beginning at a point 1,850 feet east of the common intersection of SRs 22 and 2017 (Palmerton Road), thence continuing easterly along the northern side of SR 22 a distance of 2,050 feet. Application received February 26, 2007. Permit issued October 11, 2007.

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

40813212R4. Scenic Development Corp. (559 East Northampton Street, Wilkes-Barre, PA 18702), renewal of an existing anthracite coal refuse reprocessing operation for reclamation only in Larksville Borough, **Luzerne County** affecting 4.0 acres, receiving stream: none. Application received May 30, 2006. Renewal issued October 10, 2007.

54020101R and NPDES Permit No. PA0224219. Summit Anthracite, Inc. (196 Vista Road, Klingerstown, PA 17941), renewal of an existing anthracite surface mine operation in Porter Township, **Schuyl-**

kill County affecting 300.0 acres, receiving stream: East Branch Rausch Creek. Application received January 17, 2007. Renewal issued October 10, 2007.

Noncoal Permits Actions

Moshannon District Mining Office: 186 Enterprise Drive, Philipsburg, PA 16866, (814) 342-8200.

17070802. Harry D. Killion Trucking and Excavating, 6085 St. Lawrence Road, Coalport, PA 16627. Commencement, operation and restoration of a shale quarry operation in Beccaria Township, **Clearfield County**, affecting 1.0 acre. Receiving stream: UNT to Clearfield Creek. Application received September 28, 2007. Permit issued October 4, 2007.

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

38870301C6 and NPDES Permit No. PA0595543. Pennsy Supply, Inc. (P. O. Box 3331, Harrisburg, PA 17105), renewal of NPDES Permit for discharge of treated mine drainage from a quarry operation in Annville Borough, North Londonderry, North Annville and South Annville Townships, **Lebanon County**, receiving stream: Killinger and Quittaphilla Creeks. Application received October 23, 2006. Renewal issued October 9, 2007.

38870301C7 and NPDES Permit No. PA0595543. Pennsy Supply, Inc., (P. O. Box 3331, Harrisburg, PA 17105), correction to an existing quarry operation to update the NPDES Permit and authorize additional mining area in Annville Borough, North Londonderry, North Annville and South Annville Townships, **Lebanon County**, affecting 1,045.8 acres, receiving stream: Killinger and Quittaphilla Creeks. Application received December 28, 2006. Correction issued October 9, 2007.

48072801. Penn Big Bed Slate Co., (P. O. Box 184, Slatington, PA 18080), commencement, operation and restoration of a quarry operation in Pen Argyl Borough, **Northampton County** affecting 5.0 acres, receiving stream: none. Application received April 12, 2007. Permit issued October 10, 2007.

58072801. Edward Greene III, (R. R. 3, Box 217A3, Susquehanna, PA 18847), commencement, operation and restoration of a quarry operation in Great Bend Township, **Susquehanna County** affecting 5.0 acres, receiving stream: none. Application received January 25, 2007. Permit issued October 11, 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.

01074118. Newville Construction Services, Inc., 408 Mohawk Road, Newville, PA 17241-9424, blasting activity permit issued for single dwelling development in Straban Township, **Adams County**. Blasting activity permit end date is September 27, 2008. Permit issued October 1, 2007.

21074165. M & J Explosives, Inc., P. O. Box 608, Carlisle, PA 17013-0608, blasting activity permit issued for residential development in Lower Allen Township, **Cumberland County**. Blasting activity permit end date is September 30, 2008. Permit issued October 1, 2007.

28074149. Geological Tech Inc., P. O. Box 70, Falling Waters, WV 25419-0070, blasting activity permit issued for residential development in Greencastle Borough, **Franklin County**. Blasting activity permit end date is October 27, 2007. Permit issued October 2, 2007.

21074166. R & M Excavation, 403 Hilltop Road, Newburg, PA 17240-9202, blasting activity permit issued for residential development in Shippensburg Township, **Cumberland County**. Blasting activity permit end date is October 1, 2008. Permit issued October 2, 2007.

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

48074002. Genesis Builders, Inc., (758 Main Street, Hellertown, PA 18055) and **Bernard J. Hasara**, (1125 East Mahanoy Avenue, Mahanoy City, PA 17948), construction blasting at Willshire Villas On The Delaware in the City of Easton, **Northampton County** with an expiration date of February 12, 2008. Permit issued October 9, 2007.

39074127. Austin Powder Company, (25800 Science Park Drive, Cleveland, OH 44122), construction blasting for Apple Valley Estates in North Whitehall Township, **Lehigh County** with an expiration date of October 8, 2008. Permit issued October 9, 2007.

40074134. Geological Technologies, Inc., (P. O. Box 70, Falling Waters, WV 25419), construction blasting for Lot 40 in the Humboldt Industrial Park in the City of Hazleton, **Luzerne County** with an expiration date of September 27, 2008. Permit issued October 9, 2007.

40074135. DC Guelich Explosives, Inc., (R. R. 3, Box 125A, Clearfield, PA 16830), construction blasting for the Huber Pit in Hanover Township, **Luzerne County** with an expiration date of September 30, 2008. Permit issued October 9, 2007.

64074111. Holbert Explosives, Inc., (237 Mast Hope Plank Road, Lackawaxen, PA 18435), construction blasting for a single dwelling on Reining Road in Berlin Township, **Wayne County** with an expiration date of December 31, 2007. Permit issued October 9, 2007.

40074004. Mazzuca Enterprises, Inc., (P. O. Box 443, 510 North 14th Street, Pottsville, PA 17901) and **Bernard J. Hasara**, (1125 East Mahanoy Avenue, Mahanoy City, PA 17948), construction blasting for Contract No. 3 Hazle Township Sewer Southside in Hazle Township, **Luzerne County** with an expiration date of March 31, 2008. Permit issued October 11, 2007.

15074121. Dyno-Nobel, Inc., (1320 Galiffa Drive, Donora, PA 15033), construction blasting for Weather Stone in West Vincent Township, **Chester County** with an expiration date of October 30, 2008. Permit issued October 11, 2007.

15074122. KGA Drilling & Blasting, Inc., (1250 Conshohocken Road, Conshohocken, PA 19428), construction blasting for utilities in East Coventry Township, **Chester County** with an expiration date of February 15, 2008. Permit issued October 11, 2007.

35074130. Explosive Services, Inc., (7 Pine Street, Bethany, PA 18431), construction blasting for road at Lackawanna State Forest in Thornhurst Township,

Lackawanna County with an expiration date of October 5, 2008. Permit issued October 11, 2007.

35074131. Hayduk Enterprises, Inc., (257 Riverside Drive, Factoryville, PA 18419), construction blasting for Lorel Estates in Archbald Borough, **Lackawanna County** with an expiration date of October 31, 2008. Permit issued October 11, 2007.

35074132. Holbert Explosives, Inc., (237 Mast Hope Plank Road, Lackawaxen, PA 18435), construction blasting for Walmart/Lowes in Taylor Borough, **Lackawanna County** with an expiration date of October 6, 2008. Permit issued October 11, 2007.

35074133. Explosive Services, Inc., (7 Pine Street, Bethany, PA 18431), construction blasting for Laurel Estates in Jefferson Township, **Lackawanna County** with an expiration date of October 9, 2008. Permit issued October 11, 2007.

67074146. M & J Explosives, Inc., (P. O. Box 608, Carlisle, PA 17013), construction blasting for Hunter Creek in Conewago Township, **York County** with an expiration date of October 31, 2008. Permit issued October 11, 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

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

E35-410. Lackawanna County, Lackawanna County Courthouse, 200 Adams Avenue, Scranton, PA 18503. Jefferson Township, **Lackawanna County**, United States Army Corps of Engineers Philadelphia District.

To remove the existing structure and to construct and maintain a road crossing of West Branch Wallenpaupack Creek (HQ-CWF) consisting of a 6-foot by 20-foot concrete box culvert, with fish baffles, depressed 1-foot below streambed elevation. The project is located on Spangenberg Lake Road (T-399) approximately 0.4 mile east of SR 2003 (Lake Ariel, PA Quadrangle N: 10.3 inches; W: 13.8 inches). (Subbasin: 01C)

E35-405. Louis Ferrari, 12 Sunset Road, Moscow, PA 18444. Roaring Brook Township, **Lackawanna County**, United States Army Corps of Engineers Baltimore District.

To construct and maintain a 250-foot long driveway crossing through 0.13 acre of EV PFO wetlands within the Roaring Brook Watershed (HQ-CWF). The permittee is required to provide 0.15 acre of replacement wetlands. The project is located adjacent to Pinewood Drive (T-351) approximately 200 feet east of Relda Road (T-357) (Moscow, PA Quadrangle N: 19.9 inches; W: 7.4 inches). (Subbasin: 05A)

E35-408. Mark Clarks Summit North Associates, LP, 580 Third Avenue, Kingston, PA 18704. South Abington Township, **Lackawanna County**, United States Army Corps of Engineers Baltimore District.

To construct and maintain a bridge, having a 32-foot span and a 6-foot underclearance, across Lackawanna Trail Tributary (TSF) for the purpose of providing secondary access to Rite Aid Drug Store. The project is located on the east side of Routes 6 and 11 approximately 0.1 mile north of the Turnpike Northeast Extension Bridge (Scranton, PA Quadrangle N: 20.2 inches; W: 9.3 inches). (Subbasin: 05A)

E48-368. Ron Del Development Company, 3242 Farmersville Road, Bethlehem, PA 18020. Lower Nazareth Township, **Northampton County**, United States Army Corps of Engineers Philadelphia District.

To construct and maintain the following in a tributary to Monocacy Creek (HQ-CWF): 1) an approximate 2,350-foot long channel change generally having a bottom width of 20 feet, a bed slope of 0.3% and 3H:1V side slopes; 2) a road crossing consisting of four 11.5-foot by 3.0-foot reinforced concrete box culverts; and 3) electrical, sanitary sewer and water utility line stream crossings. The work is associated with a proposed 30-lot residential subdivision known as Colt's Run South. The project is located on the south side of T437 (Hecktown Road),

approximately 2,500 feet east of SR 0191 (Nazareth, PA Quadrangle N: 12.3 inches; W: 10.6 inches). (Subbasin: 2C)

E13-146. Turnpike Commission, P. O. Box 67676, Harrisburg, PA 17106-7676. East Penn and Mahoning Townships and Perryville Borough, **Carbon County**, United States Army Corps of Engineers Philadelphia District.

To place fill in 0.11 acre of wetlands; to remove the existing I-476 bridge over the Lehigh River (TSF) and Lehigh Canal (CWF) and to construct and maintain two 45-foot wide, 6-span steel girder bridges over the Lehigh River and Lehigh Canal having underclearances exceeding 100 feet and spans totaling 1,585 feet (Northbound I-476 Bridge) and 1,530 feet (Southbound I-476 Bridge); to remove the existing I-476 bridge over Pohopoco Creek (CWF) and to construct and maintain two 45-foot wide, four-span steel girder bridges over Pohopoco Creek each having underclearances exceeding 100 feet and spans totaling 1,020 feet (Northbound I-476 Bridge and Southbound I-476 Bridge); to extend an existing 7-foot wide by 6-foot high stream enclosure for a UNT to the Lehigh River; and to remove the existing structure and to construct and maintain an open-bottom concrete arch culvert having a span of 12 feet and unclearance of 5 feet across a UNT to the Lehigh River (Lehighon, PA Quadrangle N: 12.0 inches; W: 7.0 inches).

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

E44-131: Genevieve McCardle, 12007 Ferguson Valley Road, Lewistown, PA 17044 in Granville Township, **Mifflin County**, ACOE Baltimore District.

To construct and maintain a 14.0-foot wide single span bridge having a clear span of 30.0 feet and an underclearance of 4.5 feet across Buck Run (TSF). The project is located off Route 22/322 at Burnham/Yeagertown exit, 2.5 miles south on SR 4013 (Ferguson Valley Road) towards Jack Mountain (Lewistown, PA Quadrangle N: 20.06 inches; W: 15.81 inches, Latitude: 40° 36' 37.6"; Longitude: 77° 36' 50") in Granville Township, Mifflin County.

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.

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

E67-820: Mike Eden, Eden Properties, LLC, 157 East Main Street, New Freedom, PA 17349, New Freedom Borough, **York County**, ACOE Baltimore District

To construct and maintain an 18" HDPE stormwater outfall pipe with a riprap rock apron that discharges to a UNT to the South Branch Codorus Creek (WWF), (2) to fill two wetlands for the construction of a building and parking area. The wetland impacts are associated with a UNT to the South Branch Codorus Creek (WWF) permanently impacting 0.012 acre (121 ft² and 414 ft²) of PEM

wetland. The project is located at the northwest corner of the intersection of Constitution Avenue (SR 0851) and Pleasant Avenue (T-428) (New Freedom, PA Quadrangle N: 21.6 inches; W: 9.8 inches, Latitude: 39° 44' 36"; Longitude: 76° 41' 52") in New Freedom Borough, York County. The wetland impact is considered diminimis and no mitigation is required.

E22-517: Anthony Leo, Sunnyhill Homes, Inc., 6291 Lyters Lane, Harrisburg, PA 17111, Lower Paxton Township, **Dauphin County**, ACOE Baltimore District.

To construct and maintain a 140-foot long, 6.0-foot CMP stream crossing in a UNT to Beaver Creek (WWF) (Latitude: 40° 16' 35.4"; Longitude: 76° 46' 31.8"), a 160.0-foot long, 7.0-foot CMP stream crossing in a UNT to Beaver Creek (WWF) (Latitude: 40° 16' 35.46"; Longitude: 76° 46' 40.86") and to permanently impact 0.243 acre of palustrine emergent wetlands associated to a UNT to Beaver Creek (WWF) at the southwest intersection of Lyters Lane and 67th Street (Harrisburg East, PA Quadrangle N: 5 inches; W: 3.5 inches, Latitude: 40° 16.640' N; Longitude: 76° 46.595' W) in Lower Paxton Township, Dauphin County. Applicant proposes 0.245 acre of onsite wetland mitigation.

E67-830: Wrightsville Municipal Sewer Authority, Benjamin Baltzer, P. O. Box 187, Wrightsville, PA 17368, Wrightsville Borough, **York County**, ACOE Baltimore District.

To convert an existing contact stabilization tank to an aerobic digester then construct and maintain two Sequencing Batch Reactor tanks, a post-equalization tank, a pumping station and an ultraviolet disinfection system all within the floodplain of the Susquehanna River (WWF) at a point south of Front Street (Columbia West, PA Quadrangle N: 3.6 inches; W: 3.1 inches, Latitude: 40° 1' 17"; Longitude: 76° 31' 26") in Wrightsville Borough, York County, ACOE Baltimore District.

E06-627: Reading Regional Airport Authority, Terry Sroka, 2501 Bernville Road, Reading, PA 19605, Bern Township, **Berks County**, ACOE Philadelphia District.

To construct and maintain a 300.0-foot long, 72.0-inch diameter reinforced concrete culvert pipe in a UNT to the Schuylkill River (CWF) and to construct and maintain a 15.0-foot wide, 345-foot long vegetated channel located next to the proposed pipe, for the purpose of conveying stormwater to and controlling overflow from the Schuylkill River (CWF), all for the purpose of relocating an existing Township Road, Leisz Bridge Road (T-938), to allow for a runway expansion (Temple, PA Quadrangle N: 2.2 inches; W: 10.5 inches, Latitude: 40° 23' 8.7"; Longitude: 75° 57' 56.4") in Bern Township, Berks County.

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

E49-293. Moran Industries, 202 East Seventh Street, Watsontown, PA 17777. Warehouse Construction in Floodway, in Watsontown Borough, **Northumberland County**, ACOE Baltimore District (Milton, PA Quadrangle Latitude 41° 5' 27.9"; Longitude 76° 51' 57.2").

Operate and maintain 1.2 acres of fill in the floodway. The fill consists of a concrete loading area and a small portion of the warehouse building. The permit also authorizes the construction, operation and maintenance of a stream bank-regrading project on Spring Run. The project consists of laying the banks back to a slope of 2:1 for 225 linear feet downstream of Matthew Street to the terminal point at the railroad crossing. The banks of Spring Run shall be lined with R-5 riprap and all additional disturbed area shall be permanently stabilized with seed and mulch. Spring Run is designated as a WWF and no wetland impacts are authorized with this permit. This project is located one block north on Matthew Street from the intersection with Eighth Street in the Borough of Watsontown, Northumberland County. This permit also includes 401 Water Quality Certification.

Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.

E1414-001, Boggs Township, Centre County, 1270 Runville Road, Bellefonte, PA 16823. Wallace Run Stream Rehabilitation Project, Boggs Township, **Centre County** (Bellefonte, PA Quadrangle N: 13.78 inches; W: 11.30 inches), ACOE Baltimore District.

The project would consist of restoration of approximately 650 feet of the Wallace Run stream channel beginning just downstream of a concrete block wall and ending at the existing riprap downstream of 710 Runville Road, Bellefonte, PA. Work will consist of channel grading and realignment, installation of rock structures within the channel, seeding and plantings.

DAM SAFETY

Central Office: Bureau of Waterways Engineering, 400 Market Street, Floor 3, P. O. Box 8554, Harrisburg, PA 17105-8554.

D20-068. Department of Corrections, P. O. Box 598, Camp Hill, PA. To modify, operate and maintain Cambridge Springs Dam across a tributary to French Creek (WWF), for the purpose of meeting dam safety requirements. Modifications include the construction of a new spillway, raising the dam 6 inches and lowering normal pool 11 inches (Cambridge Springs, PA Quadrangle N: 7.8 inches; W: 7.3 inches) in Cambridge Township, **Crawford County**.

STORAGE TANKS

SITE-SPECIFIC INSTALLATION PERMITS

The following Storage Tank Site-Specific Installation Permits, under the authority of the Storage Tank Spill Prevention Act (35 P. S. §§ 6021.304, 6021.504, 6021.1101—6021.1102) and under 25 Pa. Code Chapter 245, Subchapter C, have been issued by the Bureau of Waste Management, Director, P. O. Box 8763, Harrisburg, PA 17105-8763.

<i>SSIP Permit No.</i>	<i>Applicant Name & Address</i>	<i>County</i>	<i>Municipality</i>	<i>Tank Type</i>	<i>Tank Capacity</i>
07-09-006	Basic Chemical Solutions, LLC 5 Steel Road East Morrisville, PA 19067 Attn: Robert DePascale	Bucks	Falls Township	1 AST storing Sulfuric Acid	35,000 gallons

SPECIAL NOTICES

Southcentral Regional Office: Regional Watershed Management Program Manager, 909 Elmerton Avenue, Harrisburg, PA 17110-8200, (717) 705-4802.

Application No. PAI-0307-06-001, Wal-Mart Real Estate Business Trust, 2001 SE 10th Street, Bentonville, AR 72712.

Wal-Mart Real Estate Business Trust has submitted an application for an Individual National Pollutant Discharge Elimination System (NPDES) permit for a proposed Wal-Mart Supercenter retail building located northwest of the intersection of Pleasant Valley Road (US Bus 220) and Sabbath Rest Road (SR 4018) in Antis Township, Blair County. The proposed development will be situated near Sandy Run, which is classified as a HQ-WTS and adjacent Exceptional Value (EV) wetlands.

The Department of Environmental Protection (Department) has conducted administrative and initial technical reviews of the application. The project has been developed to a point in which a final technical review can be completed in conjunction with comments received from the public.

The Department has scheduled a public hearing to receive testimony and comments on the proposed NPDES permit. The hearing will be held on Tuesday, December 4, 2007, between 6 p.m. and 8 p.m. at the Antis Township Municipal Building, 909 North 2nd Street, Bellwood, PA 16617.

Persons intending to testify at the hearing should register by Thursday, November 29, 2007, by calling Christina Homer at (717) 705-4703. Persons wishing to submit testimony, but cannot attend the hearing, may do so in writing by Tuesday, December 11, 2007. Written comments should be sent to Ramez Ziadeh, Chief, Permitting and Technical Services Section, Watershed Management Program, Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA 17110-8200. If the Department does not receive any testimony registration requests by Thursday, November 29, 2007, the public hearing will be cancelled.

All testimony should be to the point. Each individual will have up to 10 minutes for his/her presentation. To ensure that all speakers have a fair and equal opportunity to present their testimony, relinquishing of time will be prohibited. Further details relating to the procedures to be followed at the hearing will be outlined at the beginning of the proceedings.

The permit application is on file at Southcentral Regional Office located at 909 Elmerton Avenue, Harrisburg,

PA 17110-8200. An appointment to review the file may be scheduled by calling the file room at (717) 705-4732 between the hours of 8 a.m. and 4 p.m., Monday through Friday.

Comments received 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 and careful review of all comments received, 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.

BUREAU OF MINE SAFETY

Request for Variance

The Department of Environmental Protection (Department), Bureau of Mine Safety, has received a request for variance from Rosebud Mining Company. The following notification contains a summary of this request. A complete copy of the variance request may be obtained from Cathy Dunn by calling (724) 439-7469 or from the BMS website at www.depweb.state.pa.us/deepminesafety/site/default.asp.

The Department is publishing a summary of the request in order to solicit comments from affected parties on the proposed variance request. Comments may be used by the Bureau to assist in its investigation of the variance request. Comments will be accepted for 30 days following the publication of this notice. Comments should be addressed to: Joseph A. Scaffoni, Director, Bureau of Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown, PA 15401.

Section 702 of the Bituminous Coal Mine Act (act) (53 P. S. § 701-702), provides a mechanism for operators to obtain variances from specific requirements of the Act to accommodate the adoption of new machinery, equipment, tools, supplies, methods or processes.

Section 290(d) of the act (53 P. S. § 701-290(d)) states that every gassy mine shall have at least four main entries, two of which shall lead from the main opening and two from the second opening into the body of the mine.

Summary of the Request: Rosebud Mining Company requests a variance to reduce the number of main entries in the 2nd Northwest Mains at the Keystone East Mine.

Request for Variance

The Department of Environmental Protection (Department), Bureau of Mine Safety, has received a request for variance from Rosebud Mining Company. The following notification contains a summary of this request. A complete copy of the variance request may be obtained from Cathy Dunn by calling (724) 439-7469 or from the BMS web site at www.depweb.state.pa.us/deepminesafety/site/default.asp.

The Department is publishing a summary of the request in order to solicit comments from affected parties on the proposed variance request. Comments may be used by the Bureau to assist in its investigation of the variance request. Comments will be accepted for 30 days following the publication of this notice. All comments should be addressed to: Joseph A. Scaffoni, Director, Bureau of Mine Safety, Fayette County Health Center, 100 New Salem Road, Room 167, Uniontown, PA 15401.

Section 702 of the Bituminous Coal Mine Act (act) (53 P. S. § 701-702), provides a mechanism for operators to obtain variances from specific requirements of the Act to accommodate the adoption of new machinery, equipment, tools, supplies, methods or processes.

Section 290(d) of the act (53 P.S. § 701-290(d)) states that every gassy mine shall have at least four main entries, two of which shall lead from the main opening and two from the second opening into the body of the mine.

Summary of the Request: Rosebud Mining Company requests a variance to reduce the number of main entries in the 2nd Northwest Mains at the Tracy Lynne Mine.

[Pa.B. Doc. No. 07-1992. Filed for public inspection October 26, 2007, 9:00 a.m.]

Beneficial Use of Alternative Fuels for Circulating and Bubbling Fluidized Bed Boilers and Pulverized Coal-Fired Boilers; Notice of Issuance; General Permit WMGR116

Under the regulatory authority of 25 Pa. Code §§ 287.611 and 271.811 (relating to authorization for general permit) of the residual and municipal waste regulations and the statutory authority of the Solid Waste Management Act (35 P. S. §§ 6018.101—6018.1003), the Department of Environmental Protection (Department) has issued a general permit for the beneficial use of alternative fuels at circulating and bubbling fluidized bed boilers and pulverized coal-fired boilers.

This general permit authorizes the beneficial use of petroleum coke, wood and paper and wood industry wastes (except for Chromated Copper Arsenate (CCA) or Pentachlorophenol (PCP) pressured-treated and lead-based painted wood), agricultural plant/animal waste, nonhazardous coal tar and oil-contaminated waste, high carbon coal fly ash, tire-derived fuel (chipped or whole waste tires), biosolids and waste asphalt shingles as alternative fuels. The general permit also authorizes the beneficial use of the resulting ash.

Persons interested in obtaining more information or a paper copy of General Permit WMGR116 should contact the Bureau of Waste Management, Division of Municipal and Residual Waste, Rachel Carson State Office Building, P. O. Box 8472, Harrisburg, PA 17105-8472, (717) 787-7381. TDD users may contact the Department through

the Pennsylvania Relay Service at (800) 654-5984. The General Permit WMGR116 document is also accessible on the Department's website at www.depweb.state.pa.us (DEP Keyword: Residual Waste; then choose General Permits; then choose List of Residual Waste Beneficial Use General Permits).

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 07-1993. Filed for public inspection October 26, 2007, 9:00 a.m.]

Mining and Reclamation Advisory Board; Special Meeting

The Mining and Reclamation Advisory Board (Board) will hold a special meeting on Thursday, November 29, 2007, from 10 a.m. to 3 p.m. in the Delaware Conference Room on the 16th Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The purpose of the meeting is for the Department of Environmental Protection (Department) to seek advice regarding the remnants of the former Alternate Bonding System in the context of a recent court decision and the Reclamation Fee/Bonding Rulemaking. This special meeting was requested by the Board's Regulation, Legislation and Technical Subcommittee at their meeting held on October 12, 2007.

Questions concerning the special meeting can be directed to James Charowsky at (717) 787-7007 or jcharowsky@state.pa.us. The agenda and meeting materials will be available through the Public Participation Center on the Department's website at www.depweb.state.pa.us (DEP Keywords: Public Participation, Participate).

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact James Charowsky at (717) 787-7007 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 07-1994. Filed for public inspection October 26, 2007, 9:00 a.m.]

Proposed General Plan Approval for Pharmaceutical and Specialty Chemical Production (BAQ-GPA-24)

The Department of Environmental Protection (Department) proposes to issue the following General Plan Approval for Pharmaceutical and Specialty Chemical production (Pharm/Chem General Plan Approval) which contains predetermined Best Available Technology (BAT) and other regulatory requirements: BAQ-GPA-24 (Pharmaceutical and Specialty Chemical Production).

This Pharm/Chem General Plan Approval is designed to be used as a plan approval for regulated facilities that construct sources or modify sources to produce and/or handle pharmaceutical and/or specialty chemical products that result in an increase in emissions of Volatile Organic Compounds (VOCs) and/or Hazardous Air Pollutants

(HAPs), the emission of a HAP not previously emitted or a change in HAP emission release characteristics. This Pharm/Chem General Plan Approval does not allow the installation of new air pollution control devices, except for vent condensers. Use of this Pharm/Chem General Plan Approval is limited to Title V permitted facilities that produce or handle pharmaceutical or specialty chemical products and which have a previously established Plantwide Applicability Limit (PAL) for VOC emissions.

Pharmaceutical and Specialty Chemical Processes, for the purpose of this Pharm/Chem General Plan Approval, are limited to those processes classified under SIC codes 2833—2844 and 2879.

The proposed Pharm/Chem General Plan Approval contains conditions that prescribe applicability, emissions, compliance, notification, monitoring, recordkeeping and reporting and administrative requirements.

Prior to initiating construction or modification using this Pharm/Chem General Plan Approval, the owner or operator of a pharmaceutical and/or specialty chemical production facility must submit an application form provided by the Department.

Title V facilities may use this Pharm/Chem General Plan Approval as a plan approval only when new source review (25 Pa. Code Chapter 127, Subchapter E) and prevention of significant deterioration review requirements (25 Pa. Code Chapter 127, Subchapter D) are not applicable. This Pharm/Chem General Plan Approval cannot be used for a plan approval that will cause a Title V facility to exceed its established VOC PAL under the Title V permit.

The proposed Pharm/Chem General Plan Approval establishes the following restrictions for pharmaceutical and/or specialty chemical production facilities:

The Best Available Technology (BAT) requirement under primary operating scenarios would be the use of an existing appropriately designed combustion control device such as a Thermal Oxidizing Unit for control of combustible VOCs and HAPs that would be followed by an existing appropriately designed scrubber for control of acid gases. The combustion control device must achieve 99.9% destruction and removal efficiency for VOCs and HAPs and 99.99% for methylene chloride. Scrubbers associated with a combustion control device must meet an overall halogen and hydrogen halide removal efficiency of at least 99%.

Under secondary operating scenarios like during unplanned combustion control device outages and/or scrubber malfunctions, an alternative operating scenario using a vent condenser meeting 25 Pa. Code § 129.68 (relating to manufacture of synthesized pharmaceutical products) may be employed to complete the processing of batches or material currently in process to the next stable process hold point. However, no new batches may be charged, or processing initiated without using a properly operating combustion control device and scrubber.

In addition to meeting the standards for National emission standards for hazardous air pollutants (NESHAP), namely, 40 CFR Part 63, Subpart GGG, MMM, PPP and FFFF, we are proposing special risk assessment requirements in this Pharm/Chem General Plan Approval that would require the permittee to assess and limit risk and hazards associated with HAP emissions towards human health each time a process change is initiated.

Under special risk assessment requirements the permittee shall submit a list of HAPs to be permitted under

this Pharm/Chem General Plan Approval detailing the maximum annual mass quantity of each new HAP and/or increase in existing HAPs to be used along with a human health risk assessment. The risk assessment must include an air impact modeling analysis of each HAP. The air impact modeling analysis provides estimates of maximum short-term and long-term ambient air concentrations used to determine the potential for adverse human health effects from inhalation. An air dispersion modeling protocol that describes the selection of the air dispersion model, the actual site conditions and source parameters, and the proposed methods for modeling must be submitted for review and approval by the Department prior to use of this General Plan Approval for the permitting of a new or increased HAP. The approval will remain in effect as long as the parameters of the protocol remain unchanged. The risk assessment for approval of new HAP compounds will make use of the acute and chronic endpoint criterion described in the GP. The results of the approved risk assessment shall be submitted to the Department with the General Plan Approval application.

Each time new construction or a process change is made such that the quantity of existing HAPs released increases above the previously submitted maximum annual mass quantity or a new HAP is emitted, a new ambient air impact analysis must be performed on each HAP, and submitted to the Department along with the General Plan Approval application and fee to demonstrate that the ambient air concentrations do not exceed the appropriate endpoint criterion.

Within 180 days of receiving Department approval to use this Pharm/Chem General Plan Approval, performance testing of the combustion control device and associated scrubber shall be performed when a process change causes an increase in emission loading to the existing air pollution control devices. Stack testing shall be performed to verify that the new or increased VOC and/or HAP loading to the existing control system will result in the destruction or removal efficiency required. Also, parameters such as oxidizer temperature, scrubber flow rate and pH shall be verified to be adequate at the new or increased VOC and/or HAP loading.

The authorization to use the Pharm/Chem General Plan Approval will be valid for a period of 18 months after the issue date. If the construction, modification or installation is not commenced within 18 months of the issuance of authorization, or if there is more than an 18-month lapse in construction, modification or installation, a new Pharm/Chem General Plan Approval Application and fee shall be submitted.

This Pharm/Chem General Plan Approval establishes the following fees:

- a. Plan approval application fee: \$1,000

A new authorization and permit fee as indicated previously is required each time the permittee makes a process change that requires construction or modification of sources or use of new HAPs or a change in HAP emissions release characteristics that would affect the ambient air impact analysis required in condition 13.

- b. Plan approval extension fee: \$300

Interested parties are encouraged to obtain and review a complete copy of this proposed Pharm/Chem General Plan Approval by contacting Jeanette Van Skike, Division of Permits, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-4325. TDD users should contact the Department through the AT&T Relay Service (800)

654-5984. Internet users can access a copy of the Pharm/Chem General Plan Approval at www.depweb.state.pa.us (DEP Keyword: Air Quality Home).

The Department invites written comments on the proposed Pharm/Chem General Plan Approval. Notice and opportunity for comment will also be provided to the United States, Environmental Protection Agency and the States of Delaware, Maryland, New Jersey, New York, Ohio, Virginia and West Virginia. Interested persons may submit written comments, suggestions or objections to Virendra Trivedi, Environmental Engineer Manager, New Source Review Section, Division of Permits, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468. The Department will also consider written requests that a public hearing be held concerning this proposed Pharm/Chem General Plan Approval. Written public comments must be submitted to the Department by December 26, 2007. Comments received by facsimile will not be accepted.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 07-1995. Filed for public inspection October 26, 2007, 9:00 a.m.]

Small Water Systems Technical Assistance Center Advisory Board Meeting

The Small Water Systems Technical Assistance Center Advisory Board (Board) has scheduled two supplemental meetings, in addition to the regularly scheduled quarterly Board meeting of November 15, 2007. The two supplemental meetings will be held from 10 a.m. to 3 p.m. on Thursday, November 1, 2007, and Thursday, December 13, 2007, in Room 105, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

Questions concerning these meetings should be directed to Ray Braun at (717) 772-2186 or rbraun@state.pa.us. The agenda and meeting materials for these meetings will be available through the Public Participation Center on the Department of Environmental Protection's (Department) website at www.depweb.state.pa.us (DEP Keywords: Public Participation, Participate).

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Department at (717) 772-2186 or through the Pennsylvania AT&T Relay Services at (800) 654-5984 (TDD) to discuss how the Department may accommodate their needs.

KATHLEEN A. MCGINTY,
Secretary

[Pa.B. Doc. No. 07-1996. Filed for public inspection October 26, 2007, 9:00 a.m.]

DEPARTMENT OF HEALTH

Application of Evangelical Community Hospital for Exception

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

notice that Evangelical Community 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 exception from the following standard contained in this publication: 5.4.1.2(2) (relating to patient prep and recovery).

This request is on file with the Department. Persons may receive a copy of a request for exception by requesting a copy from the Department of Health, Division of Acute and Ambulatory Care, Room 532, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-8980, fax (717) 772-2163, ra-paexcept@state.pa.us.

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 Director, Division of Acute and Ambulatory Care at (717) 783-8980 for speech and/or hearing impaired persons V/TT (717) 783-6154 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. 07-1997. Filed for public inspection October 26, 2007, 9:00 a.m.]

Application of The Williamsport Hospital and Medical Center for Exception

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that The Williamsport Hospital and Medical Center has requested an exception to the requirements of 28 Pa. Code § 123.25(2) (relating to regulations for control of anesthetic explosion hazards).

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.

The facility is requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/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. 07-1998. Filed for public inspection October 26, 2007, 9:00 a.m.]

Applications for Exception to 28 Pa. Code § 569.35

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), the Department of Health (Department) gives notice that the following facilities have requested an exception to the requirement of 28 Pa. Code § 569.35 (relating to general safety precautions).

Fairgrounds Surgical Center
Susquehanna Surgery Center, Inc.

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.

The facilities are requesting a waiver of the comment period, as set forth in 28 Pa. Code § 51.33(c).

Persons with a disability who wish to obtain a copy of a request and/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. 07-1999. Filed for public inspection October 26, 2007, 9:00 a.m.]

Decisions on Requests for Exceptions to Health Care Facility Regulations

Under 28 Pa. Code § 51.33 (relating to requests for exceptions), effective June 6, 1998, the Department of Health (Department) has published in the *Pennsylvania Bulletin* all requests by entities licensed under the Health Care Facilities Act (35 P. S. §§ 448.101—448.904b), for exceptions to regulations contained in 28 Pa. Code Part IV, Subparts B—G.

Section 51.33(d) provides that the Department will publish notice of all approved exceptions on a periodic basis. The Department has determined that it will publish notice of all exceptions, both approved and denied. The following list contains the decisions made on exception requests published in the *Pennsylvania Bulletin* from June, 2007 through September, 2007. Future publications of decisions on exception requests will appear on a quarterly basis.

Requests for additional information on the exception requests and the Department's decision should be made to the relevant division of the Department. Inquiries regarding hospitals and ambulatory surgical facilities shall be addressed to the Division of Acute and Ambulatory Care, Susan Legros, Acting Director, Room 532, Health and Welfare Building, Harrisburg, PA 17120. Inquiries regarding long-term care facilities shall be addressed to the Division of Nursing Care Facilities, William Bordner, Director, Room 528, Health and Welfare Building, Harrisburg, PA 17120. Those persons requiring special assistance for speech and/or hearing impairment should call V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT).

Hospitals

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Request Published</i>	<i>Decision</i>
Community Medical Center	28 Pa. Code § 51.3c	notification	07/21/07	granted
Eastern Regional Medical Center	28 Pa. Code § 51.23	PET scanning	07/21/07	granted
Montgomery County Advanced Medical Imaging	28 Pa. Code § 51.23	PET scanning	08/18/07	granted
Grove City Medical Center	28 Pa. Code § 51.23	PET scanning	08/18/07	granted
Pinnacle Health Hospitals	28 Pa. Code § 51.23	PET scanning	08/18/07	granted
Memorial Hospital of York	28 Pa. Code § 101.191	multiple facilities	09/01/07	denied
UPMC Northwest	28 Pa. Code § 103.4(3)	functions	06/23/07	withdrawn
The Surgical Specialty Center at Coordinated Health	28 Pa. Code § 107.2	medical staff membership—podiatrists	09/01/07	granted
Excelsa Health—Westmoreland	28 Pa. Code §§ 107.11 and 146.1a	medical staff bylaws, rules and regulations, infection control	08/18/07	granted
Excelsa Health—Frick	28 Pa. Code §§ 107.11 and 146.1a	medical staff bylaws, rules and regulations, infection control	08/18/07	granted
Excelsa Health—Latrobe	28 Pa. Code §§ 107.11 and 146.1a	medical staff bylaws, rules and regulations, infection control	08/18/07	granted
Millcreek Community Hospital	28 Pa. Code § 107.25(8)	medical staff executive committee	09/15/07	denied
UPMC Northwest	28 Pa. Code § 107.26	additional committees	06/23/07	not needed
Warren General	28 Pa. Code § 107.61	written orders	06/02/07	denied

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Request Published</i>	<i>Decision</i>
UPMC Northwest	28 Pa. Code § 107.61	orders for medications/treatment	08/18/07	denied
Millcreek Community Hospital	28 Pa. Code § 117.30(1)	emergency paramedic services	06/23/07	granted
Mercy Hospital of Pittsburgh	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	03/31/07	granted
Altoona Regional Health System	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	05/19/07	granted
Aliquippa Community Hospital	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	07/07/07	granted
Somerset Hospital	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	07/07/07	granted
Pottstown Memorial Medical Center	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	07/07/07	granted
Nason Hospital	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	07/07/07	granted
UPMC St. Margaret	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	07/07/07	granted
Albert Einstein Healthcare Network	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	07/21/07	granted
Jameson Hospital	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	07/28/07	granted
UPMC Presbyterian Shadyside	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	08/04/07	granted
Bloomsburg Hospital	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	08/04/07	granted
Penn State Hershey Medical Center	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	08/04/07	granted
Alle-Kiski Medical Center	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	08/04/07	granted
Edgewood Surgical Hospital	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	08/18/07	granted
Ohio Valley General Hospital	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	08/18/07	granted
St. Luke's Miners Memorial Hospital	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	08/18/07	granted
Chestnut Hill Hospital	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	09/01/07	granted
Main Line Hospital—Paoli	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	08/25/07	granted
Phoenixville Hospital	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	09/08/07	granted
Bradford Regional Medical Center	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	09/08/07	granted
York Hospital	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	09/08/07	granted
Divine Providence Hospital	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	09/08/07	granted
Doylestown Hospital	28 Pa. Code § 123.25(2)	regulations for control of anesthetic explosion hazards	09/29/07	granted
Sharon Regional Health System	28 Pa. Code § 127.32	diagnostic orders—chiropractors and other MDs not on staff	8/18/07	denied
Lower Bucks Hospital	28 Pa. Code § 138.1	cardiac catheterizations only in a hospital	08/18/07	granted
UPMC Horizon	28 Pa. Code § 138.2	definition of cardiac catheterization area	09/01/07	granted

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Request Published</i>	<i>Decision</i>
Sacred Heart Hospital	28 Pa. Code § 138.15	high-risk cardiac catheterization—open heart program	08/18/07	withdrawn
Riddle Memorial Hospital	28 Pa. Code § 138.18(b)	EPS studies	08/18/07	granted
Albert Einstein Healthcare Network	28 Pa. Code § 139.12(a)	perinatal guidelines	08/18/07	granted
Armstrong County Memorial Hospital	28 Pa. Code § 153.1	7.10.H1 cardiac catheterization laboratory	01/20/07	granted
St. Clair Memorial Hospital	28 Pa. Code § 153.1	5.1.3.7(1)(b); 5.1.3.7(b); 5.1.3.7(1)(a); 5.1.3.7(1)(c)	04/14/07	granted
Pinnacle Health Hospitals—Harrisburg	28 Pa. Code § 153.1	5.7.3.1; 5.7.3.2	05/05/07	granted
DuBois Regional Medical Center	28 Pa. Code § 153.1	2.1.3.1 treatment room square footage	05/12/07	granted
Bradford Regional Medical Center	28 Pa. Code § 153.1	7.10HI / now 5.4.1.1	06/02/07	granted
Community Medical Center	28 Pa. Code § 153.1	3.4.2.1 patient care areas	06/02/07	granted
Western Pennsylvania Hospital—Forbes Regional	28 Pa. Code § 153.1	7.8A3 sterilizing facilities	06/02/07	granted
Penn State Hershey Rehabilitation	28 Pa. Code § 153.1	2.4—2.1.1.2 patient rooms; 2.4—3.1.1 dining/recreation; 2.4—2.1.5.1(1) showers/tub room	05/26/07	granted
Titusville Area Hospital	28 Pa. Code § 153.1	3.12—2.1.1.1 hand washing	07/21/07	denied
Punxsutawney Area Hospital	28 Pa. Code § 153.1	2.1.3.1 sq footage of treatment rooms	07/21/07	granted
Moses Taylor Hospital	28 Pa. Code § 153.1	4.4.7.1 (table 2.1.5) medical gas outlets; 10.2.1.1 (2.1.3) air filtration; 3.1.1.5 hand washing	07/21/07	granted
Albert Einstein Healthcare Network	28 Pa. Code § 153.1	2.1—4.2.3.1 exam room and 4.2.3.2 toilet room	08/18/07	granted
Good Samaritan Hospital	28 Pa. Code § 153.1	2.3.2.2 patient holding	08/18/07	granted
Jameson Memorial Hospital	28 Pa. Code § 153.1	3.2.1.2 equipment; 5.6.1 housekeeping room; 2.1.3.10 soiled workroom; 2.1.1.7(1) pt wardrobe	08/18/07	granted
Jameson Memorial Hospital	28 Pa. Code § 153.1	2.1.1.6 toilet room; 2.1.15 hand wash stations	08/18/07	granted
Select Specialty Hospital—Central Pennsylvania	28 Pa. Code § 153.1	9.2.3.1 elevator size	08/18/07	granted
Troy Community Hospital	28 Pa. Code § 153.1	2.1—5.3.3.3(1) Phase II recovery	08/18/07	denied
St. Luke's Hospital	28 Pa. Code § 153.1	5.1.2.5(2) treatment room	09/08/07	denied
Excelsa Westmoreland Hospital	28 Pa. Code § 153.1	8.1.2.1 IBC code—handicapped accessible patient toilets	09/15/07	not DOH jurisdiction
DSI Bucks County	28 Pa. Code § 153.1c	NFPA 101—18.2.2.2.9 and 7.2.1.14	09/29/07	not DOH jurisdiction
DSI Bucks County	28 Pa. Code § 153.1	8.2.2.3 of AIA Guidelines	09/29/07	granted
Ambulatory Surgical Facilities				
Center for Spine Care at Lancaster Neuroscience and Spine Associates	28 Pa. Code § 551.3	definitions—PS3	03/10/07	denied
Carbon-Schuylkill Endoscopy Center	28 Pa. Code § 551.3	definitions—PS3	06/02/07	granted
Rhawn Street Endoscopy Center	28 Pa. Code § 551.3	definitions—PS3	06/02/07	granted

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<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Request Published</i>	<i>Decision</i>
Grand View Endoscopy Center at Harleysville	28 Pa. Code § 551.3	definitions—PS3	07/21/07	granted
Endoscopy Center at St. Mary	28 Pa. Code § 551.3	definitions—PS3	07/21/07	granted
Main Line Endoscopy Center, East	28 Pa. Code § 551.3	definitions—PS3	08/18/07	granted
Mountain Laurel Surgery Center	28 Pa. Code § 551.3	definitions—PS3	08/18/07	granted
Mt. Airy Ambulatory Endoscopy Surgery Center	28 Pa. Code § 551.3	definitions—PS3	08/18/07	granted
Main Line Endoscopy Center, East	28 Pa. Code § 551.3	definitions—PS3	09/01/07	granted
Temple University School of Podiatric Medicine Ambulatory Surgical Center	28 Pa. Code § 551.3	definitions—PS3	09/01/07	granted
PMA Gastroenterology Center	28 Pa. Code § 551.3	definitions—PS3	09/08/07	denied
20/20 Surgery Center	28 Pa. Code § 551.3	definitions—PS3	09/15/07	granted
West Chester Endoscopy, LLC	28 Pa. Code § 551.3	definitions—PS3	09/13/07	granted
Wellspan Endoscopy Center	28 Pa. Code § 551.3(a)	administrative responsibilities	08/18/07	granted
Abington Surgical Center	28 Pa. Code § 551.21(d)	criteria for surgery—laparoscopic procedures	06/02/07	granted
Northwood Surgery Center	28 Pa. Code § 551.21(d)	criteria for surgery—laparoscopic procedures	06/02/07	granted
Gettysburg Ambulatory Surgical Center, LLC	28 Pa. Code § 551.21(d)	criteria for surgery—laparoscopic procedures	07/21/07	granted/ denied
SmartHealth Norwin Hills Outpatient Center	28 Pa. Code § 553.1	governing body	08/18/07	granted
Surgery Center at Limerick	28 Pa. Code § 553.1	governing body	09/15/07	granted
SmartHealth Norwin Hills Outpatient Center	28 Pa. Code § 553.4(a)	annual governing body meeting	09/29/07	granted
PMA Gastroenterology Center	28 Pa. Code § 553.31(a)	anesthesia services—propofol	09/15/07	granted
SmartHealth Norwin Hills Outpatient Center	28 Pa. Code § 555.1	medical staff	08/18/07	granted
Surgery Center at Limerick	28 Pa. Code § 555.1	medical staff	09/15/07	granted
CHP South Surgery Center	28 Pa. Code § 555.2	medical staff membership	07/21/07	denied
CHP North Surgery Center	28 Pa. Code § 555.2	medical staff membership	07/21/07	denied
CHP South Surgery Center	28 Pa. Code § 555.3(d)(2)(3)	reappointment	07/21/07	denied
CHP North Surgery Center	28 Pa. Code § 555.3(d)(2)(3)	reappointment	07/21/07	denied
Valley Surgical Center	28 Pa. Code § 555.31(a)	anesthesia services—propofol	08/19/06	granted
Drexel Center for Digestive Health	28 Pa. Code § 555.31(a)	anesthesia services—propofol	08/18/07	granted
Temple University School of Podiatric Medicine ASC	28 Pa. Code § 555.31(a)	anesthesia services—propofol	07/21/07	granted
SmartHealth Norwin Hills Outpatient Center	28 Pa. Code § 557.1	principle—quality assurance	08/18/07	granted
SmartHealth Norwin Hills Outpatient Center	28 Pa. Code § 557.3(f)	quality assurance committee	09/29/07	granted
Surgery Center at Limerick	28 Pa. Code § 557.4	quality assurance	09/15/07	granted
SmartHealth Norwin Hills Outpatient Center	28 Pa. Code § 563.1	principle—medical records	08/18/07	not needed

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Request Published</i>	<i>Decision</i>
SmartHealth Norwin Hills Outpatient Center	28 Pa. Code § 563.2(a)	medical records service	09/29/07	granted
SmartHealth Norwin Hills Outpatient Center	28 Pa. Code § 563.12	form and content of record	08/18/07	denied
SmartHealth Norwin Hills Outpatient Center	28 Pa. Code § 567	environmental services—infection control	08/18/07	denied
Surgery Center at Limerick	28 Pa. Code § 567.2	quality assurance committee	09/15/07	granted
SmartHealth Norwin Hills Outpatient Center	28 Pa. Code § 567.2(1)	infection control prevention, control and investigation	09/29/07	granted
SmartHealth Norwin Hills Outpatient Center	28 Pa. Code § 567.2(i)	written standards for ASF sanitation and asepsis	09/29/07	granted
CHP South Surgery Center	28 Pa. Code § 569.35	general safety precautions	03/31/07	granted
Surgery Center of the Main Line	28 Pa. Code § 569.35	general safety precautions	07/07/07	granted
UPMC St. Margaret Harmar Outpatient Center	28 Pa. Code § 569.35	general safety precautions	07/07/07	granted
Gamma Surgery Center	28 Pa. Code § 569.35	general safety precautions	07/21/07	granted
Harrisburg Endoscopy and Surgery Center	28 Pa. Code § 569.35	general safety precautions	07/28/07	granted
Evangelical Ambulatory Surgery Center	28 Pa. Code § 569.35	general safety precautions	08/04/07	granted
Altoona Regional Health System Surgery Center	28 Pa. Code § 569.35	general safety precautions	08/04/07	granted
Center for Same Day Surgery, The	28 Pa. Code § 569.35	general safety precautions	08/04/07	granted
Surgical Center of York	28 Pa. Code § 569.35	general safety precautions	08/18/07	granted
Surgery Center at Limerick	28 Pa. Code § 569.35	general safety precautions	09/08/07	granted
Surgery Center at Brinton Lake, LLC	28 Pa. Code § 569.35	general safety precautions	09/29/07	granted
Surgery Center of Central Pennsylvania	28 Pa. Code § 571.1	3.1 2.1.3 treatment rooms and 3.7 2.4.1 recovery areas	07/21/07	granted
Ludwick Laser and Surgery Center	28 Pa. Code § 571.1	9.5.F3c recovery stations	08/18/07	granted
Excelsa Health—Latrobe	NUMEROUS	governing body, medical staff	06/02/07	granted/not necessary
Excelsa Health—Frick	NUMEROUS	governing body, medical staff	06/02/07	granted/not necessary
Excelsa Health—Westmoreland	NUMEROUS	governing body, medical staff	06/02/07	granted/not necessary
Nursing Care Facilities				
Presbyterian Homes of the Presbytery of Huntingdon	28 Pa. Code § 201.3	definitions	07/21/07	granted
Wayne Woodlands Manor	28 Pa. Code § 201.3	definitions	07/21/07	granted
Belle Haven	28 Pa. Code § 201.3	definitions	07/21/07	granted
Laurel View Village	28 Pa. Code § 201.3	definitions	08/04/07	granted
Shamokin Area Community Hospital Skilled Nursing	28 Pa. Code § 201.17	location	06/23/07	granted
Shamokin Area Community Hospital Skilled Nursing	28 Pa. Code § 205.6(a)	function of building	06/23/07	granted
Sunbury Community Hospital Skilled Nursing	28 Pa. Code § 205.6(a)	function of building	06/23/07	granted
Muncy Valley Hospital Skilled Nursing Unit	28 Pa. Code § 205.6(a)	function of building	06/23/07	granted
Bucktail Medical Center	28 Pa. Code § 205.6(a)	function of building	06/23/07	granted

<i>Facility Name</i>	<i>Regulation</i>	<i>Relating to</i>	<i>Request Published</i>	<i>Decision</i>
The Village at Luther Square	28 Pa. Code § 205.6(a)	function of building	07/21/07	granted
Maple Winds Care Center	28 Pa. Code § 205.6(a)	function of building	07/21/07	granted
Renaissance Gardens at Maris Grove	28 Pa. Code § 205.6(a)	function of building	07/28/07	granted
Laurel Care Nursing and Rehab Center	28 Pa. Code § 205.6(a)	function of building	08/04/07	granted
Memorial Hospital, Inc. Skilled Nursing Unit	28 Pa. Code § 205.6(a)	function of building	08/04/07	granted
Charles Cole Memorial Hospital ECF	28 Pa. Code § 205.6(a)	function of building	08/04/07	granted
Baptist Homes of Western	28 Pa. Code § 205.6(a)	function of building	08/18/07	granted
Mt. Macrina Manor	28 Pa. Code § 205.6(a)	function of building	08/18/07	granted
Centre Crest	28 Pa. Code § 205.6(a)	function of building	09/01/07	granted
Arbutus Park Manor	28 Pa. Code § 205.6(a)	function of building	09/22/07	granted
Jefferson Manor Health Care	28 Pa. Code § 206.6(a)	function of building	09/22/07	granted
Chatham Acres Nursing Center, Inc.	28 Pa. Code § 205.20(d)(f)	resident bedrooms	06/23/07	granted
Garden Spot Village	28 Pa. Code § 205.28(a)	nurses' station	06/30/07	granted
The Health Center at The Hill at Whitemarsh	28 Pa. Code § 205.28(b)	nurses' station	07/28/07	granted
Bucktail Medical Center	28 Pa. Code § 205.28(a)	nurses' station	07/28/07	granted
Holy Family Residence	28 Pa. Code § 205.28(b)	nurses' station	07/28/07	granted
Golden Living Center—Mansion	28 Pa. Code § 205.36(h)	bathing facilities	08/04/07	granted
Lebanon Valley Brethren Home	28 Pa. Code § 205.67(k)	electric requirements	07/21/07	granted
Pennsylvania Soldiers' and Sailors' Home	28 Pa. Code § 205.68(a)	special electrical req	09/22/07	granted
HealthSouth York Transitional Rehab Unit	28 Pa. Code § 211.12(b)	nursing services	06/23/07	granted
Mercy Jeannette Hospital Skilled Nursing Center	28 Pa. Code § 211.12(b)	nursing services	07/21/07	granted

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-2000. Filed for public inspection October 26, 2007, 9:00 a.m.]

Human Immunodeficiency Virus (HIV) Community Prevention Planning Committee; Public Meeting

The Statewide HIV Community Prevention Planning Committee, established by the Department of Health (Department) under sections 301 and 317(b) of the Public Health Service Act (42 U.S.C.A. §§ 241(a) and 247(b)), will hold a public meeting on Wednesday, November 14, 2007, from 9 a.m. to 4 p.m. at the Harrisburg Holiday Inn West, 5401 Carlisle Pike, Mechanicsburg, PA 17050.

For additional information, contact Kenneth McGarvey, Department of Health, Bureau of Communicable Diseases, Room 1010, Health and Welfare Building, Harrisburg, PA 17120, (717) 783-0572.

Persons with a disability who wish to attend the meeting and require an auxiliary aid, service or other accommodation to do so should contact Kenneth McGarvey at the previous number or at V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT).

The Department reserves the right to cancel this meeting without prior notice.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-2001. Filed for public inspection October 26, 2007, 9:00 a.m.]

Infant Hearing Screening Advisory Committee Meeting

The Infant Hearing Screening Advisory Committee, established under the Infant Hearing Education, Assessment, Reporting and Referral Act (11 P.S. §§ 876-1—876-9), will hold a public meeting on Thursday, November 29, 2007, from 10 a.m. to 3 p.m., 125N, Training Room A, Commonwealth Keystone Building, Commonwealth Avenue and Forster Streets, Harrisburg, PA.

For additional information, contact Arthur A. Florio, Public Health Program Administrator, Newborn Hearing Screening Program (Program), Division of Newborn Screening and Genetics at (717) 783-8143.

Persons with a disability who wish to attend the meeting and require auxiliary aid, service or other accommodation to do so should contact the Newborn Hearing Screening Program at (717) 783-8143. Speech and/or hearing impaired persons use V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT).

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-2002. Filed for public inspection October 26, 2007, 9:00 a.m.]

Pennsylvania Cancer Control, Prevention and Research Advisory Board Meeting

The Pennsylvania Cancer Control, Prevention and Research Advisory Board, established under the Pennsylvania Cancer Control, Prevention and Research Act (35 P. S.

§ 5633), will hold a meeting on Wednesday, December 5, 2007, from 7:45 a.m. to 2 p.m., at the Dixon University Center, 2986 North Second Street, Harrisburg, PA 17110.

For additional information, contact Kathleen A. Zitka, Chief, Department of Health, Comprehensive Cancer Control Section, Room 1011, Health and Welfare Building, Harrisburg, PA at (717) 787-5251.

Persons with disabilities who wish to attend the meeting and requiring an auxiliary aid, service or other accommodation should contact Kathleen A. Zitka at (717) 787-5251 or for speech and/or hearing impaired persons at V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Services at (800) 654-5984 (TT).

This meeting is subject to cancellation without notice.

CALVIN B. JOHNSON, M. D., M.P.H.,
Secretary

[Pa.B. Doc. No. 07-2003. Filed for public inspection October 26, 2007, 9:00 a.m.]

DEPARTMENT OF PUBLIC WELFARE

Medical Assistance Program Fee Increases for Select Dental Procedure Codes

Purpose of Notice

The Department of Public Welfare (Department) announces that it will increase the fees paid by the Medical Assistance (MA) Program for select dental procedure codes effective with dates of service on or after November 1, 2007. The Department consulted with the Pennsylvania Dental Association, other key stakeholders and dentists in determining which existing fees for dental services should be increased to support enhanced access to dental services by MA recipients. The Department is increasing the fees for the following dental procedure codes:

<i>Procedure Code</i>	<i>Procedure Description</i>	<i>Current Fee</i>	<i>Fee Effective November 1, 2007</i>
D1110	Prophylaxis—Adult (12 years of age or older)	\$34.00	\$36.00
D1120	Prophylaxis—Child (0 through 11 years of age)	\$22.00	\$30.00
D1203	Topical Application of Fluoride (Prophylaxis Not Included)—Child	\$17.00	\$18.00
D2740	Crown—Porcelain/Ceramic Substrate	\$300.00	\$350.00
D2751	Crown—Porcelain Fused to Predominantly Base Metal	\$300.00	\$350.00
D2791	Crown—Full Cast Predominantly Base Metal	\$300.00	\$350.00
D2930	Prefabricated Stainless Steel Crown—Primary Tooth	\$90.00	\$99.00
D2934	Prefabricated Esthetic Coated Stainless Steel Crown—Primary Tooth	\$90.00	\$99.00
D3220	Therapeutic Pulpotomy (Excluding Final Restoration)	\$50.00	\$57.00
D3310	Anterior (Excluding Final Restoration)	\$180.00	\$210.00
D3320	Bicuspid (Excluding Final Restoration)	\$225.00	\$270.00
D3330	Molar (Excluding Final Restoration)	\$270.00	\$345.00
D5110	Complete Denture—Maxillary	\$320.00	\$355.00
D5120	Complete Denture—Mandibular	\$320.00	\$355.00
D5130	Immediate Denture—Maxillary	\$320.00	\$355.00
D5140	Immediate Denture—Mandibular	\$320.00	\$355.00
D5211	Upper Partial—Resin Based	\$200.00	\$250.00
D5212	Lower Partial—Resin Based	\$200.00	\$250.00
D5213	Maxillary Partial Denture—Cast Metal Framework with Resin Denture Bases	\$330.00	\$370.00
D5214	Mandible Partial Denture—Cast Metal Framework with Resin Denture Bases	\$330.00	\$370.00
D7140	Extraction, Erupted Tooth or Exposed Root	\$45.00	\$60.00
D7210	Surgical Removal of Erupted Tooth Requiring Elevation of Mucoperiosteal Flap and Removal of Bone and/or Section of Tooth	\$45.00	\$60.00
D7220	Removal of Impacted Tooth—Soft Tissue	\$60.00	\$65.00

Fiscal Impact

These changes will result in increased costs of \$1.631 million (\$0.754 million in State funds) in the MA-Outpatient program in Fiscal Year (FY) 2007-2008, and \$3.263 million (\$1.512 million in State funds) in FY 2008-2009.

Public Comment

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg PA 17120. Comments received within 30 days will be reviewed and considered for any subsequent revision to the MA Program Outpatient Fee Schedule.

Persons with a disability who require an auxiliary aid or service may submit comments using the AT&T Relay Services at (800) 654-5984 (TDD users) or (800) 654-5899 (voice users).

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-NOT-530. (1) General Fund; (2) Implementing Year 2007-08 is \$754,000; (3) 1st Succeeding Year 2008-09 is \$1,512,000; 2nd Succeeding Year 2009-10 is \$1,512,000; 3rd Succeeding Year 2010-11 is \$1,512,000; 4th Succeeding Year 2011-12 is \$1,512,000; 5th Succeeding Year 2012-13 is \$1,512,000; (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. 07-2004. Filed for public inspection October 26, 2007, 9:00 a.m.]

Medical Assistance Program Fee Schedule; Childhood Nutrition and Weight Management Services

Purpose of Notice

The Department of Public Welfare (Department) announces that it is adding Childhood Nutrition and Weight Management Services for Medical Assistance (MA) recipients under 21 years of age to the MA Program Fee Schedule, effective November 1, 2007.

Description of Services

Children who are overweight or obese are at risk of developing serious health problems such as high cholesterol, high blood pressure and type 2 diabetes. At times, children who have weight management problems, such as significant fluctuations in weight over a period of time, are also susceptible to serious health complications. In an effort to achieve better health outcomes for MA recipients under 21 years of age, the Department will make payment for Childhood Nutrition and Weight Management Services, which address the child's nutrition and weight management activities and are intended to reduce the occurrence of the serious health problems described previously. Specific services include: initial assessment, re-assessment, individual counseling, family counseling, group counseling and nutritional counseling.

Fee Schedule

Effective November 1, 2007, Physicians, Certified Registered Nurse Practitioners, registered nurses, nutritionists, outpatient hospitals, independent medical-surgical clinics, Federally Qualified Health Centers and Rural Health Clinics enrolled in the MA Program who serve as Primary Care Practitioners may bill for Childhood Nutrition and Weight Management Services when the services are medically necessary and rendered to MA recipients under 21 years of age who are overweight, obese or experiencing weight management problems. The Department is adding the following procedure codes to the MA Program Fee Schedule for initial assessment, reassessment, counseling and nutritional counseling services:

Procedure

<i>Code</i>	<i>Procedure Description</i>	<i>MA Fee</i>
96150	Health and behavior assessment (e.g., health-focused clinical interview, behavioral observations, psychophysiological monitoring, health-oriented questionnaires), each 15 minutes, face-to-face with the patient; initial assessment	\$20.38
T1015	*** Clinic visit defined as = Health and behavior assessment (e.g., health-focused clinical interview, behavioral observations, psychophysiological monitoring, health-oriented questionnaires), each 15 minutes, face-to-face with the patient; initial assessment	Encounter rate
96151	Health and behavior assessment (e.g., health-focused clinical interview, behavioral observations, psychophysiological monitoring, health-oriented questionnaires), each 15 minutes, face-to-face with the patient; re-assessment	\$20.38
T1015	*** Clinic visit defined as = Health and behavior assessment (e.g., health-focused clinical interview, behavioral observations, psychophysiological monitoring, health-oriented questionnaires), each 15 minutes, face-to-face with the patient; re-assessment	Encounter rate
96152	Health and behavior intervention, each 15 minutes, face-to-face; individual	\$19.60
T1015	***Clinic visit defined as= Health and behavior intervention, each 15 minutes, face-to-face; individual	Encounter rate
96153	Health and behavior intervention, each 15 minutes, face-to-face; group (2 or more patients)	\$5.39
T1015	***Clinic visit defined as= Health and behavior intervention, each 15 minutes, face-to-face; group (2 or more patients)	Encounter rate

<i>Procedure Code</i>	<i>Procedure Description</i>	<i>MA Fee</i>
96154	Health and behavior intervention, each 15 minutes, face-to-face; family (with patient present)	\$19.60
T1015	***Clinic visit defined as= Health and behavior intervention, each 15 minutes, face-to-face; family (with patient present)	Encounter rate
S9470	Nutritional counseling, dietitian visit	\$26.46
T1015	***Clinic visit defined as= Nutritional counseling, dietitian visit	Encounter rate

Specific instructions for billing these procedure codes will be included in a MA Bulletin that will be issued to affected providers before November 1, 2007.

Enrollment of Nutritionists

A nutritionist who possesses current licensure as a dietitian-nutritionist from the Department of State and current certification from the Commission on Dietetic Registration, the credentialing agency for The American Dietetic Association, may apply to enroll as a provider of nutritional counseling. Interested persons may obtain an enrollment application by:

- visiting the Department's website at www.dpw.state.pa.us/omap/promise/enroll/omappromiseenroll.asp;
- calling (800) 537-8862; or
- writing to DPW Enrollment Unit, P. O. Box 8045, Harrisburg, PA 17105.

Nutritionists currently enrolled in the MA Program to provide nutritional consultation services under the Aids Waiver Program may provide the nutritional counseling component of Childhood Nutrition and Weight Management Services without submitting another enrollment application.

Fiscal Impact

It is estimated that the addition of these services to the MA Program Fee Schedule will result in costs to the MA-Outpatient Program of \$0.382 million (\$0.176 million in State funds) in Fiscal Year (FY) 2006-2007 and \$1.530 million (\$0.704 million in State funds) in FY 2008-2009. It is expected that these additional costs will be offset by savings achieved through the improved health of the target population.

Public Comment

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, Attention: c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days 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 should submit comments using the AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-NOT-531. (1) General Fund; (2) Implementing Year 2007-08 is \$ 176,000; (3) 1st Succeeding Year 2008-09 is \$704,000; 2nd Succeeding Year 2009-10 is \$1,760,000; 3rd Succeeding Year 2010-11 is \$3,519,000; 4th Succeeding Year 2011-12 is \$3,519,000; 5th Succeeding Year 2012-13 is \$3,519,000; (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. 07-2005. Filed for public inspection October 26, 2007, 9:00 a.m.]

Medical Assistance Program Outpatient Fee Schedule Increases for Select Office Visit and Office Consultation Procedure Codes

Purpose of Notice

The Department of Public Welfare (Department) announces that it will increase the fees paid by the Medical Assistance (MA) Program for select office visit and office consultation procedure codes effective with dates of service on or after November 1, 2007. The Department consulted with the Pennsylvania Medical Society, medical providers and other key stakeholders in determining which existing fees for office visits and office consultations should be increased to support continued access to medical services by MA recipients. The Department is increasing the fees for the following procedure codes:

NOTICES

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<i>Procedure Code</i>	<i>Procedure Description</i>	<i>Current Fee</i>	<i>Fee Effective November 1, 2007</i>
99202	Office or other outpatient visit for the evaluation and management of a new patient, which requires these three key components: an expanded problem focused history; an expanded problem focused examination; and straightforward medical decision making. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of low to moderate severity. Physicians typically spend 20 minutes face-to-face with the patient and/or family.	\$23.00	\$30.00
99203	Office or other outpatient visit for the evaluation and management of a new patient, which requires these three key components: a detailed history; a detailed examination; and medical decision making of low complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate severity. Physicians typically spend 30 minutes face-to-face with the patient and/or family.	\$25.00	\$50.00
99204	Office or other outpatient visit for the evaluation and management of a new patient, which requires these three key components: a comprehensive history; a comprehensive examination; and medical decision making of moderate complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate to high severity. Physicians typically spend 45 minutes face-to-face with the patient and/or family.	\$27.00	\$60.00
99205	Office or other outpatient visit for the evaluation and management of a new patient, which requires these three key components: a comprehensive history; a comprehensive examination; and medical decision making of high complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate to high severity. Physicians typically spend 60 minutes face-to-face with the patient and/or family.	\$36.00	\$80.00
99213	Office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three key components: an expanded problem focused history; an expanded problem focused examination; and medical decision making of low complexity. Counseling and coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of low to moderate severity. Physicians typically spend 15 minutes face-to-face with the patient and/or family.	\$27.00	\$35.00
99214	Office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three key components: a detailed history; a detailed examination; and medical decision making of moderate complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate to high severity. Physicians typically spend 25 minutes face-to-face with the patient and/or family.	\$29.00	\$43.00
99215	Office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three key components: a comprehensive history; a comprehensive examination; and medical decision making of high complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate to high severity. Physicians typically spend 40 minutes face-to-face with the patient and/or family.	\$36.00	\$70.00

<i>Procedure Code</i>	<i>Procedure Description</i>	<i>Current Fee</i>	<i>Fee Effective November 1, 2007</i>
99242	Office consultation for a new or established patient, which requires these three key components: an expanded problem focused history; an expanded problem focused examination; and straightforward medical decision making. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of low severity. Physicians typically spend 30 minutes face-to-face with the patient and/or family.	\$30.00	\$40.00
99243	Office consultation for a new or established patient, which requires these three key components: a detailed history; a detailed examination; and medical decision making of low complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate severity. Physicians typically spend 40 minutes face-to-face with the patient and/or family.	\$30.00	\$50.00
99244	Office consultation for a new or established patient, which requires these three key components: a comprehensive history; a comprehensive examination; and medical decision making of moderate complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate to high severity. Physicians typically spend 60 minutes face-to-face with the patient and/or family.	\$49.00	\$60.00
99245	Office consultation for a new or established patient, which requires these three key components: a comprehensive history; a comprehensive examination; and medical decision making of high complexity. Counseling and/or coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presenting problem(s) are of moderate to high severity. Physicians typically spend 80 minutes face-to-face with the patient and/or family.	\$49.00	80.00

Fiscal Impact

These changes will result in increased costs of \$4.641 million (\$2.252 million in State funds) in the MA Outpatient Program in Fiscal Year (FY) 2007-2008, and \$9.283 million (\$4.474 million in State funds) in FY 2008-2009.

Public Comment

Interested persons are invited to submit written comments regarding this notice to the Department of Public Welfare, Office of Medical Assistance Programs, c/o Regulations Coordinator, Room 515, Health and Welfare Building, Harrisburg, PA 17120. Comments received within 30 days will be reviewed and considered in any subsequent revisions to the MA Program Outpatient Fee Schedule.

Persons with a disability who require an auxiliary aid or service may submit comments using the AT&T Relay Services at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-NOT-532. (1) General Fund; (2) Implementing Year 2007-08 is \$2,252,000; (3) 1st Succeeding Year 2008-09 is \$4,474,000; 2nd Succeeding Year 2009-10 is \$4,474,000; 3rd Succeeding Year 2010-11 is \$4,474,000; 4th Succeeding Year 2011-12 is \$4,474,000; 5th Succeeding Year 2012-13 is \$4,474,000; (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. 07-2006. Filed for public inspection October 26, 2007, 9:00 a.m.]

DEPARTMENT OF TRANSPORTATION

Request for Bids

The Department of Transportation will be accepting bids for the boarding and sealing of structures of property located along Route 412, Hellertown Road, City of Bethlehem, Northampton County. Sealed Bids from contractors will be accepted by the Department of Transportation at Engineering District 5-0, 1002 Hamilton Street, Allentown, PA 18101, until 3 p.m. on Wednesday, November 21, 2007. The contract will include approximately 17 structures. For Bid Forms, date of inspection tour, specifications and further information contact Bruce Kern, District Property Manager, Department of Transportation, 1002 Hamilton Street, Allentown, PA 18101, (610) 871-4179.

ALLEN D. BIEHLER, P. E.,
Secretary

[Pa.B. Doc. No. 07-2007. Filed for public inspection October 26, 2007, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

Acceptance of Rulemaking Petition for Study

On October 16, 2007, the Environmental Quality Board (Board) accepted a rulemaking petition for study under 25

Pa. Code Chapter 23 (relating to Environmental Quality Board policy for processing petitions—statement of policy). The petition, submitted collectively by the Brodhead Watershed Association, Tobyhanna Creek Tunkhannock Creek Watershed Association, the Brodhead Chapter of Trout Unlimited, the Swiftwater Preserve and the Buck Hill Conservancy, requests the Board amend 25 Pa. Code § 93.9c (relating to Drainage List C) to upgrade the Swiftwater Creek Basin in Monroe County (Source to SR No. 611) from High Quality-Cold Water Fishes to Exceptional Value designation.

Under 25 Pa. Code § 93.4d(a) (relating to processing of petitions, evaluations and assessments to change a designated use), the Department of Environmental Protection (Department) is required to publish a notice of intent to assess candidate waters before performing survey work. The Department's assessment notice for the Swiftwater Creek Basin will appear in a future issue of the *Pennsylvania Bulletin*.

The previously referenced petition submitted by the Brodhead Watershed Association, and others are available to the public by contacting the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 and are accessible on the Department's website at www.depweb.state.pa.us (DEP Keywords: EQB) (EQB Meeting Agendas/Handouts/Minutes; 2007; October 16, 2007).

KATHLEEN A. MCGINTY,
Chairperson

[Pa.B. Doc. No. 07-2008. Filed for public inspection October 26, 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>
7-409	Environmental Quality Board Hazardous Waste Regulations 37 Pa.B. 3249 (July 14, 2007)	9/12/07	10/12/07

Environmental Quality Board Regulation #7-409 (IRRC #2619)

Hazardous Waste Regulations

October 12, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the July 14, 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 Environmental Quality Board (Board) to respond to all comments received from us or any other source.

1. Sections 264a.115 and 265a.115. Certification of closure.—Consistency; Clarity.

Certification of closure

These two sections provide the processes for closure certification of hazardous waste facilities. We question why the terms are different in each. For example, the period of 180 days is used for closure procedures for solid waste management units in Section 264a.115(b). The same period of 180 days is also in Section 265a.115(c) while a period of 90 days is found in Section 265a.115(b).

In addition, why are the reasons or conditions different in either section for extending the closure period? What are the bases for these differences?

Finally, why does Section 264a.115(b)(2) discuss taking “all steps to prevent threats to human health and environment,” but Sections 265a.115(b)(1) and (2) refer to “all measures necessary to ensure safety to human health and the environment?” The Board should use consistent standards in the final-form regulation or explain the need for the different phrasing used to describe these standards of protection.

Reasonable likelihood and incompatibility

In Section 264a.115(b)(1)(ii) and (iii) how would the Board determine or measure “reasonable likelihood” and if closure of the facility would be “incompatible . . . ?”

2. Sections 264a.143 and 265a.143. Financial assurance for closure.—Fiscal impact; Consistency with other regulations; Need; Implementation procedures.

These sections remove the use of the financial test and the corporate guarantee as a means of financial assurance, and replace them with closure insurance. According to the Preamble, this change is based on “[t]he Department’s [Department of Environmental Protection (DEP)] experience with companies suddenly losing the ability to meet the requirements of the financial test with no means of replacing collateral available or entering bankruptcy.” Commentators claim that the changes in these provisions will financially penalize the regulated community. What are the compelling interests that justify reducing the flexibility that is available under federal law and regulations? What will be the fiscal impact of the new system on the regulated community? In its response, the Board should also consider and explain what methods of financial assurance are used in neighboring states.

3. Sections 264a.168 and 265a.168. Bond forfeiture.—Implementation procedures; Clarity.

These two sections establish the process necessary if DEP determines that bond forfeiture is appropriate. We have four questions. First, why does the first sentence remain in Section 264a.168 (b)(4), but the same sentence was deleted from Section 265a.168(b)(4)? Second, in both sections, should each new sentence added to Subsection (b)(4) be separated out as its own number? Third, what are “environmental effects” as mentioned in (b)(4)? Finally, how will DEP calculate what are “excess moneys” as listed in Subsection (b)(4)?

4. Section 264a.195. Inspections.—Fiscal impact; Reasonableness; Implementation procedures; Need.

The proposed regulation deletes this section in its entirety. Commentators have indicated that this deletion would result in unnecessary costs imposed on the regulated community. If the tanks are in a facility that is not in operation during the weekend, what is the need for daily inspections? Why is inspection necessary for a storage tank when the facility is not in operation? The Board and DEP need to justify the need for and benefit of this deletion.

5. Section 265a.154. Form, terms and conditions of bond.—Clarity.

Subsection (b)

Subsection (b) mentions forms used for bond instruments. The Board should specify the manner in which these forms will be made available to the regulated community.

Numerical order

6. Section 266b.3. Definitions.—Clarity.

Paragraph (i), under the definition of “oil-based finishes,” refers to a “hazardous waste characteristic,” but the proposed regulation does not define this term. The Board should provide a definition for this term or a reference to the applicable federal regulation.

7. Sections 266b.11, 266b.12, 266b.31 and 266b.32. Waste management for universal waste.—Implementation procedures; Clarity.

These sections contain the same language to describe waste management for both universal waste oil-based finishes and photographic solutions. We have three concerns pertaining to these four sections. First, what is “original or *otherwise appropriate* and labeled packaging?” (Emphasis added.) Second, the phrase “reasonably foreseeable conditions” is vague and needs to be further defined. Finally, how is it determined that a container is “structurally sound, compatible . . . ?”

8. Section 270a.2. Definitions.—Implementation procedures.

Subsection (c) defines the term “standardized permit.” This subsection states that a standardized permit may have two parts: “[a] uniform portion issued in all cases and a *supplemental portion issued at the Department’s* discretion.” (Emphasis added.) When would DEP decide to use its discretion to issue a “supplemental portion?”

9. Section 270a.60. Permits-by-rule.—Fiscal impact; Reasonableness; Need.

Subsection (b)(2)(vi) states that “[t]reatment activities involving thermal treatment are not eligible to operate under this permit-by-rule.” Currently, DEP allows a generator treating its own hazardous waste in containers, tanks or containment buildings to operate under a permit-by-rule. A commentator expressed concerns over this proposed subsection, indicating that it could: “[l]imit options for reclaiming usable material from the waste or contaminated soil via use of thermal desorption or other processes that use elevated temperatures.” The Preamble offers no explanation for the new language making thermal treatment ineligible. What is the need for this change? Please explain the intent of the addition of Subsection (b)(2)(vi) and its impact on thermal treatment.

10. Section 270a.204. Procedures for preparing a draft standardized permit.—Reasonableness; Implementation procedures; Clarity.

This section provides the procedures necessary for preparing a draft standardized permit. How will DEP determine whether a facility has a “demonstrated history of significant noncompliance with applicable requirements,” making it ineligible for a standardized permit under Subsection (2)(ii)(D)?

The intent of the “tentative determination” and “draft permit decision” requirements in Subsection (3) are unclear. Will the permit applicant have an opportunity at this point to submit more information? Please explain.

11. Section 270a.206. Requirement to apply for an individual permit.—Clarity.

This section provides the requirements necessary to apply for an individual standardized permit, with ineligibility based on various factors. How will DEP determine a “demonstrated history of significant noncompliance” and a “demonstrated history of submitting incomplete or deficient permit applications” as mentioned in Paragraphs 1

(ii) and (iii)? When will DEP inform a facility owner or operator that it needs to apply for an individual permit as mentioned in Paragraph (2)? The final-form regulation should include a reference to the appropriate section that specifies a timeframe.

12. Section 270a.207. Requirements for standardized permit public notices.—Clarity.

This section describes the process for DEP to provide public notice of draft standardized permits. Paragraph (2)(ii) refers to “[a] manner constituting legal notice to the public under State statute.” This phrase is vague. The final-form rulemaking should set forth the specific manner in which notice is to be legally provided and specify the statute this provision references.

13. Section 270a.209. Response to comments.—Clarity.

This section describes the process for DEP’s response to public comments on draft standardized permits. We have two questions. First, Paragraphs (1) (ii) and (2) refer to “significant comments.” How will DEP determine what comments are “significant?” Second, Paragraph (1)(ii) indicates that DEP will describe and respond to all significant comments, and “[o]n any additional conditions necessary to protect human health and the environment.” What is meant by this phrase? Is it referring to conditions as a result of the permit or from those identified by the public comment? The final-form regulation needs to clarify this issue.

14. Section 270a.210. Procedures to appeal a final standardized permit.—Reasonableness; Clarity.

Would there be any circumstances where the uniform portion of the standardized permit would be subject to appeal?

15. Requests.—Reasonableness; Consistency; Implementation procedure; Clarity.

In Sections 265a.163 and 270a.41(3), the regulation refers to requests by DEP. However, it is unclear whether requests by DEP will be made in writing. We note that Section 270a.207(1)(iv) requires the public to submit requests in writing to DEP. The final-form regulation should clearly state that DEP will submit its requests in writing to parties who are expected to comply with the requests.

ARTHUR COCCODRILLI,
Chairperson

[Pa.B. Doc. No. 07-2009. Filed for public inspection October 26, 2007, 9:00 a.m.]

INSURANCE DEPARTMENT

AF&L Insurance Company; Rate Increase Filing for an LTC Policy Form; Rate Filing

AF&L Insurance Company is requesting approval to increase the premium 12% on Long-Term Care policy form HHC-4. The proposed increase will affect 1,671 a policyholders of this Commonwealth.

Unless formal administrative action is taken prior to January 2, 2008, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department’s (Department) website at www.ins.state.pa.us.

pa.us. Scroll down the home page and click on “Consumer Information” located on the left side. Next scroll down to “General Information,” located in the middle of the page and click on “Notices.” The pdf copy of this filing is located at the link “Filing.pdf” following the name of the filing.

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department’s office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@state.pa.us, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Acting Insurance Commissioner

[Pa.B. Doc. No. 07-2010. Filed for public inspection October 26, 2007, 9:00 a.m.]

AF&L Insurance Company; Rate Increase Filing for an LTC Policy Form; Rate Filing

AF&L Insurance Company is requesting approval to increase the premium 12% on Long-Term Care policy form LTC-5. The proposed increase will affect 528 policyholders of this Commonwealth.

Unless formal administrative action is taken prior to January 2, 2008, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department’s (Department) website at www.ins.state.pa.us. Scroll down the home page and click on “Consumer Information” located on the left side. Next scroll down to “General Information,” located in the middle of the page and click on “Notices.” The pdf copy of this filing is located at the link “Filing.pdf” following the name of the filing.

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department’s office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Laverty, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlaverty@state.pa.us, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Acting Insurance Commissioner

[Pa.B. Doc. No. 07-2011. Filed for public inspection October 26, 2007, 9:00 a.m.]

AF&L Insurance Company; Rate Increase Filing for an LTC Policy Form; Rate Filing

AF&L Insurance Company is requesting approval to increase the premium 12% on Long-Term Care policy form LTC-4. The proposed increase will affect 323 policyholders of this Commonwealth.

Unless formal administrative action is taken prior to January 2, 2008, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website at www.ins.state.pa.us. Scroll down the home page and click on "Consumer Information" located on the left side. Next scroll down to "General Information," located in the middle of the page and click on "Notices." The pdf copy of this filing is located at the link "Filing.pdf" following the name of the filing.

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Lavery, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlavery@state.pa.us, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Acting Insurance Commissioner

[Pa.B. Doc. No. 07-2012. Filed for public inspection October 26, 2007, 9:00 a.m.]

AF&L Insurance Company; Rate Increase Filing for an LTC Policy Form; Rate Filing

AF&L Insurance Company is requesting approval to increase the premium 12% on Long-Term Care policy form QLTC-97. The proposed increase will affect 63 policyholders of this Commonwealth.

Unless formal administrative action is taken prior to January 2, 2008, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website at www.ins.state.pa.us. Scroll down the home page and click on "Consumer Information" located on the left side. Next scroll down to "General Information," located in the middle of the page, and click on "Notices." The pdf copy of this filing is located at the link "Filing.pdf" following the name of the filing.

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Lavery, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlavery@state.pa.us, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Acting Insurance Commissioner

[Pa.B. Doc. No. 07-2013. Filed for public inspection October 26, 2007, 9:00 a.m.]

AF&L Insurance Company; Rate Increase Filing for an LTC Policy Form; Rate Filing

AF&L Insurance Company is requesting approval to increase the premium 12% on Long-Term Care policy

form LTC-93. The proposed increase will affect 758 policyholders of this Commonwealth.

Unless formal administrative action is taken prior to January 2, 2008, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website at www.ins.state.pa.us. Scroll down the home page and click on "Consumer Information" located on the left side. Next scroll down to "General Information," located in the middle of the page, and click on "Notices." The pdf copy of this filing is located at the link "Filing.pdf" following the name of the filing.

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Lavery, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlavery@state.pa.us, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Acting Insurance Commissioner

[Pa.B. Doc. No. 07-2014. Filed for public inspection October 26, 2007, 9:00 a.m.]

AF&L Insurance Company; Rate Increase Filing for an LTC Policy Form; Rate Filing

AF&L Insurance Company is requesting approval to increase the premium 12% on Long-Term Care policy form LTC-7. The proposed increase will affect 218 policyholders of this Commonwealth.

Unless formal administrative action is taken prior to January 2, 2008, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website at www.ins.state.pa.us. Scroll down the home page and click on "Consumer Information" located on the left side. Next scroll down to "General Information," located in the middle of the page and click on "Notices." The pdf copy of this filing is located at the link "Filing.pdf" following the name of the filing.

Copies of the filing are also available for public inspection, by appointment, during normal working hours at the Department's office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Lavery, Actuary, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jlavery@state.pa.us, within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Acting Insurance Commissioner

[Pa.B. Doc. No. 07-2015. Filed for public inspection October 26, 2007, 9:00 a.m.]

Independence Blue Cross and Highmark Blue Shield; Nongroup Major Medical Rate Adjustment; Filing No. 16-P-07; Form 5210; Rate Filing

On October 10, 2007, the Insurance Department (Department) received from Independence Blue Cross a filing for a rate adjustment for Nongroup Major Medical products.

The company requests a rate increase of 10.04%. This will affect about 2,100 contractholders and will produce additional income of about \$626,000 annually. The requested effective date of the change is January 1, 2008.

Unless formal administrative action is taken prior to January 10, 2008, 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. 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 office in Harrisburg.

Interested parties are invited to submit written comments, suggestions or objections to James Sabater, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120, jsabater@state.pa.us, by no later than November 25, 2007.

JOEL SCOTT ARIO,
Acting Insurance Commissioner

[Pa.B. Doc. No. 07-2016. Filed for public inspection October 26, 2007, 9:00 a.m.]

Insurance Services Office, Inc.; Homeowners Loss Cost Revision; Rate Filing

On October 9, 2007, the Insurance Department (Department) received from Insurance Services Office, Inc. a filing for a proposed loss cost level change for homeowners insurance.

The advisory organization requests an overall 7.5% decrease in loss costs effective March 1, 2008.

Unless formal administrative action is taken prior to December 8, 2007, the subject filing may be deemed approved by operation of law.

A copy of the filing is available for public inspection, by appointment, during normal working hours at the Department's office in Harrisburg.

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, within 15 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Acting Insurance Commissioner

[Pa.B. Doc. No. 07-2017. Filed for public inspection October 26, 2007, 9:00 a.m.]

Inter-County Health Plan, Inc.; Application for Approval of Revised Rates for its 65-Select (Health) Plans, Filing No. MG Health 0907; Rate Filing

Inter-County Health Plan, Inc. has filed for approval increased rates for its community-rated 65-Select program. The requested effective date of the revised rates is January 1, 2008, and represents an average increase of 13.5% over the currently approved rates. The monthly premiums for subscribers enrolling at first eligibility are as follows:

	<i>Current Rate</i>	<i>Proposed Rate</i>	<i>Adjustment Percentage</i>
Plan A	\$74.20	\$84.15	13.4%
Plan B	\$77.25	\$87.60	13.4%
Plan C	\$86.40	\$98.15	13.6%
Plan D	\$80.20	\$90.95	13.4%
Plan E	\$77.25	\$87.60	13.4%
Plan H	\$94.80	\$107.50	13.4%

These rate adjustments will affect approximately 2,543 subscribers in this Commonwealth, and will generate approximately \$396,000 in additional premium annually.

Unless formal administrative action is taken prior to January 10, 2008, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website at 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 Michael Gurgiolo, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120 or mgurgiolo@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Acting Insurance Commissioner

[Pa.B. Doc. No. 07-2018. Filed for public inspection October 26, 2007, 9:00 a.m.]

Inter-County Hospitalization Plan, Inc.; Application for Approval of Revised Rates for its 65-Select (Hospital) Plans, Filing No. MG Hospital 0907; Rate Filing

Inter-County Hospitalization Plan, Inc. has filed for approval increased rates for its community-rated 65-Select program. The requested effective date of the revised rates is January 1, 2008, and represents an average increase of 21.1% over the currently approved rates. The monthly premiums for subscribers enrolling at first eligibility are as follows:

	<i>Current Rate</i>	<i>Proposed Rate</i>	<i>Adjustment Percentage</i>
Plan A	\$55.30	\$67.00	21.2%
Plan B	\$84.50	\$97.50	15.4%
Plan C	\$95.45	\$117.65	23.3%
Plan D	\$95.90	\$117.45	22.5%

	<i>Current Rate</i>	<i>Proposed Rate</i>	<i>Adjustment Percentage</i>
Plan E	\$102.45	\$116.95	14.2%
Plan H (with Rx)	\$191.20	\$152.70	-20.1%
Plan H (w/o Rx)	\$93.75	\$116.30	24.1%

These rate adjustments will affect approximately 2,543 subscribers in this Commonwealth, and will generate approximately \$690,000 in additional premium annually.

Unless formal administrative action is taken prior to January 10, 2008, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website at 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 Michael Gurgiolò, Insurance Department, Insurance Product Regulation and Market Enforcement, Room 1311, Strawberry Square, Harrisburg, PA 17120 or mgurgiolò@state.pa.us within 30 days after publication of this notice in the *Pennsylvania Bulletin*.

JOEL SCOTT ARIO,
Acting Insurance Commissioner

[Pa.B. Doc. No. 07-2019. Filed for public inspection October 26, 2007, 9:00 a.m.]

Keystone Health Plan Central—Base Rates—Filing No. 07-ZZ and Benefit Pricing Methodology 07-AAA; Rate Filing

On October 12, 2007, Keystone Health Plan Central submitted a filing to revise its base HMO rates. The requested base rate increase by quarter for those renewing in 2008 is:

	<i>Quarter 1</i>	<i>Quarter 2</i>	<i>Quarter 3</i>	<i>Quarter 4</i>
For groups with less than 100 contracts—	14.29%	13.68%	13.07%	12.47%
For groups with 100 or more contracts—	13.71%	13.11%	12.51%	11.91%

Keystone Health Plan Central has also submitted a Benefit Pricing methodology. The filings will impact approximately 60,000 members. The base rate filing will generate additional annual revenue amounting to \$23.2 million. An effective date of January 1, 2008, has been requested.

Unless formal administrative action is taken prior to January 10, 2008, the subject filing may be deemed approved by operation of law.

A copy of the filing is available on the Insurance Department's (Department) website at 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 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. 07-2020. Filed for public inspection October 26, 2007, 9:00 a.m.]

Medical Care Availability and Reduction of Error Fund; Notice of and Amount of Assessment Action; Notice No. 2007-05

The Insurance Department (Department), Medical Care Availability and Reduction of Error Fund, by Peter Adams, Deputy Insurance Commissioner, under section 712 of the Medical Care Availability and Reduction of Error (MCARE) Act (act) (40 P.S. § 1303.712), has determined that the annual assessment to be levied for calendar year 2008 shall be 20% applied to the prevailing primary premium for each participating health care provider.

The act defines "prevailing primary premium" as the schedule of occurrence rates approved by the Insurance Commissioner for the Joint Underwriting Association (JUA). For purposes of the 2007 annual assessment, the rates shall be those currently approved for use by the JUA.

Participating health care providers having approved self-insurance plans shall be assessed an amount equal to the assessment imposed on a participating health care provider of like class, size, risk and kind as determined by the Department.

This action is subject to 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

PETER J. ADAMS,
Deputy Insurance Commissioner

[Pa.B. Doc. No. 07-2021. Filed for public inspection October 26, 2007, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Default Order

[Correction]

The Pennsylvania Public Utility Commission published the following default order at 37 Pa.B. 5108 (September 15, 2007) with an incorrect docket number. The following text represents the correct heading that should have appeared with the notice. The ellipses refer to the correct remaining text of the default order.

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-310865***

* * * * *

[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 November 19, 2007. Documents filed in support of the applications are available for inspection and copying at the Office of the Secretary between 8 a.m. and 4:30 p.m., Monday through Friday, and at the business address of the respective applicant.

Applications of the following for approval to begin operating as common carriers for transportation of persons as described under each application.

A-00124153. C.A.T.A. Limos, LLC, t/a Hot Pursuit Limos of ABE (4115 Jacksonville Road, Bethlehem, Northampton County, PA 18017), a limited liability company of the Commonwealth—persons in limousine service, between points in the Counties of Carbon, Lehigh, Monroe and Northampton.

A-00124154. Jose Francisco Jose (515 Winters Avenue, West Hazleton, Luzerne County, PA 18202)—in paratransit service, from points in the City of Hazleton, to the T. J. Maxx Store located in Pittston Township, PA, and return.

A-00124156. Dennis Wise, t/a Wise Travels (2196 Millersville Road, Lancaster, Lancaster County, PA 17603)—in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, from points in the Lancaster County, to points in Pennsylvania, and return.

Application of the following for the approval of the right and privilege to discontinue/abandon operating as common carriers by motor vehicle and for cancellation of the certificate of public convenience as described under the application.

A-00116740, F1. South Hills Carriage, Inc. (250 Bower Hill Road, Venetia, Washington County, PA 15367)—a corporation of the Commonwealth—in limousine service, between points in the County of Washington, and from points in said county, to points in Pennsylvania,

and return; subject to the following conditions: (a) That no right, power or privilege is granted to provide service for funeral homes or for persons attending funerals; (b) That no right, power or privilege is granted to provide service to or from points in Butler County; (c) That no right, power or privilege is granted to provide service in vehicles with seating capacities of less than six passengers, except where provided in Rolls Royce and Bentley vehicles, or in vehicles which qualify as antique motor vehicles, as defined in 67 Pa. Code § 67.2.

A-00116740, F2. South Hills Carriage, Inc. (250 Bower Hill Road, Venetia, Washington County, PA 15367)—a corporation of the Commonwealth—in group and party service in vehicles seating 15 passengers or less, including the driver, between points in the County of Washington, and from points in said county, and the County of Allegheny, to points in Pennsylvania, and return; subject to the following condition: That service between points in the County of Washington located on and south of Interstate Highway 70 and from points in said territory, to points in Pennsylvania, is limited to the use of luxury limousine vehicles seating 11 to 15 passengers, including the driver.

A-00120815. Robert W. Alexander, Jr. and Linda L. Griffin (309 Main Street, Prospect, Butler County, PA 16052)—in limousine service, between points in the Counties of Butler, Lawrence, Mercer, Armstrong, Allegheny and Indiana, and from points in said counties, to points in Pennsylvania, and return.

A-00121696. Adam Weaver (162 East Main Street, P. O. Box 328, Leola, Lancaster County, PA 17540)—in paratransit service, limited to persons whose personal convictions prevent them from owning or operating motor vehicles, between points in the Counties of Berks, Union, Lancaster, Franklin and Cumberland, and from points in said counties, to points in Pennsylvania, and return.

Pennsylvania Public Utility Commission, Bureau of Transportation and Safety v. William G. Gordon, t/a Buck Run Enterprises; Doc. No. A-00118109C0701

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 all authority issued to Gordon, William G. (respondent) is under suspension effective 03/01/2007 for failure to maintain evidence of insurance on file with this Commission.
2. That respondent maintains a principal place of business at Gordon, William G., t/a Buck Run Enterprises, 307 North Main Street, Mercersburg, PA 17236.
3. That respondent was issued a Certificate of Public Convenience by this Commission on 8/28/2001 at Application Docket No. A-00118109.
4. That respondent has failed to maintain evidence of bodily injury and property damage liability insurance and cargo insurance on file with this Commission.
5. That respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66

Pa.C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

Wherefore, unless respondent causes its insurer to file evidence of insurance with this Commission within twenty (20) days of the date of service of this Complaint, the Bureau of Transportation and Safety Prosecutory Staff will request that the Commission issue an Order which (1) cancels the Certificate of Public Convenience held by respondent at Docket No. A-00118109 for failure to maintain evidence of current insurance on file with the Commission, (2) orders such other remedy as the Commission may deem to be appropriate, which may include a fine and the suspension of a vehicle registration and (3) imposes an additional fine on the respondent.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
Motor Carrier Services & Enforcement Division
Bureau of Transportation and Safety
P. O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, 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 of the date of service, 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. You may elect not to contest this Complaint by causing your insurer to file proper evidence of current

insurance in accordance with the Commission's regulations within twenty (20) days of the date of service of this Complaint. The proof of insurance must be filed with the

Compliance Office, Bureau of Transportation
and Safety
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Upon receipt of the evidence of insurance from your insurer, the Complaint proceeding shall be closed. *Acord Certificates of Insurance and Faxed Form Es and Hs Are Unacceptable as Evidence of Insurance.*

D. 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.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The judge is not bound by the optional fine set forth above.

F. 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. 07-2022. Filed for public inspection October 26, 2007, 9:00 a.m.]

Telecommunications

A-311265F7001. Telrite Corporation and Verizon North, Inc. Joint petition of Telrite Corporation and Verizon North, Inc. for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Telrite Corporation and Verizon North, Inc., by its counsel, filed on October 11, 2007, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Telrite Corporation 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. 07-2023. Filed for public inspection October 26, 2007, 9:00 a.m.]

Telecommunications

A-311265F7000. Telrite Corporation and Verizon Pennsylvania, Inc. Joint petition of Telrite Corporation and Verizon Pennsylvania, Inc. for approval of an interconnection agreement under section 252(e) of the Telecommunications Act of 1996.

Telrite Corporation and Verizon Pennsylvania, Inc., by its counsel, filed on October 11, 2007, at the Pennsylvania Public Utility Commission (Commission), a joint petition for approval of an interconnection agreement under sections 251 and 252 of the Telecommunications Act of 1996.

Interested parties may file comments concerning the petition and agreement with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265. Comments are due on or before 10 days after the date of publication of this notice. Copies of the Telrite Corporation 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. 07-2024. Filed for public inspection October 26, 2007, 9:00 a.m.]

**PHILADELPHIA REGIONAL
PORT AUTHORITY**

Condensed Statement of Changes in Net Assets

	June 30, 2007 and 2006	
	AUDITED	
	<i>June 30, 2007</i>	<i>June 30, 2006</i>
Total Revenues	\$ 6,213,119	\$ 5,506,237
Total Operating Expenses	\$ 22,002,893	\$ 21,354,907
Operating Gain (Loss)	\$ (15,789,774)	\$ (15,848,670)
Net Nonoperating Revenues (Expenses)	\$ 4,966,031	\$ 4,561,774
(Loss) Gain Before Capital Grants	\$ (10,823,743)	\$ (11,286,896)

	<i>June 30, 2007</i>	<i>June 30, 2006</i>
Capital Grants and appropriations	\$ 15,081,218	\$ 18,157,148
Change in Net Assets	\$ 4,257,475	\$ 6,870,252
Net Assets, Beginning of Year	\$ 47,759,199	\$ 40,888,947
Net Assets, End of Year	\$ 52,016,674	\$ 47,759,199

JAMES T. MCDERMOTT, Jr.,
Executive Director

[Pa.B. Doc. No. 07-2025. Filed for public inspection October 26, 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:

November 13, 2007	Larry D. Punch (Benefit Reduction and COLA Application)	1 p.m.
November 28, 2007	Arthur Randall Thomas (Purchase of Service)	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 to General Rules of Administrative Practice and Procedure) unless specific exemption is granted.

LEONARD KNEPP,
Acting Secretary

[Pa.B. Doc. No. 07-2026. Filed for public inspection October 26, 2007, 9:00 a.m.]

